

International code of detention in Africa

Compendium of texts

Ghislain Patrick Lessène

Clothilde Viera Alves

TABLE CONTENTS

PRESENTATION.....	10
<i>Objectives</i>	<i>10</i>
<i>Justification</i>	<i>11</i>
<i>Subdivision.....</i>	<i>11</i>
1. Universal Declaration of Human Rights.....	15
Adopted by the United Nations General Assembly in its resolution 217 A (III), on 10 December 1948.....	15
2. International Covenant on Civil and Political Rights.....	20
Adopted by the United Nations General Assembly, resolution 2200 A (XXI) of 16 December 1966. Entry into force 23 March 1976.....	20
3. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.....	29
1. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)	31
2. Code of Conduct for Law Enforcement Officials	73
3. Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners	78
4. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment	86
5. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.....	96
6. Basic Principles for the Treatment of Prisoners.....	102
7. Status of foreign citizens in criminal proceedings	103
1. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	105
2. 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.....	108
3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.....	110
4. Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	121
5. Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.....	124
6. Resolution 64/153: Torture and other cruel, inhuman or degrading treatment or punishment	132
1. Capital punishment.....	140
2. Safeguards guaranteeing protection of the rights of those facing the death penalty.....	142
3. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty.....	143

4. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions	146
5. Safeguards guaranteeing protection of the rights of those facing the death penalty	150
Resolution 1996/15 Economic and Social Council, 23 July 1996	150
6. The question of the death penalty	153
1. Declaration on the Protection of All Persons from Enforced Disappearance.....	157
2. International Convention for the Protection of All Persons from Enforced Disappearance...	165
1. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).....	183
2. United Nations Rules for the Protection of Juveniles Deprived of their Liberty	209
3. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)	225
4. Guidelines for Action on Children in the Criminal Justice System	235
1. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	317
2. Basic Principles on the Independence of the Judiciary.....	321
3. Guidelines on the Role of Prosecutors.....	325
4. Basic Principles on the Role of Lawyers	331
5. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law	337
1. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)...	349
2. Basic principles on the use of restorative justice programmes in criminal matters	359
1. Geneva Convention (III) relative to the treatment of Prisoners of War of 12 August 1949...	363
Article 1	363
Article 2	363
2. Geneva Convention (IV) relative to the Protection of Civilian Persons in time of War of 12 August 1949.....	437
Article 1	437
Article 2	437
Article 3	437
Article 4	438
Article 5	439
Article 8	440
Article 9	440
Article 10	441
Article 11	441
Article 12	442
PART II.....	442
Article 13.....	442

<i>Article 15</i>	443
<i>Article 16</i>	443
<i>Article 17</i>	443
<i>PART III</i>	444
<i>Article 27</i>	444
<i>Article 28</i>	444
<i>Article 29</i>	444
<i>Article 30</i>	444
<i>Article 31</i>	445
<i>Article 32</i>	445
<i>Article 34</i>	445
(...)	445
<i>Article 37</i>	445
<i>Article 38</i>	446
<i>Article 41</i>	446
<i>Article 42</i>	446
<i>Article 43</i>	447
<i>Article 44</i>	447
<i>Article 45</i>	447
<i>Article 46</i>	448
<i>Article 47</i>	448
<i>Article 64</i>	448
<i>Article 65</i>	449
<i>Article 66</i>	449
<i>Article 67</i>	449
<i>Article 68</i>	449
<i>Article 69</i>	450
<i>Article 70</i>	450
<i>Article 71</i>	450
<i>Article 72</i>	451
<i>Article 73</i>	451
<i>Article 74</i>	452
<i>Article 75</i>	452
<i>Article 76</i>	452
<i>Article 77</i>	453
<i>Article 78</i>	453
<i>Article 79</i>	454

<i>Article 80</i>	454
<i>Article 81</i>	454
<i>Article 82</i>	454
<i>Article 83</i>	455
<i>Article 84</i>	455
<i>Article 85</i>	455
<i>Article 86</i>	456
<i>Article 87</i>	456
<i>Article 88</i>	456
<i>Article 89</i>	457
<i>Article 90</i>	457
<i>Article 91</i>	458
<i>Article 92</i>	458
<i>Article 93</i>	459
<i>Article 94</i>	459
<i>Article 95</i>	460
<i>Article 96</i>	461
<i>Article 97</i>	461
<i>Article 98</i>	462
<i>Article 99</i>	462
<i>Article 100</i>	463
<i>Article 101</i>	463
<i>Article 102</i>	464
<i>Article 103</i>	464
<i>Article 104</i>	464
<i>Article 105</i>	465
<i>Article 106</i>	465
<i>Article 107</i>	465
<i>Article 108</i>	466
<i>Article 109</i>	466
<i>Article 110</i>	467
<i>Article 111</i>	467
<i>Article 112</i>	468
<i>Article 113</i>	468
<i>Article 114</i>	469
<i>Article 115</i>	469
<i>Article 116</i>	469

<i>Article 117</i>	469
<i>Article 119</i>	470
<i>Article 120</i>	470
<i>Article 121</i>	471
<i>Article 122</i>	471
<i>Article 123</i>	471
<i>Article 124</i>	472
<i>Article 125</i>	472
<i>Article 126</i>	473
<i>Article 127</i>	473
<i>Article 128</i>	474
<i>Article 129</i>	474
<i>Article 130</i>	474
<i>Article 131</i>	475
<i>Chapter XII</i>	475
<i>Article 132</i>	475
<i>Article 133</i>	476
<i>Article 134</i>	476
<i>Article 135</i>	476
<i>Article 136</i>	477
<i>Article 137</i>	477
<i>Article 138</i>	478
<i>Article 139</i>	478
<i>Article 140</i>	478
<i>Article 141</i>	479
<i>PART IV</i>	479
<i>Article 142</i>	479
<i>Article 143</i>	480
<i>Article 144</i>	480
<i>Article 145</i>	480
<i>Article 146</i>	481
<i>Article 147</i>	481
<i>Article 148</i>	481
<i>Article 149</i>	482
<i>Article I</i>	483
<i>Article 2</i>	483
<i>Article 3</i>	483

<i>Article 4</i>	483
<i>Article 5</i>	483
<i>Article 6</i>	484
<i>Article 8</i>	484
<i>3. Protocol additional to the Geneva Conventions of 12 august 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 june 1977</i>	488
Preamble	488
GENERAL PROVISIONS	488
<i>4. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977</i>	500
1. <i>Rome Statute of the International Criminal Court of 17 July 1998</i>	506
2. <i>Elements of crime September 2002</i>	510
1. <i>African Charter on Human and Peoples' Rights</i>	522
2. <i>Grand Bay (Mauritius) Declaration and Plan of action</i>	529
3. <i>Kigali Declaration</i>	532
1. <i>The Cairo Declaration on Human Rights in Islam</i>	534
2. <i>Arab Charter on Human Rights</i>	537
3. <i>Arab Charter on Human Rights</i>	541
1. <i>Resolution on Prisons in Africa</i>	549
2. <i>The Kampala Declaration on Prison Conditions in Africa</i>	551
3. <i>Plan of Action for the Kampala Declaration on Prison Conditions in Africa</i>	556
4. <i>The Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa</i>	560
5. <i>Arusha Declaration on good prison practice</i>	561
6. <i>Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa</i>	563
1. <i>Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines)</i>	591
2. <i>Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa</i>	599
3. <i>Resolution on the Change of Name of the Robben Island Guidelines Follow-Up Committee" to the "Committee for the Prevention of Torture in Africa" and the Reappointment of the Chairperson and Members of the Committee"</i>	601
1. <i>The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa</i>	603
2. <i>Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa</i>	606
1. <i>Resolution on the Right to Recourse and Fair Trial</i>	613
2. <i>Principles And Guidelines On The Right To A Fair Trial And Legal Assistance In Africa – May 2003</i>	615
3. <i>The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa</i> ...	651
4. <i>Lilongwe Plan of Action for Accessing Legal Aid in the Criminal Justice System in Africa</i>	657

<i>5. International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa.....</i>	<i>662</i>
<i>1. Kadoma Declaration on Community Service Orders in Africa</i>	<i>667</i>
<i>2. Kadoma Declaration on Community Service Orders in Africa plan of action</i>	<i>669</i>
<i>3. Code of conduct for national committees on community service</i>	<i>671</i>
F. WOMEN.....	672
<i>Banjul Declaration of the 59th Ordinary Session of the African Commission on Human and Peoples' Rights under the theme "Women's Rights: Our Collective Responsibility.....</i>	<i>672</i>
III. INTERNATIONAL CRIMINAL LAW.....	676
<i>Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol).....</i>	<i>676</i>

PRESENTATION

The current code is a compilation of texts published in French for the first time in 2013. It aims at giving an exhaustive scope of the legal framework related to detention centres in Africa, largely considered as "places where people are left to die". Indeed more than fifty-five years after their independence, African States have difficulty in setting up decent detention centres. Moreover, the global situation is very degrading and this proves that it is important to promote specific legal framework relating to incarceration

Objectives

The code is intended for persons or institutions dedicated to defending and guaranteeing that there are pockets of humanity in places of detention which are also in effect places of high vulnerability. It also addressed to practitioners, stakeholders of human rights and justice who will find new opportunities for the defense of persons deprived of their liberty. It is also intended for persons in Africa, who are potential prisoners, because everyone can be deprived of his/her liberty. This book is meant to be used as a training material in law courses related to detention. In addition, the objective of this code is the integration of international texts related to detention at the national level. This can be done only by a frequent use of the material by national stakeholders and their implementation in various jurisdictions.

In our point of view, respect for these legal instruments will certainly contribute to the fight against prison overpopulation and its consequences in African prisons.

The code proceeds to identify and determine rights that must be accorded to detainees, while determining the responsibilities of different penitentiary personnel. It contains standards of international human rights, but also humanitarian international law and international criminal law. Indeed, Africa is still the continent with the highest level of current armed conflicts. The situation of people such as prisoners of war who have been subjected to or may be subjected to incarceration must not be omitted. The present code also includes relevant instruments of international law which condemn detentions qualified as international crimes.

The code also lists the main texts adopted by African regional mechanisms still widely ignored by the public. Bearing in mind the reluctance of African judges

to apply international law and because of the distrust of African authorities towards the universal mechanisms, we understand the importance of the "regionalization" or the "africanization" of the law. These texts were adopted either by the African Commission on Human and peoples' Rights, or by other departments of the African Union and deserve to be highlighted because they are the reflection of african realities. It is also necessary to highlight how they complement universal texts which aim at guaranteeing the effectiveness of the standards recognized by the international community.

Justification

The main criteria for the presentation of texts of this collection are their sources and the various domains they cover (treatment of detainees, protection against torture, access to justice, etc.). Besides that, we opted for a chronological presentation which will allow the reader to understand the evolution at the international and African levels of awareness in order to guarantee protection to vulnerable people who are deprived of their liberty. In this perspective, texts were not thus classified according to their normative value or their binding effect. In fact, there are presented in the same manner as they were adopted, without comments.

Subdivision

The code includes two parts. The first part concerns the universal instruments whereas the second part is dedicated to instruments adopted in the African regional framework.

The first part entitled "Universal instruments" presents the various international standards.

Firstly, it mentions instruments related to human rights adopted in the framework of the United Nations Organisation (UN) and which are applied in peace time, particularly conventions, pacts or protocols that have a general reach. However, some dispositions are also applicable to the privation of liberty. Resolutions, declarations, rules and more specific principles adopted by the United Nations General Assembly or by its specialized organs are also a part of these universal instruments. All African States are members of UN and these instruments are applicable in their internal legal framework.

It is important to state that the reproduced texts are only selective and specific to the particular subject which is the privation of liberty. We limited ourselves

to the relevant content of these instruments with clarity and precision. We advise readers who would want to know more about these texts adopted by the UN regarding human rights and detention to refer to the publications of the United Nations High Commissioner for Human Rights¹ and the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention². Other texts can be consulted on the sites of organizations that specialize in detention³ or the African Commission on Human and Peoples' rights⁴.

Secondly the code contains international texts applicable to deprived persons during armed conflicts because the African continent is still the theater of both international and non-international conflicts. Grave violations of rights of persons deprived of liberty during conflicts in Africa give evidence of the necessity for the promotion and popularization of these texts. For that reason, we will focus on relevant dispositions of Geneva Conventions and their additional Protocols containing rules applicable to the persons deprived of liberty⁵.

Thirdly the code lists texts that suppress detentions qualified as international crimes, specifically the Rome Statute of 1998 establishing the International Criminal Court and about Elements of crimes⁶.

The second part of the code is dedicated to "African instruments" and deals with texts developed within the framework of the African system of protection of human rights applicable to prisoners. Following the example of universal instruments, it mentions on one hand, general texts which are applicable also to every detainee and on the other hand, specific texts that are applicable to prisoners. These texts emanate either from the Organization of African Unity

¹ Office of the United Nations High Commissioner for Human Rights, *Human Rights and Prisons - A Manual on Human Rights Training for Prison Officials*, Training Series n°11, United Nations Publications, New –York and Geneva, 2005 and *Human rights and prisons: A Pocketbook of International Human Rights Standards for Prison Officials*, Training Series n°11, Add.3, United Nations Publications, New –York and Geneva, 2005. For further information, see the website of the Office of the United Nations High Commissioner for Human Rights: www.ohchr.org

² United Nations High Commissioner for Refugees, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012 (<http://www.unhcr.org/refworld/docid/503489533b8.html>)

³ For further details, see the following websites: www.apr.ch; <http://www.oip.org/> and <http://www.penalreform.org/>.

⁴For further details, see the website of the African Commission on Human and Peoples' Rights: <http://www.achpr.org/fr/instruments/>.

⁵For further information, see the website of the International Committee of Red Cross: www.icrc.org.

⁶For further information, see the website of the international Criminal Court: <http://www.icc-cpi.int/Menu/ICC/Legal+Texts+and+Tools/>.

(OAU) which became African Union (UA) in 2002, or from African mechanisms for promotion and protection of human rights like the African Commission of Human and People's rights.

It is also necessary to state that some texts developed during Pan-African meetings which were afterward taken back and adopted by African and universal mechanisms. Finally, we have mentioned instruments adopted by Arab-Muslim organizations because of their influence on Muslim countries in Africa.

The *Arab Spring* intervened in North Africa in 2010 and 2011. In addition, inhuman conditions of detention of migrants in transit in some States from the Maghreb revealed the necessity for a better knowledge of international, regional and national rules for a good administration of prison systems.

The peculiarity of the English version of the code is the introduction of new texts which are absent in the first French edition.

Another characteristic of the English version, and not the slightest, is the co-writing of this version with Miss Clothilde VIEIRA ALVES who dedicated a part of her internship at the Centre d'Etudes Juridiques Africaines (Centre for African Legal Studies (CEJA)) to research fervently and patiently new legal instruments. I would like to express my deepest gratitude to her for that great job!

We hope that this code will be a precious and essential tool for researchers, students, experts, professionals of justice and activists of human rights, especially Africans, in their work towards greater respect of human rights in Africa in general, and rights of persons deprived of liberty in particular.

As is the case with the French versions, any comments, criticism or suggestions for the improvement of this work will be welcomed.

Ghislain Patrick Lessène

PhD in Law

Executive Director of the Centre d'Etudes Juridiques Africaines (CEJA)

PART ONE

UNIVERSAL INSTRUMENTS

I

HUMAN RIGHTS

A. INSTRUMENTS OF GENERAL APPLICATION

1. Universal Declaration of Human Rights

Adopted by the United Nations General Assembly in its resolution 217 A (III), on 10 December 1948.

(Extracts)

Preamble

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

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly proclaims this Universal Declaration Of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

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

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

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

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any

discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

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

Article 9

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

Article 10

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

Article 11

1. 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.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

(...)

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.

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

Article 17

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

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

(...)

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

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

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

2. International Covenant on Civil and Political Rights

Adopted by the United Nations General Assembly, resolution 2200 A (XXI) of 16 December 1966. Entry into force 23 March 1976

(Extracts)

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

(...)

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps,

in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

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

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

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;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

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.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be

the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

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

Article 10

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

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

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

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

Article 11

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

(...)

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances

where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

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

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(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.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

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

Article 18

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.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
 2. 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.
 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.
- (...)

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
 2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
 3. No marriage shall be entered into without the free and full consent of the intending spouses.
 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.
- (...)

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.

(...)

3. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989. Entry into force 11 July 1991

The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,

Have agreed as follows:

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.
2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

Article 4

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 5

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 6

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.

2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

(...)

B. SPECIFIC INSTRUMENTS

B1. TREATMENT OF PRISONERS

1. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

First adopted in 1957. Revised and unanimously adopted by the UN General Assembly in Resolution A/Res/70/175 on 17 December 2015.

The General Assembly,

Guided by the principal purposes of the United Nations, as set out in the Preamble to the Charter of the United Nations and the Universal Declaration of Human Rights,⁷ and inspired by the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, without distinction of any kind, and in the equal rights of men and women and of nations large and small, to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained and to promote social progress and better standards of life in larger freedom,

Recalling all standards and norms in crime prevention and criminal justice developed at the request of the Commission on Crime Prevention and Criminal Justice and adopted or recommended by the General Assembly, or adopted by a United Nations congress on the prevention of crime and the treatment of offenders, and recognizing that the Universal Declaration of Human Rights is a source of inspiration for the United Nations standards and norms in crime prevention and criminal justice,

Bearing in mind the long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights, and emphasizing the fundamental importance of human rights in the daily administration of criminal justice and crime prevention, *aware* that the Standard Minimum Rules for the Treatment of Prisoners⁸ have been the universally acknowledged minimum standards for the detention of prisoners and that they have been of significant value and influence, as a guide, in the development of correctional laws, policies and practices since their adoption

⁷ Resolution 217 A (III).

⁸ Human Rights: A Compilation of International Instruments, Volume I (First Part), Universal Instruments (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34

by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in 1955,

Mindful that, in the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,⁹ Member States recognized that an effective, fair, accountable and humane criminal justice system was based on the commitment to uphold the protection of human rights in the administration of justice and the prevention and control of crime, and acknowledged the value and impact of the United Nations standards and norms in crime prevention and criminal justice in designing and implementing national crime prevention and criminal justice policies, procedures and programmes,

Taking into account the progressive development of international law pertaining to the treatment of prisoners since 1955, including in international instruments such as the International Covenant on Civil and Political Rights,¹⁰ the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹¹ and the Optional Protocol thereto,¹²

Recalling the United Nations standards and norms in crime prevention and criminal justice related to the treatment of prisoners and to alternatives to imprisonment adopted since 1955, in particular the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners,¹³ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,¹⁴ the Basic Principles for the Treatment of Prisoners,¹⁵ the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)¹⁶ and the basic principles on the use of restorative justice programmes in criminal matters,¹⁷ *Bearing in mind* the need for vigilance with regard to the specific situation of children, juveniles and women in the administration of justice, in particular while they are deprived of their liberty, as called for in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),¹⁸ the United Nations

⁹ Resolution 65/230, annex.

¹⁰ Resolution 2200 A (XXI), annex.

¹¹ United Nations, Treaty Series, vol. 1465, No. 24841.

¹² *Ibid.*, vol. 2375, No. 24841.

¹³ Economic and Social Council resolution 1984/47, annex.

¹⁴ Resolution 43/173, annex.

¹⁵ Resolution 45/111, annex.

¹⁶ Resolution 45/110, annex.

¹⁷ Economic and Social Council resolution 2002/12, annex.

¹⁸ Resolution 40/33, annex.

Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),¹⁹ the United Nations Rules for the Protection of Juveniles Deprived of their Liberty²⁰ and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),²¹ *Recalling* the United Nations standards and norms in crime prevention and criminal justice adopted since 1955 that provide additional guidance on the treatment of prisoners, including the Code of Conduct for Law Enforcement Officials,²² 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,²³ the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,²⁴ the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²⁵ and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,²⁶ *Aware* of regional principles and standards related to the treatment of prisoners, including the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, the revised European Prison Rules, the Kampala Declaration on Prison Conditions in Africa,²⁷ the Arusha Declaration on Good Prison Practice²⁸ and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,

Recalling its resolution 65/230 of 21 December 2010, entitled “Twelfth United Nations Congress on Crime Prevention and Criminal Justice”, in which it requested the Commission on Crime Prevention and Criminal Justice to establish an open-ended intergovernmental expert group to exchange information on best practices, as well as national legislation and existing international law, and on the revision of existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional science and best practices, *Recalling* also its

¹⁹ Resolution 45/112, annex.

²⁰ Resolution 45/113, annex.

²¹ Resolution 65/229, annex.

²² Resolution 34/169, annex.

²³ Resolution 37/194, annex.

²⁴ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex.

²⁵ Resolution 55/89, annex.

²⁶ Resolution 67/187, annex.

²⁷ Economic and Social Council resolution 1997/36, annex.

²⁸ Economic and Social Council resolution 1999/27, annex.

resolutions 67/188 of 20 December 2012, 68/190 of 18 December 2013 and 69/192 of 18 December 2014, entitled “Standard Minimum Rules for the Treatment of Prisoners”, in particular resolution 68/190, in which it took note with appreciation of the work done by the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners, and resolution 69/192, in which it emphasized that efforts should be made to finalize the revision process, building on the recommendations made at the three meetings of the Expert Group and the submissions of Member States,

Mindful that, in its resolution 68/190, it took into consideration the recommendations of the Expert Group with regard to the issues and the rules of the Standard Minimum Rules that had been identified for revision in the following areas:

- (a) Respect for prisoners’ inherent dignity and value as human beings (rules 6, para. 1; 57–59; and 60, para. 1),
- (b) Medical and health services (rules 22–26; 52; 62; and 71, para. 2),
- (c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet (rules 27, 29, 31 and 32),
- (d) Investigation of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners (rule 7 and proposed rules 44 bis and 54 bis),
- (e) Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances (rules 6 and 7),
- (f) The right of access to legal representation (rules 30; 35, para. 1; 37; and 93),
- (g) Complaints and independent inspection (rules 36 and 55),
- (h) The replacement of outdated terminology (rules 22–26, 62, 82 and 83 and various others),
- (i) Training of relevant staff to implement the Standard Minimum Rules (rule 47),

Mindful also that, in its resolution 69/192, it reiterated that any changes to the Standard Minimum Rules should not lower any of the existing standards, but should reflect recent advances in correctional science and good practices so as to promote safety, security and humane conditions for prisoners,

Mindful further of the extensive consultative process culminating in the recommendations of the Expert Group, a process spanning a period of five years, consisting of technical and expert pre-consultations, meetings in Vienna,

Buenos Aires and Cape Town, South Africa, and the active participation and input of Member States from all regions, assisted by representatives of the United Nations crime prevention and criminal justice programme network and other United Nations entities, including the Office of the United Nations High Commissioner for Human Rights, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Office on Drugs and Crime, intergovernmental organizations, including the International Committee of the Red Cross, specialized agencies in the United Nations system, including the World Health Organization, and non-governmental organizations and individual experts in the field of correctional science and human rights, *Recalling* its resolution 69/172 of 18 December 2014, entitled “Human rights in the administration of justice”, in which it recognized the importance of the principle that, except for those lawful limitations that are demonstrably necessitated by the fact of incarceration, persons deprived of their liberty shall retain their non-derogable human rights and all other human rights and fundamental freedoms, recalled that the social rehabilitation and reintegration of persons deprived of their liberty shall be among the essential aims of the criminal justice system, ensuring, as far as possible, that offenders are able to lead a law-abiding and self-supporting life upon their return to society, and took note of, inter alia, general comment No. 21 on the humane treatment of persons deprived of their liberty, adopted by the Human Rights Committee,²⁹

1. *Expresses its gratitude and appreciation* to the Government of South Africa for hosting the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Cape Town, South Africa, from 2 to 5 March 2015 and for providing financial support and leadership throughout the review process, and notes with appreciation the consensus achieved on the nine thematic areas and the rules identified for revision by the Expert Group at its previous meetings;³⁰

2. *Expresses its appreciation* to the Government of Argentina for hosting and financing the meeting of the Expert Group held in Buenos Aires from 11 to 13 December 2012 and to the Government of Brazil for its financial contribution to the meeting of the Expert Group held in Vienna from 25 to 28 March 2014;

3. *Acknowledges* the valuable work accomplished by the bureau of the meeting of the Expert Group held in Vienna in 2014 in preparing, with the assistance

²⁹ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI.B.

³⁰ See E/CN.15/2015/17.

of the Secretariat, the documentation for the meeting of the Expert Group held in Cape Town in 2015, in particular the revised consolidated working paper;³¹

4. *Notes* that in the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Doha from 12 to 19 April 2015,³² the Thirteenth Congress welcomed the work of the Expert Group, and took note of the draft updated Standard Minimum Rules for the Treatment of Prisoners, as finalized by the Expert Group at its meeting held in Cape Town in March 2015;

5. *Adopts* the proposed revision of the Standard Minimum Rules for the Treatment of Prisoners, annexed to the present resolution, as the United Nations Standard Minimum Rules for the Treatment of Prisoners;

6. *Approves* the recommendation of the Expert Group that the Rules should be known as “the Nelson Mandela Rules”, to honour the legacy of the late President of South Africa, Nelson Rolihlahla Mandela, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace;

7. *Decides* to extend the scope of Nelson Mandela International Day, observed each year on 18 July,³³ to be also utilized in order to promote humane conditions of imprisonment, to raise awareness about prisoners being a continuous part of society and to value the work of prison staff as a social service of particular importance, and to this end invites Member States, regional organizations and organizations of the United Nations system to celebrate this occasion in an appropriate manner;

8. *Reaffirms*, in the context of paragraph 5 above, the preliminary observations to the Nelson Mandela Rules, underscores the non-binding nature of the Rules, acknowledges the variety of Member States’ legal frameworks, and in that regard recognizes that Member States may adapt the application of the Rules in accordance with their domestic legal frameworks, as appropriate, bearing in mind the spirit and purposes of the Rules;

9. *Encourages* Member States to endeavour to improve conditions in detention, consistent with the Nelson Mandela Rules and all other relevant and applicable

³¹ UNODC/CCPCJ/EG.6/2015/2.

³² Resolution 70/174, annex.

³³ See resolution 64/13.

United Nations standards and norms in crime prevention and criminal justice, to continue exchanging good practices in order to identify challenges faced in implementing the Rules and to share their experiences in dealing with those challenges;

10. *Invites* the Commission on Crime Prevention and Criminal Justice to consider, at its upcoming sessions, reconvening the open-ended intergovernmental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners for the purpose of identifying the lessons learned, the means to continue to exchange good practices and the challenges faced in the implementation of the Nelson Mandela Rules;

11. *Encourages* Member States to promote the implementation of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹⁴ and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);¹⁵

12. *Recommends* that Member States continue to endeavour to reduce prison overcrowding and, where appropriate, resort to non-custodial measures as alternatives to pretrial detention, to promote increased access to justice and legal defence mechanisms, to reinforce alternatives to imprisonment and to support rehabilitation and social reintegration programmes, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);¹⁰

13. *Notes* the importance of a voluntary exchange of experiences and good practices among Member States and with relevant international entities, where appropriate, and the provision of technical assistance to Member States, for the improved implementation of the Nelson Mandela Rules, upon their request;

14. *Encourages* Member States to consider allocating adequate human and financial resources to assist in the improvement of prison conditions and the application of the Nelson Mandela Rules;

15. *Requests* the United Nations Office on Drugs and Crime to ensure broad dissemination of the Nelson Mandela Rules, to design guidance material and to provide technical assistance and advisory services to Member States in the field of penal reform, in order to develop or strengthen penitentiary legislation, procedures, policies and practices in line with the Rules;

16. *Commends* the Commission on Crime Prevention and Criminal Justice for its continuing contributions to the improvement of the administration of justice through the development and refinement of international standards and norms

in the field of crime prevention and criminal justice, and calls upon Member States to continue their efforts in this regard;

17. *Requests* the United Nations Office on Drugs and Crime to continue to promote the use and application of the United Nations standards and norms in crime prevention and criminal justice by, inter alia, providing advisory services and technical assistance to Member States, on request, including assistance in crime prevention, criminal justice and law reform, and in the organization of training for law enforcement, crime prevention and criminal justice personnel and support in the administration and management of penal and penitentiary systems, thus contributing to the upgrading of their efficiency and capabilities;

18. *Invites* Member States and other donors to provide extrabudgetary resources for the purposes described above, in accordance with the rules and procedures of the United Nations;

19. *Affirms* the important role of the United Nations crime prevention and criminal justice programme network, intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council in the revision process and in contributing to the dissemination, promotion and practical application of the Nelson Mandela Rules in accordance with the procedures for their effective implementation.

80th plenary meeting

17 December 2015

Annex

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

Preliminary observation 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 principles and practice in the treatment of prisoners and prison management.

Preliminary observation 2

1. In view of the great variety of legal, social, economic and geographical conditions in 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.

2. 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.

Preliminary observation 3

1. Part I of the rules covers the general management of prisons, 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.

Preliminary observation 4

1. The rules do not seek to regulate the management of institutions set aside for young persons such as juvenile detention facilities 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.

I. RULES OF GENERAL APPLICATION

Basic principles

Rule 1

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

Rule 2

1. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.
2. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.

Rule 3

Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

Rule 4

1. The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.
2. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.

Rule 5

1. The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.
2. Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

Prisoner file management

Rule 6

There shall be a standardized prisoner file management system in every place where persons are imprisoned. Such a system may be an electronic database of records or a registration book with numbered and signed pages. Procedures shall be in place to ensure a secure audit trail and to prevent unauthorized access to or modification of any information contained in the system.

Rule 7

No person shall be received in a prison without a valid commitment order. The following information shall be entered in the prisoner file management system upon admission of every prisoner:

- (a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender;
- (b) The reasons for his or her commitment and the responsible authority, in addition to the date, time and place of arrest;

- (c) The day and hour of his or her admission and release as well as of any transfer;
- (d) Any visible injuries and complaints about prior ill-treatment;
- (e) An inventory of his or her personal property;
- (f) The names of his or her family members, including, where applicable, his or her children, the children's ages, location and custody or guardianship status;
- (g) Emergency contact details and information on the prisoner's next of kin.

Rule 8

The following information shall be entered in the prisoner file management system in the course of imprisonment, where applicable:

- (a) Information related to the judicial process, including dates of court hearings and legal representation;
- (b) Initial assessment and classification reports;
- (c) Information related to behaviour and discipline;
- (d) Requests and complaints, including allegations of torture or other cruel, inhuman or degrading treatment or punishment, unless they are of a confidential nature;
- (e) Information on the imposition of disciplinary sanctions;
- (f) Information on the circumstances and causes of any injuries or death and, in the case of the latter, the destination of the remains.

Rule 9

All records referred to in rules 7 and 8 shall be kept confidential and made available only to those whose professional responsibilities require access to such records. Every prisoner shall be granted access to the records pertaining to him or her, subject to redactions authorized under domestic legislation, and shall be entitled to receive an official copy of such records upon his or her release.

Rule 10

Prisoner file management systems shall also be used to generate reliable data about trends relating to and characteristics of the prison population, including occupancy rates, in order to create a basis for evidence-based decision-making.

Separation of categories

Rule 11

The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus:

- (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate;
- (b) Untried prisoners shall be kept separate from convicted prisoners;
- (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- (d) Young prisoners shall be kept separate from adults.

Accommodation

Rule 12

1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. 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 prison.

Rule 13

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.

Rule 14

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.

Rule 15

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.

Rule 16

Adequate bathing and shower installations shall be provided so that every prisoner can, and may be 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.

Rule 17

All parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

Rule 18

1. 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.
2. 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 able to shave regularly.

Clothing and bedding

Rule 19

1. Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her 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 prison for an authorized purpose, he or she shall be allowed to wear his or her own clothing or other inconspicuous clothing.

Rule 20

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

Rule 21

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

Food

Rule 22

1. Every prisoner shall be provided by the prison 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 or she needs it.

Exercise and sport

Rule 23

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.

Health-care services

Rule 24

1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.
2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

Rule 25

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special healthcare needs or with health issues that hamper their rehabilitation.
2. The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner.

Rule 26

1. The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access his or her medical file.
2. Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.

Rule 27

1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.
2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.

Rule 28

In women's prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

Rule 29

1. A decision to allow a child to stay with his or her parent in prison shall be based on the best interests of the child concerned. Where children are allowed to remain in prison with a parent, provision shall be made for:

- (a) Internal or external childcare facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent;
 - (b) Child-specific health-care services, including health screenings upon admission and ongoing monitoring of their development by specialists.
2. Children in prison with a parent shall never be treated as prisoners.

Rule 30

A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

- (a) Identifying health-care needs and taking all necessary measures for treatment;
- (b) Identifying any ill-treatment that arriving prisoners may have been subjected to prior to admission;
- (c) Identifying any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and undertaking all appropriate individualized measures or treatment;
- (d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;
- (e) Determining the fitness of prisoners to work, to exercise and to participate in other activities, as appropriate.

Rule 31

The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality.

Rule 32

1. The relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community, in particular:
- (a) The duty of protecting prisoners' physical and mental health and the prevention and treatment of disease on the basis of clinical grounds only;

(b) Adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship;

(c) The confidentiality of medical information, unless maintaining such confidentiality would result in a real and imminent threat to the patient or to others; (d) An absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation that may be detrimental to a prisoner's health, such as the removal of a prisoner's cells, body tissues or organs.

2. Without prejudice to paragraph 1 (d) of this rule, prisoners may be allowed, upon their free and informed consent and in accordance with applicable law, to participate in clinical trials and other health research accessible in the community if these are expected to produce a direct and significant benefit to their health, and to donate cells, body tissues or organs to a relative.

Rule 33

The physician shall report to the prison director whenever he or she 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.

Rule 34

If, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority. Proper procedural safeguards shall be followed in order not to expose the prisoner or associated persons to foreseeable risk of harm.

Rule 35

1. The physician or competent public health body shall regularly inspect and advise the prison director on:

- (a) The quantity, quality, preparation and service of food;
- (b) The hygiene and cleanliness of the institution and the prisoners;
- (c) The sanitation, temperature, lighting and ventilation of the prison;
- (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 prison director shall take into consideration the advice and reports provided in accordance with paragraph 1 of this rule and rule 33 and shall take immediate steps to give effect to the advice and the recommendations in the reports. If the advice or recommendations do not fall within the prison director's competence or if he or she does not concur with them, the director shall immediately submit to a higher authority his or her own report and the advice or recommendations of the physician or competent public health body.

Restrictions, discipline and sanctions

Rule 36

Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well ordered community life.

Rule 37

The following shall always be subject to authorization by law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of sanctions that may be imposed;
- (c) The authority competent to impose such sanctions;
- (d) Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation.

Rule 38

1. Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.

2. For prisoners who are, or have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison.

Rule 39

1. No prisoner shall be sanctioned except in accordance with the terms of the law or regulation referred to in rule 37 and the principles of fairness and due process. A prisoner shall never be sanctioned twice for the same act or offence.
2. Prison administrations shall ensure proportionality between a disciplinary sanction and the offence for which it is established, and shall keep a proper record of all disciplinary sanctions imposed.
3. Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.

Rule 40

1. No prisoner shall be employed, in the service of the prison, 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.

Rule 41

1. Any allegation of a disciplinary offence by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.
2. Prisoners shall be informed, without delay and in a language that they understand, of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defence.
3. Prisoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges. If the prisoners do not understand or speak the language used at a disciplinary hearing, they shall be assisted by a competent interpreter free of charge.
4. Prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.

5. In the event that a breach of discipline is prosecuted as a crime, prisoners shall be entitled to all due process guarantees applicable to criminal proceedings, including unimpeded access to a legal adviser.

Rule 42

General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.

Rule 43

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement;
- (c) Placement of a prisoner in a dark or constantly lit cell;
- (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
- (e) Collective punishment.

2. Instruments of restraint shall never be applied as a sanction for disciplinary offences.

3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

Rule 44

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Rule 45

1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.

2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice,³⁴ continues to apply.

Rule 46

1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.

2. Health-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.

3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.

Instruments of restraint

Rule 47

1. The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.

2. Other instruments of restraint shall only be used when authorized by law and in the following circumstances:

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

³⁴ See rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex); and rule 22 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (General Assembly resolution 65/229, annex).

(b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.

Rule 48

1. When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply:

(a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;

(b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed;

(c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.

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

Rule 49

The prison administration should seek access to, and provide training in the use of, control techniques that would obviate the need for the imposition of instruments of restraint or reduce their intrusiveness.

Searches of prisoners and cells

Rule 50

The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.

Rule 51

Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip

and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.

Rule 52

1. Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches.

Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.

2. Body cavity searches shall be conducted only by qualified health-care professionals other than those primarily responsible for the care of the prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety.

Rule 53

Prisoners shall have access to, or be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings.

Information to and complaints by prisoners

Rule 54

Upon admission, every prisoner shall be promptly provided with written information about:

- (a) The prison law and applicable prison regulations;
- (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;
- (c) His or her obligations, including applicable disciplinary sanctions; and
- (d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.

Rule 55

1. The information referred to in rule 54 shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner does not understand any of those languages, interpretation assistance should be provided.

2. If a prisoner is illiterate, the information shall be conveyed to him or her orally. Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs.
3. The prison administration shall prominently display summaries of the information in common areas of the prison.

Rule 56

1. Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her.
2. It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present.
3. Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power.
4. The rights under paragraphs 1 to 3 of this rule shall extend to the legal adviser of the prisoner. In those cases where neither the prisoner nor his or her legal adviser has the possibility of exercising such rights, a member of the prisoner's family or any other person who has knowledge of the case may do so.

Rule 57

1. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.
2. Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.
3. Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a

prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71.

Contact with the outside world

Rule 58

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:

(a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and

(b) By receiving visits.

2. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.

Rule 59

Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.

Rule 60

1. Admission of visitors to the prison facility is contingent upon the visitor's consent to being searched. The visitor may withdraw his or her consent at any time, in which case the prison administration may refuse access.

2. Search and entry procedures for visitors shall not be degrading and shall be governed by principles at least as protective as those outlined in rules 50 to 52. Body cavity searches should be avoided and should not be applied to children.

Rule 61

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.

2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.

3. Prisoners should have access to effective legal aid.

Rule 62

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.

Rule 63

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 prison administration.

Books

Rule 64

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

Religion

Rule 65

1. If the prison 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 of this rule shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her 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 or her attitude shall be fully respected.

Rule 66

So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having

in his or her possession the books of religious observance and instruction of his or her denomination.

Retention of prisoners' property

Rule 67

1. All money, valuables, clothing and other effects belonging to a prisoner which he or she is not allowed to retain under the prison regulations shall on his or her admission to the prison 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 or her except in so far as he or she has been authorized to spend money or send any such property out of the prison, 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 or her.
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 physician or other qualified health-care professionals shall decide what use shall be made of them.

Notifications

Rule 68

Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. The sharing of prisoners' personal information shall be subject to domestic legislation.

Rule 69

In the event of a prisoner's death, the prison director shall at once inform the prisoner's next of kin or emergency contact. Individuals designated by a prisoner to receive his or her health information shall be notified by the director of the prisoner's serious illness, injury or transfer to a health institution. The explicit request of a prisoner not to have his or her spouse or nearest relative notified in the event of illness or injury shall be respected.

Rule 70

The prison administration shall inform a prisoner at once of the serious illness or death of a near relative or any significant other. Whenever circumstances

allow, the prisoner should be authorized to go, either under escort or alone, to the bedside of a near relative or significant other who is critically ill, or to attend the funeral of a near relative or significant other.

Investigations

Rule 71

1. Notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases. The prison administration shall fully cooperate with that authority and ensure that all evidence is preserved.
2. The obligation in paragraph 1 of this rule shall equally apply whenever there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed in prison, irrespective of whether a formal complaint has been received.
3. Whenever there are reasonable grounds to believe that an act referred to in paragraph 2 of this rule has been committed, steps shall be taken immediately to ensure that all potentially implicated persons have no involvement in the investigation and no contact with the witnesses, the victim or the victim's family.

Rule 72

The prison administration shall treat the body of a deceased prisoner with respect and dignity. The body of a deceased prisoner should be returned to his or her next of kin as soon as reasonably possible, at the latest upon completion of the investigation. The prison administration shall facilitate a culturally appropriate funeral if there is no other responsible party willing or able to do so and shall keep a full record of the matter.

Removal of prisoners

Rule 73

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

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 prison administration and equal conditions shall apply to all of them.

Institutional personnel

Rule 74

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 prisons 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 staff 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.

Rule 75

1. All prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner.
2. Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties, which shall be reflective of contemporary evidence-based best practice in penal sciences. Only those candidates who successfully pass the theoretical and practical tests at the end of such training shall be allowed to enter the prison service.
3. The prison administration shall ensure the continuous provision of in service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.

Rule 76

1. Training referred to in paragraph 2 of rule 75 shall include, at a minimum, training on:

(a) Relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates;

(b) Rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment;

(c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation;

(d) First aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.

2. Prison staff who are in charge of working with certain categories of prisoners, or who are assigned other specialized functions, shall receive training that has a corresponding focus.

Rule 77

All prison staff 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.

Rule 78

1. So far as possible, prison staff 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.

Rule 79

1. The prison director should be adequately qualified for his or her task by character, administrative ability, suitable training and experience.

2. The prison director shall devote his or her entire working time to official duties and shall not be appointed on a part-time basis. He or she shall reside on the premises of the prison or in its immediate vicinity.
3. When two or more prisons are under the authority of one director, he or she shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these prisons.

Rule 80

1. The prison director, his or her deputy, and the majority of other prison staff 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 a competent interpreter shall be used.

Rule 81

1. In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.
2. No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.
3. Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.

Rule 82

1. Prison staff 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. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.
2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.
3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.

Internal and external inspections

Rule 83

1. There shall be a twofold system for regular inspections of prisons and penal services:

(a) Internal or administrative inspections conducted by the central prison administration;

(b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.

2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.

Rule 84

1. Inspectors shall have the authority:

(a) To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention;

(b) To freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview;

(c) To conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits;

(d) To make recommendations to the prison administration and other competent authorities.

2. External inspection teams shall be composed of qualified and experienced inspectors appointed by a competent authority and shall encompass health-care professionals. Due regard shall be given to balanced gender representation.

Rule 85

1. Every inspection shall be followed by a written report to be submitted to the competent authority. Due consideration shall be given to making the reports of external inspections publicly available, excluding any personal data on prisoners unless they have given their explicit consent.

2. The prison administration or other competent authorities, as appropriate, shall indicate, within a reasonable time, whether they will implement the recommendations resulting from the external inspection.

II. RULES APPLICABLE TO SPECIAL CATEGORIES

A. Prisoners under sentence

Guiding principles

Rule 86

The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under preliminary observation 1 of these rules.

Rule 87

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 prison 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 88

1. 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 prison staff in the task of social rehabilitation of the prisoners.

2. There should be in connection with every prison social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her 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.

Rule 89

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 prisons suitable for the treatment of each group.

2. These prisons do not need to 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 prisons, 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 the rehabilitation of carefully selected prisoners.

3. It is desirable that the number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed 500. In open prisons 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 90

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

Treatment

Rule 91

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.

Rule 92

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 or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.

2. For every prisoner with a sentence of suitable length, the prison director shall receive, as soon as possible after his or her admission, full reports on all the matters referred to in paragraph 1 of this rule. Such reports shall always include a report by the physician or other qualified health-care professionals on the physical and mental condition of the prisoner.

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

Classification and individualization

Rule 93

1. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or 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.

2. So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.

Rule 94

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 or her in the light of the knowledge obtained about his or her individual needs, capacities and dispositions.

Privileges

Rule 95

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

Work

Rule 96

1. Sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified health-care professionals.

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

Rule 97

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

2. Prisoners shall not be held in slavery or servitude.

3. No prisoner shall be required to work for the personal or private benefit of any prison staff.

Rule 98

1. 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.

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

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

Rule 99

1. The organization and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, 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 prison.

Rule 100

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

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

Rule 101

1. The precautions laid down to protect the safety and health of free workers shall be equally observed in prisons.

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 workers.

Rule 102

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 workers.
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 prisoners.

Rule 103

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 prison administration so as to constitute a savings fund to be handed over to the prisoner on his or her release.

Education and recreation

Rule 104

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 illiterate prisoners and of young prisoners shall be compulsory and special attention shall be paid to it by the prison 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 105

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

Social relations and aftercare

Rule 106

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

Rule 107

From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family.

Rule 108

1. Services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society shall ensure, so far as is possible and necessary, that released prisoners are 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 prison and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his or her sentence.
3. It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.

B. Prisoners with mental disabilities and/or health conditions

Rule 109

1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.
2. If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.
3. The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

Rule 110

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 aftercare.

C. Prisoners under arrest or awaiting trial

Rule 111

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 from a special regime which is described in the following rules in its essential requirements only.

Rule 112

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 113

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

Rule 114

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.

Rule 115

An untried prisoner shall be allowed to wear his or her own clothing if it is clean and suitable. If he or she wears prison dress, it shall be different from that supplied to convicted prisoners.

Rule 116

An untried prisoner shall always be offered the opportunity to work, but shall not be required to work. If he or she chooses to work, he or she shall be paid for it.

Rule 117

An untried prisoner shall be allowed to procure at his or her own expense or at the expense of a third party such books, newspapers, writing material 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.

Rule 118

An untried prisoner shall be allowed to be visited and treated by his or her own doctor or dentist if there are reasonable grounds for the application and he or she is able to pay any expenses incurred.

Rule 119

1. Every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her.
2. If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.

Rule 120

1. The entitlements and modalities governing the access of an untried prisoner to his or her legal adviser or legal aid provider for the purpose of his or her defence shall be governed by the same principles as outlined in rule 61.
2. An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider.

D. Civil prisoners**Rule 121**

In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be

subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. Persons arrested or detained without charge

Rule 122

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, of these rules. Relevant provisions of part II, section A, of these rules 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.

2. Code of Conduct for Law Enforcement Officials

Adopted by General Assembly resolution 34/169 of 17 December 1979

Article 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.

Commentary

(a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 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.

Commentary

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum

Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

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

Commentary

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 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.

Commentary

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in

the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 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.

Commentary

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which:

"[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 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.

Commentary

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their

superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

3. Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners

Economic and Social Council resolution 1984/47, 25 May 1984.

Procedure 1

All States whose standards for the protection of all persons subjected to any form of detention or imprisonment fall short of the Standard Minimum Rules for the Treatment of Prisoners shall adopt the Rules.

Commentary

The General Assembly, in its resolution 2858 (XXVI) of 20 December 1971, invited the attention of Member States to the Standard Minimum Rules and recommended that they should be effectively implemented in the administration of penal and correctional institutions and that favourable consideration should be given to their incorporation in national legislation. Some States may have standards that are more advanced than the Rules, and the adoption of the Rules is therefore not requested on the part of such States. Where States feel that the Rules need to be harmonized with their legal system and adapted to their culture, the emphasis is placed on the substance rather than the letter of the Rules.

Procedure 2

Subject, as necessary, to their adaptation to the existing laws and culture but without deviation from the spirit and purpose of the Rules, the Standard Minimum Rules shall be embodied in national legislation and other regulations.

Commentary

This procedure emphasizes that it is necessary to embody the Rules within national legislation and regulations, thus covering also some aspects of procedure 1.

Procedure 3

The Standard Minimum Rules shall be made available to all persons concerned, particularly to law enforcement officials and correctional personnel, for purposes of enabling their application and execution in the criminal justice system.

Commentary

This procedure stresses that the Rules, as well as national statutes and regulations implementing the Rules, should be made available to all persons concerned with their implementation, in particular law enforcement officials and correctional personnel. The effective implementation of the Rules might also involve the organization of training courses by the central administration in charge of correctional matters. The dissemination of procedures is discussed in procedures 7 to 9.

Procedure 4

The Standard Minimum Rules, as embodied in national legislation and other regulations, shall also be made available and understandable to all prisoners and all persons under detention, on their admission and during their confinement.

Commentary

To achieve the goal of the Standard Minimum Rules, it is necessary to make the Rules, as well as the implementing national statutes and regulations, available to prisoners and all persons under detention (rule 95), in order to further the awareness that the Rules represent the minimum conditions that are accepted as suitable by the United Nations. Thus, this procedure supplements the provisions contained in procedure 3.

A similar requirement, that the Rules be made available to the persons for whose protection they have been elaborated, has been already established in the four Geneva Conventions of 12 August 1949,³⁵ of which articles 47 of the first Convention, 48 of the second, 127 of the third and 144 of the fourth state in common:

“The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.”

Procedure 5

States shall inform the Secretary-General of the United Nations every five years of the extent of the implementation and the progress made with regard to

³⁵ United Nations, Treaty Series, vol. 75, Nos. 970-973.

the application of the Standard Minimum Rules, and of the factors and difficulties, if any, affecting their implementation, by responding to the Secretary-General's questionnaire. This questionnaire should, following a specified schedule, be selective and limited so specific questions in order to secure an in-depth review and study of the problems selected. Taking into account the reports of Governments as well as other relevant information available within the United Nations system, the Secretary-General shall prepare independent periodic reports on progress made with respect to the implementation of the Standard Minimum Rules. In the preparation of those reports the Secretary-General may also enlist the cooperation of specialized agencies and of the relevant intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council. The Secretary-General shall submit the above-mentioned reports to the Committee on Crime Prevention and Control for consideration and further action, as appropriate.

Commentary

It will be recalled that the Economic and Social Council, in its resolution 663 C (XXIV) of 31 July 1957, recommended that the Secretary-General be informed every five years of the progress made with regard to the application of the Standard Minimum Rules and authorized the Secretary-General to make arrangements for the publication, as appropriate, of such information and to ask for supplementary information if necessary. Seeking the cooperation of specialized agencies and relevant intergovernmental and non-governmental organizations is a well-established United Nations practice. In the preparation of his independent reports on progress made with respect to the implementation of the Standard Minimum Rules, the Secretary-General will take into account, inter alia, information available in the human rights organs of the United Nations, including the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Human Rights Committee functioning under the International Covenant on Civil and Political Rights, and the Committee on the Elimination of Racial Discrimination. The implementation work under the future convention against torture could also be taken into account, as well as any information which might be gathered under the body of principles for the protection of prisoners and detainees currently under preparation in the General Assembly.

Procedure 6

As part of the information mentioned in procedure 5 above, States should provide the Secretary-General with:

- (a) Copies or abstracts of all laws, regulations and administrative measures concerning the application of the Standard Minimum Rules to persons under detention and to places and programmes of detention;
- (b) Any data and descriptive material on treatment programmes, personnel and the number of persons under any form of detention, and statistics, if available;
- (c) Any other relevant information on the implementation of the Rules, as well as information on the possible difficulties in their application.

Commentary

This requirement derives from both resolution 663 C (XXIV) of the Economic and Social Council and the recommendations of the United Nations congresses on the prevention of crime and the treatment of offenders. Although the items of information suggested here are not specifically provided for, it seems feasible to collect such information in order to assist Member States in overcoming difficulties through an exchange of experience. Furthermore, the request for such information is analogous to the existing periodic reporting system on human rights originally established by the Economic and Social Council in its resolution 624 B (XXII) of 1 August 1956.

Procedure 7

The Secretary-General shall disseminate the Standard Minimum Rules and the present implementing procedures, in as many languages as possible, and make them available to all States and intergovernmental and non-governmental organizations concerned, in order to ensure the widest circulation of the Rules and the present implementing procedures.

Commentary

The need for the widest possible dissemination of the Standard Minimum Rules is self-evident. Close cooperation with all appropriate intergovernmental and non-governmental organizations is important to secure more effective dissemination and implementation of the Rules. Therefore, the Secretariat should maintain close contacts with such organizations and should make relevant information and data available to them. It should also encourage those organizations to disseminate information about the Standard Minimum Rules and the implementing procedures.

Procedure 8

The Secretary-General shall disseminate his reports on the implementation of the Rules, including analytical summaries of the periodic surveys, reports of the Committee on Crime Prevention and Control, reports prepared for the United Nations congresses on the prevention of crime and the treatment of offenders as well as the reports of the congresses, scientific publications and other relevant documentation as from time to time may be deemed necessary to further the implementation of the Standard Minimum Rules.

Commentary

This procedure reflects the present practice of disseminating such reports as part of the documentation for the United Nations bodies concerned, as United Nations publications or as articles in the Yearbook on Human Rights and the International Review of Criminal Policy, the Crime Prevention and Criminal Justice Newsletter and any other relevant publications.

Procedure 9

The Secretary-General shall ensure the widest possible reference to and use of the text of the Standard Minimum Rules by the United Nations in all its relevant programmes, including technical cooperation activities.

Commentary

It should be ensured that all relevant United Nations bodies include or make reference to the Rules and the implementing procedures, thus contributing to wider dissemination and increasing the awareness of specialized agencies, governmental, intergovernmental and non-governmental bodies and the general public of the Rules and of the commitment of the Economic and Social Council and the General Assembly to their implementation.

The extent to which the Rules have any practical effect on correctional administrations depends to a great extent on the measures through which they permeate local legislative and administrative practices. They should be known and understood by a wide range of professionals and non-professionals throughout the world. Therefore there is a great need for more publicity in any form, which could also be attained by frequent references to the Rules, accompanied by public information campaigns.

Procedure 10

As part of its technical cooperation and development programmes the United Nations shall:

- (a) Aid Governments, at their request, in setting up and strengthening comprehensive and humane correctional systems;
- (b) Make available to Governments requesting them the services of experts and regional and interregional advisers on crime prevention and criminal justice;
- (c) Promote national and regional seminars and other meetings at the professional and non-professional levels to further the dissemination of the Standard Minimum Rules and the present implementing procedures;
- (d) Strengthen substantive support to regional research and training institutes in crime prevention and criminal justice that are associated with the United Nations.

The United Nations regional research and training institutes in crime prevention and criminal justice, in cooperation with national institutions, shall develop curricula and training materials, based on the Standard Minimum Rules and the present implementing procedures, suitable for use in criminal justice educational programmes at all levels, as well as in specialized courses on human rights and other related subjects.

Commentary

The purpose of this procedure is to ensure that the United Nations technical assistance programmes and the training activities of the United Nations regional institutes are used as indirect instruments for the application of the Standard Minimum Rules and the present implementing procedures. Apart from regular training courses for correctional personnel, training manuals and the like, particularly at the policy and decision-making level, provision should be made for expert advice on the questions submitted by Member States, including an expert referral system to interested States. This expert referral system seems particularly necessary in order to implement the Rules according to their spirit and with a view to the socio-economic structure of the countries requesting such assistance.

Procedure 11

The United Nations Committee on Crime Prevention and Control shall:

- (a) Keep under review, from time to time, the Standard Minimum Rules, with a view to the elaboration of new rules, standards and procedures applicable to the treatment of persons deprived of liberty;
- (b) Follow up the present implementing procedures, including periodic reporting under procedure 5 above.

Commentary

As most of the information collected in the course of periodic inquiries as well as during technical assistance missions would be brought to the attention of the Committee on Crime Prevention and Control, ensuring the effectiveness of the Rules in improving correctional practices rests with the Committee, whose recommendations would determine the future course in the application of the Rules, together with the implementing procedures. The Committee should therefore clearly define existing shortcomings in or the reasons for the lack of implementation of the Rules, *inter alia*, through contacts with the judiciary and ministries of justice of the countries concerned, with the view to suggesting appropriate remedies.

Procedure 12

The Committee on Crime Prevention and Control shall assist the General Assembly, the Economic and Social Council and any other United Nations human rights bodies, as appropriate, with recommendations relating to reports of ad hoc inquiry commissions, with respect to matters pertaining to the application and implementation of the Standard Minimum Rules.

Commentary

As the Committee on Crime Prevention and Control is the relevant body to review the implementation of the Standard Minimum Rules, it should also assist the above-mentioned bodies.

Procedure 13

Nothing in the present implementing procedures should be construed as precluding resort to any other means or remedies available under international law or set forth by other United Nations bodies and agencies for the redress of violations of human rights, including the procedure on consistent patterns of gross violations of human rights under Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, the communication procedure under the

Optional Protocol to the International Covenant on Civil and Political Rights³⁶ and the communication procedure under the International Convention on the Elimination of All Forms of Racial Discrimination.³⁷

Commentary

Since the Standard Minimum Rules are only partly concerned with specific human rights issues, the present procedures should not exclude any avenue for redress of any violation of such rights, in accordance with existing international or regional standards and norms.

³⁶ General Assembly resolution 2200 A (XXI), annex.

³⁷ General Assembly resolution 2106 A (XX), annex.

4. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Adopted by General Assembly, resolution 43/173, 9 December 1988.

Scope of the Body of Principles

Use of terms

For the purposes of the Body of Principles:

- (a) “Arrest” means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;
- (b) “Detained person” means any person deprived of personal liberty except as a result of conviction for an offence;
- (c) “Imprisoned person” means any person deprived of personal liberty as a result of conviction for an offence;
- (d) “Detention” means the condition of detained persons as defined above;
- (e) “Imprisonment” means the condition of imprisoned persons as defined above;
- (f) The words “a judicial or other authority” mean a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1

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

Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Principle 4

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

Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.
2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.³⁸ No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.
2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

³⁸ The term “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

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

Principle 12

1. There shall be duly recorded:

(a) The reasons for the arrest;

(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

Principle 16

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

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

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

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of investigation so require.

Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

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.

Principle 19

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

Principle 20

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

Principle 21

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.
2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Principle 22

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

Principle 23

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.
2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

Principle 24

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

Principle 25

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

Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.
2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities

competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

Principle 31

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

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.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

Principle 35

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.
2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.

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

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas the work of law enforcement officials³⁹ is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, *inter alia*, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation

³⁹ In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term “law enforcement officials” includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, *inter alia*, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - (b) Minimize damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.
7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.
8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or

would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

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.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

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.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

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.

6. Basic Principles for the Treatment of Prisoners

Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
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.
6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
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.
9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
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.
11. The above Principles shall be applied impartially.

7. Status of foreign citizens in criminal proceedings

Economic and Social Council resolution 1998/22, 1998.

The Economic and Social Council,

Guided by the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly in its resolution 217 A (III) of 10 December 1948,

Bearing in mind the relevant international legal instruments in the field of human rights,

Bearing also in mind the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva from 22 August to 3 September 1955¹ and approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957, and the procedures for the effective implementation of the Standard Minimum Rules, approved by the Council in its resolution 1984/47 of 25 May 1984 and set out in the annex thereto,

Recalling General Assembly resolution 49/159 of 23 December 1994, in which the Assembly approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime,²

Conscious of the need to respect human dignity and the recognized rights of persons undergoing criminal proceedings as set forth in the International Covenants on Human Rights,³

Urges Member States that have not yet done so to consider adopting the following measures:

- (a) Carefully examine whether foreign citizens under criminal prosecution are guaranteed universally recognized rights with regard to criminal prosecution at all stages of proceedings;
- (b) Ensure that individuals are not subjected to more severe custodial penalties or inferior prison conditions in a State solely because they are not nationals of that State;
- (c) Undertake the necessary arrangements to ensure that any foreign citizen subject to criminal proceedings whose native language is not that of the State conducting the proceedings against him or her and who for that reason is unable

¹ United Nations publication, Sales No. E.56.IV.4, annex I, sect. A.

² See A/49/748, annex, sect. I.A

³ General Assembly resolution 2200 A (XXI), annex.

to understand the nature of such proceedings has access throughout his or her trial to the services of a suitable interpreter in his or her native language, to the extent possible;

(d) Whenever permitted by its internal law or practice, make available to foreign citizens as well as to nationals, provided that they fulfil the relevant legal requirements, alternative penal sentences or administrative penalties provided for under the legislation of the State conducting proceedings;

(e) Intensify efforts to implement applicable international instruments, such as the Vienna Convention on Consular Relations,⁴ concerning, inter alia, notification to consular authorities of the detention of their citizens.

⁴United Nations, Treaty Series, vol. 596, No. 8638.

B2. TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT OF PRISONERS

1. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted by General Assembly resolution 3452 (XXX) of 9 December 1975

Article 1

1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 2

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Article 3

No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4

Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 5

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

Article 6

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

Article 8

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.

Article 12

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

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

Adopted by General Assembly resolution 37/194 of 18 December 1982

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 2

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

Principle 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.

Principle 4

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

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

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

Principle 5

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

Principle 6

There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.

3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. Entry into force 26 June 1987, in accordance with article 27 (1).

(Extracts)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing

him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

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

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

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

- (b) When the alleged offender is a national of that State;
 - (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the

cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

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.

Article 11

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

Article 12

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

Article 13

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

Article 14

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

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

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

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

(...)

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.
3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall

forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs I to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (e), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned. 5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the

declaration has been received by the Secretary General, unless the State Party has made a new declaration.

(...)

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

Recommended by General Assembly, resolution 55/89 of 4 December 2000

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "torture or other ill-treatment") include the following:

(a) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;

(b) Identification of measures needed to prevent recurrence;

(c) Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

2. States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.

3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry.¹ The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

¹<http://www.ohchr.org/EN/ProfessionalInterest/Pages/EffectiveInvestigationAndDocumentationOfTorture.aspx?ControlMode=Edit&DisplayMode=Design#1>

(b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.²

(b) A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

6. (a) Medical experts involved in the investigation of torture or ill-treatment shall behave at all times in conformity with the highest ethical standards and, in particular, shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical

²<http://www.ohchr.org/EN/ProfessionalInterest/Pages/EffectiveInvestigationAndDocumentationOfTorture.aspx?ControlMode=Edit&DisplayMode=Design#1>

practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

(b) The medical expert shall promptly prepare an accurate written report, which shall include at least the following:

(i) Circumstances of the interview: name of the subject and name and affiliation of those present at the examination; exact time and date; location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g., detention centre, clinic or house); circumstances of the subject at the time of the examination (e.g., nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner or threatening statements to the examiner); and any other relevant factors;

(ii) History: detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(iii) Physical and psychological examination: record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(iv) Opinion: interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination shall be given;

(v) Authorship: the report shall clearly identify those carrying out the examination and shall be signed.

(c) The report shall be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process shall be solicited and recorded in the report. It shall also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report shall not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer.

5. Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006

(Extracts)

Preamble

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

PART I

General principles

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.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of 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.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

(...)

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- (d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.
2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.
3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.
4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

- (a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;
- (e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

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.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.
2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if

necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

(...)

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

(...)

6. Resolution 64/153: Torture and other cruel, inhuman or degrading treatment or punishment

Adopted by the General Assembly on 18 December 2009 [on the report of the Third Committee (A/64/439/Add.1 and Corr.1)]

The General Assembly,

Reaffirming that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,

Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international or internal armed conflict or disturbance, and that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments,

Recalling also that the prohibition of torture is a peremptory norm of international law and that international, regional and domestic courts have held the prohibition of cruel, inhuman or degrading treatment or punishment to be customary international law,

Recalling further the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹ without prejudice to any international instrument or national legislation which contains or may contain provisions of wider application,

Emphasizing the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punishment, and of abiding strictly by the definition of torture contained in article 1 of the Convention,

Noting that under the Geneva Conventions of 1949,² torture and inhuman treatment are a grave breach and that under the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, the statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian

¹ United Nations, Treaty Series, vol. 1465, No. 24841.

² *Ibid.*, vol. 75, Nos. 970-973.

Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the Rome Statute of the International Criminal Court,³ acts of torture can constitute crimes against humanity and, when committed in a situation of armed conflict, constitute war crimes,

Emphasizing that the entry into force as soon as possible of the International Convention for the Protection of All Persons from Enforced Disappearance⁴ and its implementation will make a significant contribution to the prevention and prohibition of torture, including by prohibiting secret places of detention, and encouraging all States that have not done so to consider signing, ratifying or acceding to the Convention,

Commending the persistent efforts of civil society organizations, including non-governmental organizations, national human rights institutions and the considerable network of centres for the rehabilitation of victims of torture, to combat torture and to alleviate the suffering of victims of torture,

1. **Condemns** all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. **Emphasizes** that States must take persistent, determined and effective measures to prevent and combat all acts of torture and other cruel, inhuman or degrading treatment or punishment, stresses that all acts of torture must be made offences under domestic criminal law, and encourages States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment;

3. **Welcomes** the establishment of national preventive mechanisms to prevent torture, encourages all States that have not yet done so to establish such mechanisms, and calls upon States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵ to fulfil their obligation to designate or establish truly independent and effective national preventive mechanisms for the prevention of torture;

³ *Ibid.*, vol. 2187, No. 38544.

⁴ Resolution 61/177, annex.

⁵ Resolution 57/199, annex.

4. **Emphasizes** the importance of States' ensuring proper follow-up to the recommendations and conclusions of the relevant treaty bodies and mechanisms, including the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment;

5. **Condemns** any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions;

6. **Stresses** that an independent, competent domestic authority must promptly, effectively and impartially examine all allegations of torture or other cruel, inhuman or degrading treatment or punishment and wherever there is reasonable ground to believe that such an act has been committed, and that those who encourage, order, tolerate or perpetrate such acts must be held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed;

7. **Takes note** in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)⁶ as a useful tool in efforts to prevent and combat torture and of the updated set of principles for the protection of human rights through action to combat impunity;⁷

8. **Calls** upon all States to implement effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, particularly in places of detention and other places where persons are deprived of their liberty, including education and training of personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

9. **Also calls** upon all States to adopt a gender-sensitive approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment, paying special attention to gender-based violence;

⁶ Resolution 55/89, annex.

⁷ See E/CN.4/2005/102/Add.1.

10. **Calls** upon States to ensure that the rights of persons with disabilities, bearing in mind the Convention on the Rights of Persons with Disabilities,⁸ are fully integrated into torture prevention and protection, and welcomes the efforts of the Special Rapporteur in this regard;

11. **Encourages** all States to ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty;

12. **Emphasizes** that acts of torture in armed conflict are serious violations of international humanitarian law and in this regard constitute war crimes, that acts of torture can constitute crimes against humanity and that the perpetrators of all acts of torture must be prosecuted and punished;

13. **Strongly urges** States to ensure that no statement that is established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment;

14. **Stresses** that States must not punish personnel for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

15. **Urges** States not to expel, return (“refouler”), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

16. **Recalls** that, for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights;

17. **Calls** upon States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to fulfil their obligation to submit for prosecution or extradite those alleged to have

⁸ Resolution 61/106, annex I.

committed acts of torture, and encourages other States to do likewise, bearing in mind the need to fight impunity;

18. **Stresses** that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges States to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

19. **Recalls** its resolution 43/173 of 9 December 1988 on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and in this context stresses that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person and permitting prompt and regular medical care and legal counsel as well as visits by family members and independent monitoring mechanisms are effective measures for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

20. **Reminds** all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished;

21. **Emphasizes** that conditions of detention must respect the dignity and human rights of detainees, highlights the importance of reflecting on this in efforts to promote respect for and protection of the rights of detainees, and notes in this regard concerns about solitary confinement;

22. **Calls** upon all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment;

23. **Urges** all States that have not yet done so to become parties to the Convention as a matter of priority, and calls upon States parties to give early consideration to signing and ratifying the Optional Protocol to the Convention;

24. **Urges** all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 concerning inter-State and individual communications, to consider the possibility of withdrawing their reservations to article 20, and to notify the Secretary-General of their

acceptance of the amendments to articles 17 and 18 with a view to enhancing the effectiveness of the Committee against Torture as soon as possible;

25. **Urges** States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and **juveniles** and persons with disabilities when submitting reports to the Committee;

26. **Welcomes** the work of the Committee and its report submitted in accordance with article 24 of the Convention,⁹ recommends that the Committee continue to include information on the follow-up by States to its recommendations, and supports the Committee in its intention to further improve the effectiveness of its working **methods**;

27. **Invites** the Chairs of the Committee and the Subcommittee to present oral reports on the work of the committees and to engage in an interactive dialogue with the General Assembly at its sixty-fifth session under the sub-item entitled “Implementation of human rights instruments”;

28. **Calls** upon the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of States, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee and for the establishment and operation of national preventive mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

29. **Takes note** with appreciation of the interim report of the Special Rapporteur,¹⁰ and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations;

30. **Requests** the Special Rapporteur to continue to consider including in his report information on the follow-up by States to his recommendations, visits and communications, including progress made and problems encountered, and on other official contacts;

⁹ Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 44 (A/64/44).

¹⁰ See A/64/215 and Corr.1.

31. **Calls** upon all States to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to fully and expeditiously respond to and follow up on his urgent appeals, to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries as well as with respect to the follow-up to his recommendations;

32. **Stresses** the need for the continued regular exchange of views among the Committee, the Subcommittee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with regional organizations and mechanisms, as appropriate, and civil society organizations, including non-governmental organizations, with a view to enhancing further their effectiveness and cooperation on issues relating to the prevention and eradication of torture, inter alia, by improving their coordination;

33. **Recognizes** the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, appeals to all States and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions, and encourages contributions to the Special Fund established by the Optional Protocol to help finance the implementation of the recommendations made by the Subcommittee as well as education programmes of the national preventive mechanisms;

34. **Requests** the Secretary-General to continue to transmit to all States the appeals of the General Assembly for contributions to the Funds and to include the Funds on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

35. **Also requests** the Secretary-General to submit to the Human Rights Council and to the General Assembly at its sixty-fifth session a report on the operations of the Funds;

36. **Further requests** the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in preventing and combating torture and assisting victims of torture or other cruel, inhuman or degrading treatment or punishment, including in particular the Subcommittee

on Prevention of Torture, commensurate with the strong support expressed by Member States for preventing and combating torture and assisting victims of torture;

37. **Calls** upon all States, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and civil society organizations, including non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

38. **Decides** to consider at its sixty-fifth session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture and the Special Fund established by the Optional Protocol, the report of the Committee against Torture and the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

65th plenary meeting

18 December 2009

B3. DEATH PENALTY

1. Capital punishment

Resolution 2857 (XXVI) adopted by the General Assembly on 20 December 1971.

The General Assembly,

Recalling its resolution 2393 (XXIII) of 26 November 1968 concerning the application of the most careful legal procedures and the greatest possible safeguards for the accused in capital cases as well as the attitude of Member States to possible further restriction of the use of capital punishment or to its total abolition,

Taking note of the section of the report of the Economic and Social Council¹ concerning the consideration by the Council of the report on capital punishment² submitted by the Secretary-General in implementation of the aforementioned resolution,

Taking note of Economic and Social Council resolution 1574 (L) of 20 May 1971,

Expressing the desirability of continuing and extending the consideration of the question of capital punishment by the United Nations,

1. *Notes with satisfaction* the measures already taken by a number of States in order to ensure careful legal procedures and safeguards for the accused in capital cases in countries where the death penalty still exists;
2. *Considers* that further efforts should be made to ensure such procedures and safeguards in capital cases everywhere;
3. *Affirms* that, in order fully to guarantee the right to life, provided for in article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries;
4. *Invites* Member States which have not yet done so to inform the Secretary-General of their legal procedures and safeguards as well as of their attitude to possible further restriction of the use of the death penalty or its total abolition,

¹ *Ibid.*, chap. XVIII, sect. C.

² E/4947 and Corr.1.

by providing the information requested in paragraphs 1 (c) and 2 of General Assembly resolution 2393 (XXIII);

5. *Requests* the Secretary-General to circulate as soon as possible to Member States all the replies already received from Member States to the queries contained in paragraphs 1 (c) and 2 of resolution 2393 (XXIII) and those to be received after the adoption of the present resolution, and to submit a supplementary report to the Economic and Social Council at its fifty-second session;

6. *Further requests* the Secretary-General, on the basis of material furnished in accordance with paragraph 4 above by Governments of Member States where capital punishment still exists, to prepare a separate report regarding practices and statutory rules which may govern the right of a person sentenced to capital punishment to petition for pardon, commutation or reprieve, and to submit that report to the General Assembly.

2. Safeguards guaranteeing protection of the rights of those facing the death penalty

Approved by Economic and Social Council resolution 1984/50 of 25 May 1984

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

3. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

Economic and Social Council resolution 1989/64, 24 May 1989.

The Economic and Social Council,

Recalling its resolution 1984/50 of 25 May 1984, in which it approved the safeguards guaranteeing protection of the rights of those facing the death penalty,

Recalling also resolution 15 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,¹

Recalling further section X of its resolution 1986/10 of 21 May 1986, in which it requested a study on the question of the death penalty and new contributions of the criminal sciences to the matter,

Taking note of the report of the Secretary-General on the implementation of the United Nations safeguards guaranteeing protection of the rights of those facing the death penalty,²

Noting with satisfaction that a large number of Member States have provided the Secretary-General with information on the implementation of the safeguards and have made contributions,

Noting with appreciation the study on the question of the death penalty and the new contributions of the criminal sciences to the matter,³

Alarmed at the continued occurrence of practices incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty,

Aware that effective implementation of those safeguards requires a review of relevant national legislation and the improved dissemination of the text to all persons and entities concerned with them, as specified in resolution 15 of the Seventh Congress,

Convinced that further progress should be achieved towards more effective implementation of the safeguards at the national level on the understanding

¹ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

² E/AC.57/1988/9 and Corr.1 and 2.

³ E/AC.57/1988/CRP.7.

that they shall not be invoked to delay or to prevent the abolition of capital punishment,

Acknowledging the need for comprehensive and accurate information and additional research about the implementation of the safeguards and the death penalty in general in every region of the world,

1. Recommends that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution;

2. Invites Member States to cooperate with specialized bodies, non-governmental organizations, academic institutions and specialists in the field in efforts to conduct research on the use of the death penalty in every region of the world;

3. Also invites Member States to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the implementation of the safeguards and the death penalty in general;

4. Further invites Member States that have not yet done so to review the extent to which their legislation provides for the safeguards guaranteeing protection of the rights of those facing the death penalty as set out in the annex to Council resolution 1984/50;

5. Urges Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information on the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted

on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law;

6. Recommends that the report of the Secretary-General on the question of capital punishment, to be submitted to the Council in 1990, to pursuance of its resolution 1745 (LIV) of 16 May 1973, should henceforth cover the implementation of the safeguards as well as the use of capital punishment;

7. Requests the Secretary-General to publish the study on the question of the death penalty and the new contributions of the criminal sciences to the matter, prepared pursuant to Council resolution 1986/10, section X, and to make it available, with other relevant documentation, to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

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

Economic and Social Council resolution 1989/65, 24 May 1989.

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.
2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.
3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.
4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.
5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.
6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

Investigation

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved, and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases

where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the

investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

5. Safeguards guaranteeing protection of the rights of those facing the death penalty

Resolution 1996/15 Economic and Social Council, 23 July 1996

The Economic and Social Council,

Recalling General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977 and Economic and Social Council resolutions 1745 (LIV) of 16 May 1973, 1930 (LVIII) of 6 May 1975, 1990/51 of 24 July 1990 and 1995/57 of 28 July 1995,

Recalling also article 6 of the International Covenant on Civil and Political Rights,¹

Recalling further the safeguards guaranteeing protection of the rights of those facing the death penalty, annexed to its resolution 1984/50 of 25 May 1984, and its resolution 1989/64 of 24 May 1989 on the implementation of the safeguards,

Taking note of the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty,²

Recalling the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set forth in the annex to its resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989, and taking note of the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the death penalty contained in his report to the Commission on Human Rights at its fifty-second session,³

Taking note of Security Council resolution 827 (1993) of 25 May 1993, in which the Security Council decided to establish the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and to adopt the Statute of the International Tribunal annexed to the report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993),⁴ and taking note also of Security Council resolution 955 (1994) of 8 November 1994, in which the Security Council decided to

¹ General Assembly resolution 2200 A (XXI), annex

² E/CN.15/1996/19.

³ E/CN.4/1996/4.

⁴ S/25704.

establish the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and to adopt the Statute of the International Tribunal for Rwanda annexed to that resolution,

1. *Notes* that, during the period covered by the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, an increasing number of countries abolished the death penalty and others followed a policy reducing the number of capital offences, and declared that they had not sentenced any offender to that penalty, while still others retained it and a few reintroduced it;

2. *Calls* upon Member States in which the death penalty has not been abolished to effectively apply the safeguards guaranteeing protection of the rights of those facing the death penalty, in which it is stated that capital punishment may be imposed for only the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences;

3. *Encourages* Member States in which the death penalty has not been abolished to ensure that each defendant facing a possible death sentence is given all guarantees to ensure a fair trial, as contained in article 14 of the International Covenant on Civil and Political Rights, and bearing in mind the Basic Principles on the Independence of the Judiciary,⁵ the Basic Principles on the Role of Lawyers,⁶ the Guidelines on the Role of Prosecutors,⁷ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,⁸ and the Standard Minimum Rules for the Treatment of Prisoners;⁹

⁵ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.1), chap. I, sect. B.3, annex.

⁶ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

⁷ *Ibid.*, sect. C.26.

⁸ General Assembly resolution 43/173, annex.

⁹ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I, sect. A

4. *Also encourages* Member States in which the death penalty has not been abolished to ensure that defendants who do not sufficiently understand the language used in court are fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court;
5. *Calls* upon Member States in which the death penalty may be carried out to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency, in order to effectively apply rules 5 and 8 of the safeguards guaranteeing protection of the rights of those facing the death penalty;
6. *Also calls* upon Member States in which the death penalty may be carried out to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question;
7. *Urges* Member States in which the death penalty may be carried out to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.

6. The question of the death penalty

Commission on Human Rights resolution 2003/67, 24 April 2003

The Commission on Human Rights,

Recalling article 3 of the Universal Declaration of Human Rights which affirms the right of everyone to life, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

Recalling also General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977, as well as resolution 44/128 of 15 December 1989, in which the Assembly adopted and opened for signature, ratification and accession the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

Recalling further the relevant Economic and Social Council resolutions, 1984/50 of 25 May 1984, 1985/33 of 29 May 1985, 1989/64 of 24 May 1989, 1990/29 of 24 May 1990, 1990/51 of 24 July 1990 and 1996/15 of 23 July 1996,

Recalling its previous resolutions in which it expressed its conviction that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

Noting that, in some countries, the death penalty is often imposed after trials which do not conform to international standards of fairness and that persons belonging to national or ethnic, religious and linguistic minorities appear to be disproportionately subject to the death penalty, and condemning cases in which women are subjected to capital punishment on the basis of gender-discriminatory legislation,

Welcoming the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia, the International Tribunal for Rwanda and the International Criminal Court are authorized to impose,

Commending the States that have recently become parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights and welcoming the recent signature of the Second Optional Protocol by some States,

Welcoming the abolition of the death penalty which has taken place in some States since the last session of the Commission, and in particular in those States that have abolished the death penalty for all crimes,

Welcoming also the fact that many countries which still retain the death penalty in their penal legislation are applying a moratorium on executions,

Welcoming further regional initiatives aimed at the establishment of a moratorium on executions and the abolition of the death penalty,

Referring to the safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50,

Deeply concerned that several countries impose the death penalty in disregard of the limitations set out in the Covenant and the Convention on the Rights of the Child,

Concerned that several countries, in imposing the death penalty, do not take into account the safeguards guaranteeing protection of the rights of those facing the death penalty,

1. *Recalls* the sixth quinquennial report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, submitted in accordance with Economic and Social Council resolution 1995/57 of 28 July 1995 (E/2000/3), and welcomes the yearly supplement of the Secretary-General on changes in law and practice concerning the death penalty worldwide contained in his report (E/CN.4/2003/106), as requested in Commission resolution 2002/77;

2. *Reaffirms* resolution 2000/17 of 17 August 2000 of the Sub-Commission on the Promotion and Protection of Human Rights on international law and the imposition of the death penalty on those aged under 18 at the time of the commission of the offence;

3. *Calls upon* all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;

4. *Urges* all States that still maintain the death penalty:

(a) Not to impose it for crimes committed by persons below 18 years of age, and to exclude pregnant women from capital punishment;

- (b) Not to impose the death penalty for any but the most serious crimes and only pursuant to a final judgement rendered by an independent and impartial competent court, and to ensure the right to a fair trial and the right to seek pardon or commutation of sentence;
- (c) To ensure that all legal proceedings, including those before special tribunals or jurisdictions, and particularly those related to capital offences, conform to the minimum procedural guarantees contained in article 14 of the International Covenant on Civil and Political Rights;
- (d) To ensure that the notion of “most serious crimes” does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience and sexual relations between consenting adults;
- (e) Not to enter any new reservations under article 6 of the Covenant which may be contrary to the object and the purpose of the Covenant and to withdraw any such existing reservations, given that article 6 enshrines the minimum rules for the protection of the right to life and the generally accepted standards in this area;
- (f) To observe the safeguards guaranteeing protection of the rights of those facing the death penalty and to comply fully with their international obligations, in particular with those under article 36 of the 1963 Vienna Convention on Consular Relations, particularly the right to receive information on consular assistance within the context of a legal procedure;
- (g) Not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person;
- (h) To exclude mothers with dependent infants from capital punishment;
- (i) To ensure that, where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering and shall not be carried out in public or in any other degrading manner, and to ensure that any application of particularly cruel or inhuman means of execution, such as stoning, be stopped immediately;
- (j) Not to execute any person as long as any related legal procedure, at the international or at the national level, is pending;

5. *Calls upon* all States that still maintain the death penalty:

(a) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply;

(b) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;

(c) To make available to the public information with regard to the imposition of the death penalty and to any scheduled execution;

(d) To provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty as contained in Economic and Social Council resolution 1984/50;

6. *Calls upon* States which no longer apply the death penalty but maintain it in their legislation to abolish it;

7. *Requests* States that have received a request for extradition on a capital charge to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting State that capital punishment will not be carried out;

8. *Requests* the Secretary-General to continue to submit to the Commission, at its sixtieth session, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement on changes in law and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty against persons younger than 18 years of age at the time of the offence;

9. *Decides* to continue consideration of the matter at its sixtieth session under the same agenda item.

B4. ENFORCED DISAPPEARANCE

1. Declaration on the Protection of All Persons from Enforced Disappearance

General Assembly resolution 47/133 18 December 1992

The General Assembly,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,

Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity,

Recalling its resolution 33/173 of 20 December 1978, in which it expressed concern about the reports from various parts of the world relating to enforced or involuntary disappearances, as well as about the anguish and sorrow caused by those disappearances, and called upon Governments to hold law enforcement and security forces legally responsible for excesses which might lead to enforced or involuntary disappearances of persons,

Recalling also the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, of 1977,

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard also to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners,

Affirming that, in order to prevent enforced disappearances, it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment contained in the annex to its resolution 43/173 of 9 December 1988, and with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set forth in the annex to Economic and Social Council resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989,

Bearing in mind that, while the acts which comprise enforced disappearance constitute a violation of the prohibitions found in the aforementioned international instruments, it is none the less important to devise an instrument which characterizes all acts of enforced disappearance of persons as very serious offences and sets forth standards designed to punish and prevent their commission,

1. Proclaims the present Declaration on the Protection of All Persons from Enforced Disappearance, as a body of principles for all States;
2. Urges that all efforts be made so that the Declaration becomes generally known and respected;

Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental

freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 2

1. No State shall practise, permit or tolerate enforced disappearances.
2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.
2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

Article 6

1. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.
2. Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited.
3. Training of law enforcement officials shall emphasize the provisions in paragraphs 1 and 2 of the present article.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 8

1. No State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.
2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.
3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.
2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.
3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

Article 12

1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.
2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance

has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 14

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.

Article 15

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph

1, above, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.

2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.

3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.

4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.

3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18

1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.

2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.

Article 20

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.
2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.
3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.
4. For these purposes, States shall, where appropriate, conclude bilateral and multilateral agreements.

Article 21

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.

2. International Convention for the Protection of All Persons from Enforced Disappearance

Adopted by the General Assembly, 20 December 2006.

(Extracts)

Preamble

The States Parties to this Convention,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to the Universal Declaration of Human Rights,

Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law,

Also recalling the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992,

Aware of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity,

Determined to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance,

Considering the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation,

Affirming the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end,

Have agreed on the following articles:

PART I

Article 1

1. No one shall be subjected to enforced disappearance.

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

Article 2

For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Article 3

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

Article 4

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

Article 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Article 6

1. Each State Party shall take the necessary measures to hold criminally responsible at least:

(a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(b) A superior who:

(i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;

(ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and

(iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;

(c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.

2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

Article 7

1. Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

2. Each State Party may establish:

(a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;

(b) Without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons.

Article 8

Without prejudice to article 5,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:

(a) Is of long duration and is proportionate to the extreme seriousness of this offence;

(b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

Article 9

1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:

(a) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is one of its nationals;

(c) When the disappeared person is one of its nationals and the State Party considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.

3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

Article 10

1. Upon being satisfied, after an examination of the information available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.

2. A State Party which has taken the measures referred to in paragraph 1 of this article shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States Parties referred to in article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.

3. Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

Article 11

1. The State Party in the territory under whose jurisdiction a person alleged to have committed an offence of enforced disappearance is found shall, if it does not extradite that person or surrender him or her to another State in accordance with its international obligations or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State Party. In the cases referred to in article 9, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 9, paragraph 1.

3. Any person against whom proceedings are brought in connection with an offence of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.

Article 12

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.

2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.

3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:

(a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;

(b) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.

4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.

Article 13

1. For the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.

2. The offence of enforced disappearance shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties before the entry into force of this Convention.

3. States Parties undertake to include the offence of enforced disappearance as an extraditable offence in any extradition treaty subsequently to be concluded between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition in respect of the offence of enforced disappearance.

5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offence of enforced disappearance as an extraditable offence between themselves.

6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, in particular, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or make it subject to certain conditions.

7. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group, or that compliance with the request would cause harm to that person for any one of these reasons.

Article 14

1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is necessary for the proceedings.

2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject to conditions.

Article 15

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

Article 16

1. No State Party shall expel, return ("refouler"), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a

consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

Article 17

1. No one shall be held in secret detention.
2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:
 - (a) Establish the conditions under which orders of deprivation of liberty may be given;
 - (b) Indicate those authorities authorized to order the deprivation of liberty;
 - (c) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty;
 - (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;
 - (e) Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority;
 - (f) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.
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.

Article 18

1. Subject to articles 19 and 20, each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information:

- (a) The authority that ordered the deprivation of liberty;
- (b) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;
- (c) The authority responsible for supervising the deprivation of liberty;
- (d) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;
- (e) The date, time and place of release;
- (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.

2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

Article 19

1. Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. This is without prejudice to the use of such information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.

2. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual.

Article 20

1. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.

2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances.

Article 21

Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.

Article 22

Without prejudice to article 6, each State Party shall take the necessary measures to prevent and impose sanctions for the following conduct:

- (a) Delaying or obstructing the remedies referred to in article 17, paragraph 2 (f), and article 20, paragraph 2;
- (b) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate;
- (c) Refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

Article 23

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:

- (a) Prevent the involvement of such officials in enforced disappearances;
- (b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;
- (c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.

2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.

3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

Article 24

1. For the purposes of this Convention, "victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.

3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.

4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

(a) Restitution;

(b) Rehabilitation;

(c) Satisfaction, including restoration of dignity and reputation;

(d) Guarantees of non-repetition.

6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.

7. Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

Article 25

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article.

4. Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.

5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

PART II

Article 26

1. A Committee on Enforced Disappearances (hereinafter referred to as "the Committee") shall be established to carry out the functions provided for under this Convention. The Committee shall consist of ten experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. The members of the Committee shall be elected by the States Parties according to equitable geographical distribution. Due account shall be taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.

(...)

9. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate, to the extent of the Committee's functions that the State Party has accepted.

(...)

Article 28

1. In the framework of the competencies granted by this Convention, the Committee shall cooperate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organizations or bodies, as well as with all relevant State institutions, agencies or offices working towards the protection of all persons against enforced disappearances.

2. As it discharges its mandate, the Committee shall consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.

Article 29

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.

2. The Secretary-General of the United Nations shall make this report available to all States Parties.

3. Each report shall be considered by the Committee, which shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them, on its own initiative or at the request of the Committee.

4. The Committee may also request States Parties to provide additional information on the implementation of this Convention.

Article 30

1. A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the

disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.

2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this article:

(a) Is not manifestly unfounded;

(b) Does not constitute an abuse of the right of submission of such requests;

(c) Has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;

(d) Is not incompatible with the provisions of this Convention; and

(e) The same matter is not being examined under another procedure of international investigation or settlement of the same nature; it shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.

3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.

4. The Committee shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed.

Article 31

1. A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.

2. The Committee shall consider a communication inadmissible where:
- (a) The communication is anonymous;
 - (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;
 - (c) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where
 - (d) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.
3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this article, it shall transmit the communication to the State Party concerned, requesting it to provide observations and comments within a time limit set by the Committee.
4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.
5. The Committee shall hold closed meetings when examining communications under the present article. It shall inform the author of a communication of the responses provided by the State Party concerned. When the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

Article 32

A State Party to this Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention. The Committee shall not receive communications concerning a State Party which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

Article 33

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay.
2. The Committee shall notify the State Party concerned, in writing, of its intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The State Party shall answer the Committee within a reasonable time.
3. Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit.
4. If the State Party agrees to the visit, the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit.
5. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.

Article 34

If the Committee receives information which appears to it to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may, after seeking from the State Party concerned all relevant information on the situation, urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.

Article 35

1. The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.
2. If a State becomes a party to this Convention after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to enforced disappearances which commenced after the entry into force of this Convention for the State concerned.

(...)

Article 43

This Convention is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto of 8 June 1977, or to the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

(...)

B5. JUVENILE JUSTICE

1. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

Adopted by United Nations General Assembly Resolution 40/33 (November 29, 1985).

PART ONE

GENERAL PRINCIPLES

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice

system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind in the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

2. Scope of the Rules and definitions used

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

- (b) To meet the needs of society;
- (c) To implement the following rules thoroughly and fairly.

Commentary

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

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.⁷⁰

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

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

⁷⁰ Resolution 1386 (XIV). See also the Convention on the Elimination of All Forms of Discrimination against Women (resolution 34/180, annex); the Declaration of the World Conference to Combat Racism and Racial Discrimination (Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14-25 August 1978 (United Nations publication, Sales No. E.79.XIV.2), chap. II); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (resolution 36/55); the Standard Minimum Rules for the Treatment of Prisoners; the Caracas Declaration (resolution 35/171, annex); and rule 9.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

- (a) The so-called “status offences” prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);
- (b) Juvenile welfare and care proceedings (rule 3.2);
- (c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

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

4. Age of criminal responsibility

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

Commentary

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

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

5. Aims of juvenile justice

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

Commentary

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

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

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

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

6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice

administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

7. Rights of juveniles

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

Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments. (See also rule 14.) The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human

Rights¹ and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.²

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

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

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

Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 2.1.)

9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners³ adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

¹ General Assembly resolution 217 A (III).

² See General Assembly resolution 2200 A (XXI), annex.

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

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards— such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child.⁴

It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application. (See also rule 27.)

PART TWO

INVESTIGATION AND PROSECUTION

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

⁴ The Standard Minimum Rules for the Treatment of Prisoners and related recommendations were adopted in 1955 (see First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4). In its resolution 663 C (XXIV) of 31 July 1957, the Economic and Social Council approved the Standard Minimum Rules and endorsed, inter alia, the recommendations on the selection and training of personnel for penal and correctional institutions and on open penal and correctional institutions. The Council recommended that Governments should give favourable consideration to the adoption and application of the Standard Minimum Rules and should take the other two groups of recommendations as fully as possible into account in the administration of penal and correctional institutions. The inclusion of a new rule, rule 95, was authorized by the Economic and Social Council in its resolution 2076 (LXII) of 13 May 1977.

Commentary

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

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.)

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

11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

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

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

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.⁵ However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a “competent authority upon application”. (The “competent authority” may be different from that referred to in rule 14.)

⁵ Convention No. 105, adopted on 25 June 1957 by the General Conference of the International Labour Organisation at its fortieth session. With regard to the text of the Convention, see footnote 4.

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

12. Specialization within the police

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

Commentary

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

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

13. Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance—social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality.

Commentary

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

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

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

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

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4⁶ on juvenile justice standards, specified that the Rules, inter alia, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult

⁶ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

detainees and that account should always be taken of the needs particular to their stage of development.

PART THREE

ADJUDICATION AND DISPOSITION

14. Competent authority to adjudicate

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

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

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

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

15. Legal counsel, parents and guardians

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the

competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile—a function extending throughout the procedure.

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

16. Social inquiry reports

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

Commentary

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

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
- (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

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

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

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

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the

concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁷ as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁸ and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

⁷ General Assembly resolution 3452 (XXX), annex.

⁸ General Assembly resolution 39/46, annex.

18. Various disposition measures

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

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

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

Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising options that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is “the natural and fundamental group unit of society”. Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to

only when the facts of the case clearly warrant this grave step (for example child abuse).

19. Least possible use of institutionalization

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

Commentary

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

Rule 19 aims at restricting institutionalization in two regards: in quantity (“last resort”) and in time (“minimum necessary period”). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to “open” over “closed” institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

20. Avoidance of unnecessary delay

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

Commentary

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

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

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

22. Need for professionalism and training

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

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

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

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions. All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

PART FOUR

NON-INSTITUTIONAL TREATMENT

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

Commentary

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

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. Provision of needed assistance

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

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. Mobilization of volunteers and other community services

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

Commentary

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

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

PART FIVE

INSTITUTIONAL TREATMENT

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance—social, educational, vocational, psychological, medical and

physical—that they may require because of their age, sex, and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and interdepartmental cooperation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

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

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal

justice administration,⁹ and against the background of the Declaration on the Elimination of Discrimination against Women¹⁰ and the Convention on the Elimination of All Forms of Discrimination against Women.¹¹

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and interdepartmental cooperation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

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

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

⁹ See General Assembly resolution 35/171, annex, para. 1.6.

¹⁰ General Assembly resolution 2263 (XXII).

¹¹ General Assembly resolution 34/180, annex.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. Frequent and early recourse to conditional release

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.

Commentary

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

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

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

29. Semi-institutional arrangements

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

Commentary

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

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

PART SIX

RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

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

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

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

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

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

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

2. United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Adopted by General Assembly resolution 45/113 of 14 December 1990

I. Fundamental perspectives

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.
2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.
3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.
4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.
5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.
6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.
7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. Scope and application of the rules

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the

competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. Juveniles under arrest or awaiting trial

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. The management of juvenile facilities

A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- (a) Information on the identity of the juvenile;
- (b) The fact of and reasons for commitment and the authority therefor;
- (c) The day and hour of admission, transfer and release;
- (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
- (e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care

best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

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.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

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.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

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.

E. Education, vocational training and work

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.
41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.
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.
44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.
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.

F. Recreation

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. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. 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.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in

case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

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 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.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. 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.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. Inspection and complaints

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.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. Return to the community

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.

V. Personnel

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. 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.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

3. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990

I. Fundamental principles

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.
2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.
3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.
4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.
5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:
 - (a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;
 - (b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;
 - (c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. Scope of the Guidelines

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. General prevention

9. Comprehensive prevention plans should be instituted at every level of Government and include the following:

(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;

- (d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;
- (e) Methods for effectively reducing the opportunity to commit delinquent acts;
- (f) Community involvement through a wide range of services and programmes;
- (g) Close interdisciplinary co-operation between national, State, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;
- (h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;
- (i) Specialized personnel at all levels.

IV. Socialization processes

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

- (a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;
- (b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;
- (c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;
- (d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;
- (e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;
- (f) Provision of information and guidance regarding vocational training, employment opportunities and career development;
- (g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;
- (h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those

with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extracurricular activities of interest to young persons, in co-operation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. Community

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at or who do not have s to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for less or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. Mass media

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavouredly, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

V. Social policy

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for

the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Government should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. Legislation and juvenile justice administration

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. Research, policy development and coordination

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and coordination between economic, social, education and health agencies and

services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific cooperation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and coordination on various questions related to children juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in cooperation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

4. Guidelines for Action on Children in the Criminal Justice System

Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997

1. Pursuant to Economic and Social Council resolution 1996/13 of 23 July 1996, the present Guidelines for Action on Children in the Criminal Justice System were developed at an expert group meeting held at Vienna from 23 to 25 February 1997 with the financial support of the Government of Austria. In developing the Guidelines for Action, the experts took into account the views expressed and the information submitted by Governments.
2. Twenty-nine experts from eleven States in different regions, representatives of the Centre for Human Rights of the Secretariat, the United Nations Children's Fund and the Committee on the Rights of the Child, as well as observers for non-governmental organizations concerned with juvenile justice, participated in the meeting.
3. The Guidelines for Action are addressed to the Secretary-General and relevant United Nations agencies and programmes, States parties to the Convention on the Rights of the Child, as regards its implementation, as well as Member States as regards the use and application of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, hereinafter together referred to as United Nations standards and norms in juvenile justice.

I. Aims, objectives and basic considerations

4. The aims of the Guidelines for Action are to provide a framework to achieve the following objectives:
 - (a) To implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the United Nations standards and norms in juvenile justice and other related instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;
 - (b) To facilitate the provision of assistance to States parties for the effective implementation of the Convention on the Rights of the Child and related instruments.

5. In order to ensure effective use of the Guidelines for Action, improved cooperation between Governments, relevant entities of the United Nations system, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society is essential.
6. The Guidelines for Action should be based on the principle that the responsibility to implement the Convention clearly rests with the States parties thereto.
7. The basis for the use of the Guidelines for Action should be the recommendations of the Committee on the Rights of the Child.
8. In the use of the Guidelines for Action at both the international and national levels, consideration should be given to the following:
 - (a) Respect for human dignity, compatible with the four general principles underlying the Convention, namely: non-discrimination, including gender-sensitivity; upholding the best interests of the child; the right to life, survival and development; and respect for the views of the child;
 - (b) A rights-based orientation;
 - (c) A holistic approach to implementation through maximization of resources and efforts;
 - (d) The integration of services on an interdisciplinary basis;
 - (e) Participation of children and concerned sectors of society;
 - (f) Empowerment of partners through a developmental process;
 - (g) Sustainability without continuing dependency on external bodies;
 - (h) Equitable application and accessibility to those in greatest need;
 - (i) Accountability and transparency of operations;
 - (j) Proactive responses based on effective preventive and remedial measures.
9. Adequate resources (human, organizational, technological, financial and information) should be allocated and utilized efficiently at all levels (international, regional, national, provincial and local) and in collaboration with relevant partners, including Governments, United Nations entities, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society, as well as other partners.

II. Plans for the implementation of the Convention on the Rights of the Child, the pursuit of its goals and the use and application of international standards and norms in juvenile justice

A. Measures of general application

10. The importance of a comprehensive and consistent national approach in the area of juvenile justice should be recognized, with respect for the interdependence and indivisibility of all rights of the child.

11. Measures relating to policy, decision-making, leadership and reform should be taken, with the goal of ensuring that:

(a) The principles and provisions of the Convention on the Rights of the Child and the United Nations standards and norms in juvenile justice are fully reflected in national and local legislation policy and practice, in particular by establishing a child-oriented juvenile justice system that guarantees the rights of children, prevents the violation of the rights of children, promotes children's sense of dignity and worth, and fully respects their age, stage of development and their right to participate meaningfully in, and contribute to, society;

(b) The relevant contents of the above-mentioned instruments are made widely known to children in language accessible to children. In addition, if necessary, procedures should be established to ensure that each and every child is provided with the relevant information on his or her rights set out in those instruments, at least from his or her first contact with the criminal justice system, and is reminded of his or her obligation to obey the law;

(c) The public's and the media's understanding of the spirit, aims and principles of justice centred on the child is promoted in accordance with the United Nations standards and norms in juvenile justice.

B. Specific targets

12. States should ensure the effectiveness of their birth registration programmes. In those instances where the age of the child involved in the justice system is unknown, measures should be taken to ensure that the true age of a child is ascertained by independent and objective assessment.

13. Notwithstanding the age of criminal responsibility, civil majority and the age of consent as defined by national legislation, States should ensure that children benefit from all their rights, as guaranteed to them by international law, specifically in this context those set forth in articles 3, 37 and 40 of the Convention.

14. Particular attention should be given to the following points:

- (a) There should be a comprehensive child-centred juvenile justice process;
- (b) Independent expert or other types of panels should review existing and proposed juvenile justice laws and their impact on children;
- (c) No child who is under the legal age of criminal responsibility should be subject to criminal charges;
- (d) States should establish juvenile courts with primary jurisdiction over juveniles who commit criminal acts and special procedures should be designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures, as appropriate. Wherever necessary, national legislative and other measures should be considered to accord all the rights of and protection for the child, where the child is brought before a court other than a juvenile court, in accordance with articles 3, 37 and 40 of the Convention.

15. A review of existing procedures should be undertaken and, where possible, diversion or other alternative initiatives to the classical criminal justice systems should be developed to avoid recourse to the criminal justice systems for young persons accused of an offence. Appropriate steps should be taken to make available throughout the State a broad range of alternative and educative measures at the pre-arrest, pre-trial, trial and post-trial stages, in order to prevent recidivism and promote the social rehabilitation of child offenders. Whenever appropriate, mechanisms for the informal resolution of disputes in cases involving a child offender should be utilized, including mediation and restorative justice practices, particularly processes involving victims. In the various measures to be adopted, the family should be involved, to the extent that it operates in favour of the good of the child offender. States should ensure that alternative measures comply with the Convention, the United Nations standards and norms in juvenile justice, as well as other existing standards and norms in crime prevention and criminal justice, such as the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), with special regard to ensuring respect for due process rules in applying such measures and for the principle of minimum intervention.

16. Priority should be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge, such as interpretation services, and, in particular, to ensure that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice.

17. Appropriate action should be ensured to alleviate the problem of children in need of special protection measures, such as children working or living on the streets or children permanently deprived of a family environment, children with disabilities, children of minorities, immigrants and indigenous peoples and other vulnerable groups of children.

18. The placement of children in closed institutions should be reduced. Such placement of children should only take place in accordance with the provisions of article 37 (b) of the Convention and as a matter of last resort and for the shortest period of time. Corporal punishment in the child justice and welfare systems should be prohibited.

19. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty and article 37 (d) of the Convention also apply to any public or private setting from which the child cannot leave at will, by order of any judicial, administrative or other public authority.

20. In order to maintain a link between the detained child and his or her family and community, and to facilitate his or her social reintegration, it is important to ensure easy access by relatives and persons who have a legitimate interest in the child to institutions where children are deprived of their liberty, unless the best interests of the child would suggest otherwise.

21. An independent body to monitor and report regularly on conditions in custodial facilities should be established, if necessary. Monitoring should take place within the framework of the United Nations standards and norms in juvenile justice, in particular the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. States should permit children to communicate freely and confidentially with the monitoring bodies.

22. States should consider positively requests from concerned humanitarian, human rights and other organizations for access to custodial facilities, where appropriate.

23. In relation to children in the criminal justice system, due account should be taken of concerns raised by intergovernmental and non-governmental organizations and other interested parties, in particular systemic issues, including inappropriate admissions and lengthy delays that have an impact on children deprived of their liberty.

24. All persons having contact with, or being responsible for, children in the criminal justice system should receive education and training in human rights, the principles and provisions of the Convention and other United Nations

standards and norms in juvenile justice as an integral part of their training programmes. Such persons include police and other law enforcement officials; judges and magistrates, prosecutors, lawyers and administrators; prison officers and other professionals working in institutions where children are deprived of their liberty; and health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice.

25. In the light of existing international standards, States should establish mechanisms to ensure a prompt, thorough and impartial investigation into allegations against officials of deliberate violation of the fundamental rights and freedoms of children. States should equally ensure that those found responsible are duly sanctioned.

C. Measures to be taken at the international level

26. Juvenile justice should be given due attention internationally, regionally and nationally, including within the framework of the United Nations system-wide action.

27. There is an urgent need for close cooperation between all bodies in this field, in particular, the Crime Prevention and Criminal Justice Division of the Secretariat, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization. In addition, the World Bank and other international and regional financial institutions and organizations, as well as non-governmental organizations and academic institutions, are invited to support the provision of advisory services and technical assistance in the field of juvenile justice. Cooperation should therefore be strengthened, in particular with regard to research, dissemination of information, training, implementation and monitoring of the Convention on the Rights of the Child and the use and application of existing standards, as well as with regard to the provision of technical advice and assistance programmes, for example by making use of existing international networks on juvenile justice.

28. The effective implementation of the Convention on the Rights of the Child, as well as the use and application of international standards through technical cooperation and advisory service programmes, should be ensured by giving particular attention to the following aspects related to protecting and promoting

human rights of children in detention, strengthening the rule of law and improving the administration of the juvenile justice system:

- (a) Assistance in legal reform;
- (b) Strengthening national capacities and infrastructures;
- (c) Training programmes for police and other law enforcement officials, judges and magistrates, prosecutors, lawyers, administrators, prison officers and other professionals working in institutions where children are deprived of their liberty, health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice;
- (d) Preparation of training manuals;
- (e) Preparation of information and education material to inform children about their rights in juvenile justice;
- (f) Assistance with the development of information and management systems.

29. Close cooperation should be maintained between the Crime Prevention and Criminal Justice Division and the Department of Peacekeeping Operations of the Secretariat in view of the relevance of the protection of children's rights in peacekeeping operations, including the problems of children and youth as victims and perpetrators of crime in peace-building and post-conflict or other emerging situations.

D. Mechanisms for the implementation of technical advice and assistance projects

30. In accordance with articles 43, 44 and 45 of the Convention, the Committee on the Rights of the Child reviews the reports of States parties on the implementation of the Convention. According to article 44 of the Convention, these reports should indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Convention.

31. States parties to the Convention are invited to provide in their initial and periodic reports comprehensive information, data and indicators on the implementation of the provisions of the Convention and on the use and application of the United Nations standards and norms in juvenile justice.

32. As a result of the process of examining the progress made by States parties in fulfilling their obligations under the Convention, the Committee may make suggestions and general recommendations to the State party to ensure full compliance with the Convention (in accordance with article 45 (d) of the Convention). In order to foster the effective implementation of the Convention

and to encourage international cooperation in the area of juvenile justice, the Committee transmits, as it may consider appropriate, to specialized agencies, the United Nations Children's Fund and other competent bodies any reports from States parties that contain a request, or indicate a need, for advisory services and technical assistance, together with observations and suggestions of the Committee, if any, on those requests or indications (in accordance with article 45 (b) of the Convention).

33. Accordingly, should a State party report and the review process by the Committee reveal any necessity to initiate reform in the area of juvenile justice, including through assistance by the United Nations technical advice and assistance programmes or those of the specialized agencies, the State party may request such assistance, including assistance from the Crime Prevention and Criminal Justice Division, the Centre for Human Rights and the United Nations Children's Fund.

34. In order to provide adequate assistance in response to those requests, a coordination panel on technical advice and assistance in juvenile justice should be established, to be convened at least annually by the Secretary-General. The panel will consist of representatives of the Division, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network and other relevant United Nations entities, as well as other interested intergovernmental, regional and non-governmental organizations, including international networks on juvenile justice and academic institutions involved in the provision of technical advice and assistance, in accordance with paragraph 39 below.

35. Prior to the first meeting of the coordination panel, a strategy should be elaborated for addressing the issue of how to activate further international cooperation in the field of juvenile justice. The coordination panel should also facilitate the identification of common problems, the compilation of examples of good practice and the analysis of shared experiences and needs, which in turn would lead to a more strategic approach to needs assessment and to effective proposals for action. Such a compilation would allow for concerted advisory services and technical assistance in juvenile justice, including an early agreement with the Government requesting such assistance, as well as with all other partners having the capacity and competence to implement the various segments of a country project, thus ensuring the most effective and problem-

oriented action. This compilation should be developed continuously in close cooperation with all parties involved. It will take into account the possible introduction of diversion programmes and measures to improve the administration of juvenile justice, to reduce the use of remands and pre-trial detention, to improve the treatment of children deprived of their liberty and to create effective reintegration and recovery programmes.

36. Emphasis should be placed on formulating comprehensive prevention plans, as called for in the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). Projects should focus on strategies to socialize and integrate all children and young persons successfully, in particular through the family, the community, peer groups, schools, vocational training and the world of work. These projects should pay particular attention to children in need of special protection measures, such as children working or living on the streets or children permanently deprived of a family environment, children with disabilities, children of minorities, immigrants and indigenous peoples and other vulnerable groups of children. In particular, the placement of these children in institutions should be proscribed as much as possible. Measures of social protection should be developed in order to limit the risks of criminalization for these children.

37. The strategy will also set out a coordinated process for the delivery of international advisory services and technical assistance to States parties to the Convention, on the basis of joint missions to be undertaken, whenever appropriate, by staff of the different organizations and agencies involved, with a view to devising longer term technical assistance projects.

38. Important actors in the delivery of advisory services and technical assistance programmes at the country level are the United Nations resident coordinators, with significant roles to be played by the field offices of the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund and the United Nations Development Programme. The vital nature of the integration of juvenile justice technical cooperation in country planning and programming, including through the United Nations country strategy note, is emphasized.

39. Resources must be mobilized for both the coordinating mechanism of the coordination panel and regional and country projects formulated to improve observance of the Convention. Resources for those purposes (see paragraphs 34 to 38 above) will come either from regular budgets or from extrabudgetary

resources. Most of the resources for specific projects will have to be mobilized from external sources.

40. The coordination panel may wish to encourage, and in fact be the vehicle for, a coordinated approach to resource mobilization in this area. Such resource mobilization should be on the basis of a common strategy as contained in a programme document drawn up in support of a global programme in this area. All interested United Nations bodies and agencies as well as non-governmental organizations that have a demonstrated capacity to deliver technical cooperation services in this area should be invited to participate in such a process.

E. Further considerations for the implementation of country projects

41. One of the obvious tenets in juvenile delinquency prevention and juvenile justice is that long-term change is brought about not only when symptoms are treated but also when root causes are addressed. For example, excessive use of juvenile detention will be dealt with adequately only by applying a comprehensive approach, which involves both organizational and managerial structures at all levels of investigation, prosecution and the judiciary, as well as the penitentiary system. This requires communication, inter alia, with and among police, prosecutors, judges and magistrates, authorities of local communities, administration authorities and with the relevant authorities of detention centres. In addition, it requires the will and ability to cooperate closely with each other.

42. To prevent further overreliance on criminal justice measures to deal with children's behaviour, efforts should be made to establish and apply programmes aimed at strengthening social assistance, which would allow for the diversion of children from the justice system, as appropriate, as well as improving the application of non-custodial measures and reintegration programmes. To establish and apply such programmes, it is necessary to foster close cooperation between the child justice sectors, different services in charge of law enforcement, social welfare and education sectors.

III. Plans concerned with child victims and witnesses

43. In accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, States should undertake to ensure that child victims and witnesses are provided with appropriate access to justice and fair treatment, restitution, compensation and social assistance. If applicable, measures should be taken to prevent the settling of penal matters through

compensation outside the justice system, when doing so is not in the best interests of the child.

44. Police, lawyers, the judiciary and other court personnel should receive training in dealing with cases where children are victims. States should consider establishing, if they have not yet done so, specialized offices and units to deal with cases involving offences against children. States should establish, as appropriate, a code of practice for proper management of cases involving child victims.

45. Child victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered.

46. Child victims should have access to assistance that meets their needs, such as advocacy, protection, economic assistance, counselling, health and social services, social reintegration and physical and psychological recovery services. Special assistance should be given to those children who are disabled or ill. Emphasis should be placed upon family- and community-based rehabilitation rather than institutionalization.

47. Judicial and administrative mechanisms should be established and strengthened where necessary to enable child victims to obtain redress through formal or informal procedures that are prompt, fair and accessible. Child victims and/or their legal representatives should be informed accordingly.

48. Access should be allowed to fair and adequate compensation for all child victims of violations of human rights, specifically torture and other cruel, inhuman or degrading treatment or punishment, including rape and sexual abuse, unlawful or arbitrary deprivation of liberty, unjustifiable detention and miscarriage of justice. Necessary legal representation to bring an action within an appropriate court or tribunal, as well as interpretation into the native language of the child, if necessary, should be available.

49. Child witnesses need assistance in the judicial and administrative processes. States should review, evaluate and improve, as necessary, the situation for children as witnesses of crime in their evidential and procedural law to ensure that the rights of children are fully protected. In accordance with the different law traditions, practices and legal framework, direct contact should be avoided between the child victim and the offender during the process of investigation and prosecution as well as during trial hearings as much as possible. The identification of the child victim in the media should be prohibited, where necessary to protect the privacy of the child. Where

prohibition is contrary to the fundamental legal principles of Member States, such identification should be discouraged.

50. States should consider, if necessary, amendments of their penal procedural codes to allow for, *inter alia*, videotaping of the child's testimony and presentation of the videotaped testimony in court as an official piece of evidence. In particular, police, prosecutors, judges and magistrates should apply more child-friendly practices, for example, in police operations and interviews of child witnesses.

51. The responsiveness of judicial and administrative processes to the needs of child victims and witnesses should be facilitated by:

(a) Informing child victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved;

(b) Encouraging the development of child witness preparation schemes to familiarize children with the criminal justice process prior to giving evidence. Appropriate assistance should be provided to child victims and witnesses throughout the legal process;

(c) Allowing the views and concerns of child victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and in accordance with the relevant national criminal justice system;

(d) Taking measures to minimize delays in the criminal justice process, protecting the privacy of child victims and witnesses and, when necessary, ensuring their safety from intimidation and retaliation.

52. Children displaced illegally or wrongfully retained across borders are as a general principle to be returned to the country of origin. Due attention should be paid to their safety, and they should be treated humanely and receive necessary assistance, pending their return. They should be returned promptly to ensure compliance with the Convention on the Rights of the Child. Where the Hague Convention on the Civil Aspects of International Child Abduction of 1980 or the Hague Convention on the Protection of Children and Cooperation in respect of Inter-Country Adoption of 1993, approved by the Hague Conference on Private International Law, the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of the Child are applicable, the provisions of these conventions with regard to the return of

the child should be promptly applied. Upon the return of the child, the country of origin should treat the child with respect, in accordance with international principles of human rights, and offer adequate family-based rehabilitation measures.

53. The United Nations Crime Prevention and Criminal Justice Programme, including the institutes comprising the Programme network, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the United Nations Children's Fund, the United Nations Development Programme, the Committee on the Rights of the Child, the United Nations Educational, Scientific and Cultural Organization, the World Bank and interested non-governmental organizations should assist Member States, at their request, within the overall appropriations of the United Nations budgets or from extra-budgetary resources, in developing multidisciplinary training, education and information activities for law enforcement and other criminal justice personnel, including police officers, prosecutors, judges and magistrates.

B6. WOMEN

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)

Resolution adopted by the General Assembly on 21 December 2010

[on the report of the Third Committee (A/65/457)]

The General Assembly,

Recalling the United Nations standards and norms in crime prevention and criminal justice primarily related to the treatment of prisoners, in particular the Standard Minimum Rules for the Treatment of Prisoners,¹ the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners,² the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment³ and the Basic Principles for the Treatment of Prisoners,⁴

Recalling also the United Nations standards and norms in crime prevention and criminal justice primarily related to alternatives to imprisonment, in particular the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)⁵ and the basic principles on the use of restorative justice programmes in criminal matters,

Recalling further its resolution 58/183 of 22 December 2003, in which it invited Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and the ways in which they can be addressed,

Considering the alternatives to imprisonment as provided for in the Tokyo Rules, and taking into consideration the gender specificities of, and the consequent need to give priority to applying non-custodial measures to, women who have come into contact with the criminal justice system,

¹Human Rights: A Compilation of International Instruments, Volume I (First Part), Universal Instruments (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34.

² Economic and Social Council resolution 1984/47, annex. ³ Resolution 43/173, annex.

³ Resolution 45/111, annex.

⁴ Resolution 45/110, annex.

⁵ Economic and Social Council resolution 2002/12, annex.

Mindful of its resolution 61/143 of 19 December 2006, in which it urged States to, inter alia, take positive measures to address structural causes of violence against women and to strengthen prevention efforts that address discriminatory practices and social norms, including with regard to women who need special attention in the development of policies to address violence, such as women in institutions or in detention,

Mindful also of its resolution 63/241 of 24 December 2008, in which it called upon all States to give attention to the impact of parental detention and imprisonment on children and, in particular, to identify and promote good practices in relation to the needs and physical, emotional, social and psychological development of babies and children affected by parental detention and imprisonment,

Taking into consideration the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,⁶ in which Member States committed themselves, inter alia, to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders, and the plans of action for the implementation of the Declaration,⁷

Calling attention to the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,⁸ as it relates specifically to women in detention and in custodial and non-custodial settings,

Recalling that, in the Bangkok Declaration, Member States recommended to the Commission on Crime Prevention and Criminal Justice that it give consideration to reviewing the adequacy of standards and norms in relation to prison management and prisoners,

Having taken note of the initiative of the United Nations High Commissioner for Human Rights to designate the week from 6 to 12 October 2008 as Dignity and Justice for Detainees Week, which placed particular emphasis on the human rights of women and girls,

Considering that women prisoners are one of the vulnerable groups that have specific needs and requirements,

Aware of the fact that many existing prison facilities worldwide were designed primarily for male prisoners, whereas the number of female prisoners has significantly increased over the years,

⁶ Resolution 55/59, annex.

⁷ Resolution 56/261, annex.

⁸ Resolution 60/177, annex.

Recognizing that a number of female offenders do not pose a risk to society and, as with all offenders, their imprisonment may render their social reintegration more difficult,

Welcoming the development by the United Nations Office on Drugs and Crime of the Handbook for Prison Managers and Policymakers on Women and Imprisonment,⁹

Welcoming also the invitation, contained in Human Rights Council resolution 10/2 of 25 March 2009,¹⁰ to Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote greater attention to the issue of women and girls in prison, including issues relating to the children of women in prison, with a view to identifying and addressing the gender-specific aspects and challenges related to this problem,

Welcoming further the collaboration between the World Health Organization Regional Office for Europe and the United Nations Office on Drugs and Crime, and taking note of the Kyiv Declaration on Women's Health in Prison,¹¹

Taking note of the Guidelines for the Alternative Care of Children,¹²

Recalling Commission on Crime Prevention and Criminal Justice resolution 18/1 of 24 April 2009,¹³ in which the Commission requested the Executive Director of the United Nations Office on Drugs and Crime to convene in 2009 an open-ended intergovernmental expert group meeting to develop, consistent with the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules, supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings, welcomed the offer by the Government of Thailand to act as host to the expert group meeting, and requested the expert group meeting to submit the outcome of its work to the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, subsequently held in Salvador, Brazil, from 12 to 19 April 2010,

Recalling also that the four regional preparatory meetings for the Twelfth Congress welcomed the development of a set of supplementary rules specific

⁹ United Nations publication, Sales No. E.08.IV.4.

¹⁰ See Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 53 (A/64/53), chap. II, sect. A.

¹¹ See World Health Organization Regional Office for Europe and United Nations Office on Drugs and Crime, *Women's Health in Prison: Correcting Gender Inequity in Prison Health* (Copenhagen, 2009).

¹² Resolution 64/142, annex.

¹³ See Official Records of the Economic and Social Council, 2009, Supplement No. 10 (E/2009/30), chap. I, sect. D.

to the treatment of women in detention and in custodial and non-custodial settings,¹⁴

Recalling further the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,¹⁵ in which Member States recommended that the Commission on Crime Prevention and Criminal Justice consider the draft United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders as a matter of priority for appropriate action,

1. Takes note with appreciation of the work of the expert group to develop supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings at its meeting, held in Bangkok from 23 to 26 November 2009, and of the outcome of the meeting;¹⁶
2. Expresses its gratitude to the Government of Thailand for having acted as host to the meeting of the expert group and for the financial support provided for the organization of the meeting;
3. Adopts the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, annexed to the present resolution, and approves the recommendation of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice that the rules should be known as “the Bangkok Rules”;
4. Recognizes that, in view of the great variety of legal, social, economic and geographical conditions in the world, not all of the rules can be applied equally in all places and at all times; and that they should, however, serve to stimulate a constant endeavour to overcome practical difficulties in their application, in the knowledge that they represent, as a whole, global aspirations amenable to the common goal of improving outcomes for women prisoners, their children and their communities;
5. Encourages Member States to adopt legislation to establish alternatives to imprisonment and to give priority to the financing of such systems, as well as to the development of the mechanisms needed for their implementation;
6. Encourages Member States having developed legislation, procedures, policies or practices for women in prison or on alternatives to imprisonment

¹⁴See A/CONF.213/RPM.1/1, A/CONF.213/RPM.2/1, A/CONF.213/RPM.3/1 and A/CONF.213/RPM.4/1.

¹⁵ Resolution 65/230, annex.

¹⁶ See A/CONF.213/17.

for women offenders to make information available to other States and relevant international, regional and intergovernmental organizations, as well as non-governmental organizations, and to assist them in developing and implementing training or other activities in relation to such legislation, procedures, policies or practices;

7. Invites Member States to take into consideration the specific needs and realities of women as prisoners when developing relevant legislation, procedures, policies and action plans and to draw, as appropriate, on the Bangkok Rules;

8. Also invites Member States to collect, maintain, analyse and publish, as appropriate, specific data on women in prison and women offenders;

9. Emphasizes that, when sentencing or deciding on pretrial measures for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent;

10. Requests the United Nations Office on Drugs and Crime to provide technical assistance and advisory services to Member States, upon request, in order to develop or strengthen, as appropriate, legislation, procedures, policies and practices for women in prison and on alternatives to imprisonment for women offenders;

11. Also requests the United Nations Office on Drugs and Crime to take steps, as appropriate, to ensure broad dissemination of the Bangkok Rules, as a supplement to the Standard Minimum Rules for the Treatment of Prisoners¹ and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),⁵ and to ensure the intensification of information activities in this area;

12. Further requests the United Nations Office on Drugs and Crime to increase its cooperation with other relevant United Nations entities, intergovernmental and regional organizations and non-governmental organizations in the provision of relevant assistance to countries and to identify needs and capacities of countries in order to increase country-to-country and South-South cooperation;

13. Invites specialized agencies of the United Nations system and relevant regional and international intergovernmental and non-governmental organizations to engage in the implementation of the Bangkok Rules;

14. Invites Member States and other donors to provide extrabudgetary contributions for such purposes, in accordance with the rules and procedures of the United Nations.

71st plenary meeting 21 December 2010

Annex

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)

Preliminary observations

1. The Standard Minimum Rules for the Treatment of Prisoners¹ apply to all prisoners without discrimination; therefore, the specific needs and realities of all prisoners, including of women prisoners, should be taken into account in their application. The Rules, adopted more than 50 years ago, did not, however, draw sufficient attention to women's particular needs. With the increase in the number of women prisoners worldwide, the need to bring more clarity to considerations that should apply to the treatment of women prisoners has acquired importance and urgency.
2. Recognizing the need to provide global standards with regard to the distinct considerations that should apply to women prisoners and offenders and taking into account a number of relevant resolutions adopted by different United Nations bodies, in which Member States were called upon to respond appropriately to the needs of women offenders and prisoners, the present rules have been developed to complement and supplement, as appropriate, the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)⁵ in connection with the treatment of women prisoners and alternatives to imprisonment for women offenders.
3. The present rules do not in any way replace the Standard Minimum Rules for the Treatment of Prisoners or the Tokyo Rules and, therefore, all relevant provisions contained in those two sets of rules continue to apply to all prisoners and offenders without discrimination. While some of the present rules bring further clarity to existing provisions in the Standard Minimum Rules for the Treatment of Prisoners and in the Tokyo Rules in their application to women prisoners and offenders, others cover new areas.
4. These rules are inspired by principles contained in various United Nations conventions and declarations and are therefore consistent with the provisions of existing international law. They are addressed to prison authorities and criminal justice agencies (including policymakers, legislators, the prosecution service, the judiciary and the probation service) involved in the administration of non-custodial sanctions and community-based measures.

5. The specific requirements for addressing the situation of women offenders have been emphasized at the United Nations in various contexts. For example, in 1980, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a resolution on the specific needs of women prisoners,¹⁷ in which it recommended that, in the implementation of the resolutions adopted by the Sixth Congress directly or indirectly relevant to the treatment of offenders, recognition should be given to the specific problems of women prisoners and the need to provide the means for their solution; that, in countries where it was not yet done, programmes and services used as alternatives to imprisonment should be made available to women offenders on an equal basis with male offenders; and that the United Nations, the governmental and non-governmental organizations in consultative status with it and all other international organizations should make continuing efforts to ensure that the woman offender was treated fairly and equally during arrest, trial, sentence and imprisonment, particular attention being paid to the special problems which women offenders encounter, such as pregnancy and child care.

6. The Seventh Congress, the Eighth Congress and the Ninth Congress also made specific recommendations concerning women prisoners.^{18 19 20}

7. In the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,⁷ adopted by the Tenth Congress, Member States committed themselves to taking into account and addressing, within the United Nations crime prevention and criminal justice programme, as well as within

¹⁷ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August–5 September 1980: report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B, resolution 9.

¹⁸ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E, resolution 6 (on the fair treatment of women by the criminal justice system).

¹⁹ See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. A.5 (Basic Principles for the Treatment of Prisoners (see also General Assembly resolution 45/111, annex)); and *ibid.*, sect. C, resolutions 17 (on pretrial detention), 19 (on the management of criminal justice and development of sentencing policies) and 21 (on international and interregional cooperation in prison management and community-based sanctions and other matters).

²⁰ See A/CONF.169/16/Rev.1, chap. I, resolutions 1 (on recommendations on the four substantive topics of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders), 5 (on the practical implementation of the Standard Minimum Rules for the Treatment of Prisoners) and 8 (on the elimination of violence against women).

national crime prevention and criminal justice strategies, any disparate impact of programmes and policies on women and men (para. 11); and to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders (para. 12). The plans of action for the implementation of the Vienna Declaration⁸ contain a separate section (sect. XIII) devoted to specific recommended measures to follow up on the commitments undertaken in paragraphs 11 and 12 of the Declaration, including that of States reviewing, evaluating and, if necessary, modifying their legislation, policies, procedures and practices relating to criminal matters, in a manner consistent with their legal systems, in order to ensure that women are treated fairly by the criminal justice system.

8. The General Assembly, in its resolution 58/183 of 22 December 2003 entitled “Human rights in the administration of justice”, called for increased attention to be devoted to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they could be addressed.

9. In its resolution 61/143 of 19 December 2006 entitled “Intensification of efforts to eliminate all forms of violence against women”, the General Assembly stressed that “violence against women” meant any act of gender-based violence resulting in, or likely to result in, physical, sexual or psychological harm or suffering to women, including arbitrary deprivation of liberty, whether occurring in public or in private life, and urged States to review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs discriminating against women or having a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they existed, complied with international human rights obligations, commitments and principles, including the principle of non-discrimination; to take positive measures to address structural causes of violence against women and to strengthen prevention efforts addressing discriminatory practices and social norms, including with regard to women in need of special attention, such as women in institutions or in detention; and to provide training and capacity-building on gender equality and women’s rights for law enforcement personnel and the judiciary. The resolution is an acknowledgement of the fact that violence against women has specific implications for women’s contact with the criminal justice system, as well as their right to be free of victimization while imprisoned. Physical and psychological safety is critical to ensuring human rights and improving outcomes for women offenders, of which the present rules take account.

10. Finally, in the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, adopted by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice on 25 April 2005,⁹ Member States declared that they were committed to the development and maintenance of fair and efficient criminal justice institutions, including the humane treatment of all those in pretrial and correctional facilities, in accordance with applicable international standards (para.8); and they recommended that the Commission on Crime Prevention and Criminal Justice should give consideration to reviewing the adequacy of standards and norms in relation to prison management and prisoners (para. 30).

11. As with the Standard Minimum Rules for the Treatment of Prisoners, in view of the great variety of legal, social, economic and geographical conditions worldwide, it is evident that not all of the following rules can be equally applied in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in how they are applied, in the knowledge that they represent, as a whole, the global aspirations considered by the United Nations as leading to the common goal of improving outcomes for women prisoners, their children and their communities.

12. Some of these rules address issues applicable to both men and women prisoners, including those relating to parental responsibilities, some medical services, searching procedures and the like, although the rules are mainly concerned with the needs of women and their children. However, as the focus includes the children of imprisoned mothers, there is a need to recognize the central role of both parents in the lives of children. Accordingly, some of these rules would apply equally to male prisoners and offenders who are fathers.

Introduction

13. The following rules do not in any way replace the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules. Therefore, all provisions contained in those two sets of rules continue to apply to all prisoners and offenders without discrimination.

14. Section I of the present rules, covering the general management of institutions, is applicable to all categories of women deprived of their liberty, including criminal or civil, untried or convicted women prisoners, as well as women subject to “security measures” or corrective measures ordered by a judge.

15. Section II contains rules applicable only to the special categories dealt with in each subsection. Nevertheless, the rules under subsection A, applicable to

prisoners under sentence, shall be equally applicable to the category of prisoners dealt with in subsection B, provided they do not conflict with the rules governing that category of women and are for their benefit.

16. Subsections A and B both provide additional rules for the treatment of juvenile female prisoners. It is important to note, however, that separate strategies and policies in accordance with international standards, in particular the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),²¹ the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),²² the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty²³ and the Guidelines for Action on Children in the Criminal Justice System,²⁴ need to be designed for the treatment and rehabilitation of this category of prisoners, while institutionalization shall be avoided to the maximum possible extent.

17. Section III contains rules covering the application of non-custodial sanctions and measures for women and juvenile female offenders, including on arrest and at the pretrial, sentencing and post-sentencing stages of the criminal justice process.

18. Section IV contains rules on research, planning, evaluation, public awareness-raising and sharing of information, and is applicable to all categories of female offenders covered in these rules.

I. Rules of general application

1. Basic principle

[Supplements rule 6 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 1

In order for the principle of non-discrimination embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.

²¹ Resolution 40/33, annex.

²² Resolution 45/112, annex.

²³ Resolution 45/113, annex.

²⁴ Economic and Social Council resolution 1997/30, annex.

2. Admission

Rule 2

1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.

2. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

3. Register

[Supplements rule 7 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 3

1. The number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status.

2. All information relating to the children's identity shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children.

4. Allocation

Rule 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.

5. Personal hygiene

[Supplements rules 15 and 16 of the Standard Minimum Rules for the Treatment of Prisoners]

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.

6. Health-care services

[Supplements rules 22 to 26 of the Standard Minimum Rules for the Treatment of Prisoners]

(a) Medical screening on entry

[Supplements rule 24 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 6

The health screening of women prisoners shall include comprehensive screening to determine primary health-care needs, and also shall determine:

- (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling;
- (b) Mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm;
- (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues;
- (d) The existence of drug dependency;
- (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.

Rule 7

1. If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.

2. Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counselling.
3. Specific measures shall be developed to avoid any form of retaliation against those making such reports or taking legal action.

Rule 8

The right of women prisoners to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times.

Rule 9

If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided.

(b) Gender-specific health care

Rule 10

1. Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners.
2. If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination.

Rule 11

1. Only medical staff shall be present during medical examinations unless the doctor is of the view that exceptional circumstances exist or the doctor requests a member of the prison staff to be present for security reasons or the woman prisoner specifically requests the presence of a member of staff as indicated in rule 10, paragraph 2, above.
2. If it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.

(c) Mental health and care

Rule 12

Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison or in non-custodial settings.

Rule 13

Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support.

(d) HIV prevention, treatment, care and support

Rule 14

In developing responses to HIV/AIDS in penal institutions, programmes and services shall be responsive to the specific needs of women, including prevention of mother-to-child transmission. In this context, prison authorities shall encourage and support the development of initiatives on HIV prevention, treatment and care, such as peer-based education.

(e) Substance abuse treatment programmes

Rule 15

Prison health services shall provide or facilitate specialized treatment programmes designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.

(f) Suicide and self-harm prevention

Rule 16

Developing and implementing strategies, in consultation with mental health-care and social welfare services, to prevent suicide and self-harm among women prisoners and providing appropriate, gender-specific and specialized support to those at risk shall be part of a comprehensive policy of mental health care in women's prisons.

(g) Preventive health-care services

Rule 17

Women prisoners shall receive education and information about preventive health-care measures, including on HIV, sexually transmitted diseases and other blood-borne diseases, as well as gender-specific health conditions.

Rule 18

Preventive health-care measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynaecological cancer, shall be offered to women prisoners on an equal basis with women of the same age in the community.

7. Safety and security

[Supplements rules 27 to 36 of the Standard Minimum Rules for the Treatment of Prisoners]

(a) Searches

Rule 19

Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.

Rule 20

Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

Rule 21

Prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners.

(b) Discipline and punishment

[Supplements rules 27 to 32 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 22

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

Rule 23

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

(c) Instruments of restraint

[Supplements rules 33 and 34 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 24

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

(d) Information to and complaints by prisoners; inspections

[Supplements rules 35 and 36 and, with regard to inspection, rule 55 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 25

1. Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation.

2. Women prisoners who have been subjected to sexual abuse, and especially those who have become pregnant as a result, shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid.

3. In order to monitor the conditions of detention and treatment of women prisoners, inspectorates, visiting or monitoring boards or supervisory bodies shall include women members.

8. Contact with the outside world

[Supplements rules 37 to 39 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 26

Women prisoners' contact with their families, including their children, and their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.

Rule 27

Where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men.

Rule 28

Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.

9. Institutional personnel and training

[Supplements rules 46 to 55 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 29

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 30

There shall be a clear and sustained commitment at the managerial level in prison administrations to prevent and address gender-based discrimination against women staff.

Rule 31

Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.

Rule 32

Women prison staff shall receive equal access to training as male staff, and all staff involved in the management of women's prisons shall receive training on gender sensitivity and prohibition of discrimination and sexual harassment.

Rule 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 34

Capacity-building programmes on HIV shall be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, shall also be part of the curriculum.

Rule 35

Prison staff shall be trained to detect mental health-care needs and risk of self-harm and suicide among women prisoners and to offer assistance by providing support and referring such cases to specialists.

10. Juvenile female prisoners

Rule 36

Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.

Rule 37

Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.

Rule 38

Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners.

Rule 39

Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.

II. Rules applicable to special categories A. Prisoners under sentence

1. Classification and individualization

[Supplements rules 67 to 69 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 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 41

The gender-sensitive risk assessment and classification of prisoners shall:

- (a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high-security measures and increased levels of isolation can have on women prisoners;
- (b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other caretaking responsibilities, to be taken into account in the allocation and sentence planning process;
- (c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs;
- (d) Ensure that those with mental health-care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.

2. Prison regime

[Supplements rules 65, 66 and 70 to 81 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 42

1. Women prisoners shall have access to a balanced and comprehensive programme of activities which take account of gender-appropriate needs.
2. The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities.

3. Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison.
4. Particular efforts shall be made to provide appropriate services for women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.

Social relations and aftercare

[Supplements rules 79 to 81 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 43

Prison authorities shall encourage and, where possible, also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration.

Rule 44

In view of women prisoners' disproportionate experience of domestic violence, they shall be properly consulted as to who, including which family members, is allowed to visit them.

Rule 45

Prison authorities shall utilize options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage.

Rule 46

Prison authorities, in cooperation with probation and/or social welfare services, local community groups and non-governmental organizations, shall design and implement comprehensive pre- and post-release reintegration programmes which take into account the gender-specific needs of women.

Rule 47

Additional support following release shall be provided to released women prisoners who need psychological, medical, legal and practical help to ensure their successful social reintegration, in cooperation with services in the community.

3. Pregnant women, breastfeeding mothers and mothers with children in prison

[Supplements rule 23 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 48

1. Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.
2. Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.
3. The medical and nutritional needs of women prisoners who have recently given birth, but whose babies are not with them in prison, shall be included in treatment programmes.

Rule 49

Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.

Rule 50

Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.

Rule 51

1. Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services.
2. The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

Rule 52

1. Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.

2. The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.

3. After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

4. Foreign nationals

[Supplements rule 38 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 53

1. Where relevant bilateral or multilateral agreements are in place, the transfer of non-resident foreign-national women prisoners to their home country, especially if they have children in their home country, shall be considered as early as possible during their imprisonment, following the application or informed consent of the woman concerned.

2. Where a child living with a non-resident foreign-national woman prisoner is to be removed from prison, consideration should be given to relocation of the child to its home country, taking into account the best interests of the child and in consultation with the mother.

5. Minorities and indigenous peoples

Rule 54

Prison authorities shall recognize that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender- and culture-relevant programmes and services. Accordingly, prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves and the relevant groups.

Rule 55

Pre- and post-release services shall be reviewed to ensure that they are appropriate and accessible to indigenous women prisoners and to women prisoners from ethnic and racial groups, in consultation with the relevant groups.

B. Prisoners under arrest or awaiting trial

[Supplements rules 84 to 93 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 56

The particular risk of abuse that women face in pretrial detention shall be recognized by relevant authorities, which shall adopt appropriate measures in policies and practice to guarantee such women's safety at this time. (See also rule 58 below, with regard to alternatives to pretrial detention.)

III. Non-custodial measures

Rule 57

The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.

Rule 58

Taking into account the provisions of rule 2.3 of the Tokyo Rules, women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties. Alternative ways of managing women who commit offences, such as diversionary measures and pretrial and sentencing alternatives, shall be implemented wherever appropriate and possible.

Rule 59

Generally, non-custodial means of protection, for example in shelters managed by independent bodies, non-governmental organizations or other community services, shall be used to protect women who need such protection. Temporary measures involving custody to protect a woman shall only be applied when necessary and expressly requested by the woman concerned and shall in all cases be supervised by judicial or other competent authorities. Such protective measures shall not be continued against the will of the woman concerned.

Rule 60

Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's

contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.

Rule 61

When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds.

Rule 62

The provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.

1. Post-sentencing dispositions

Rule 63

Decisions regarding early conditional release (parole) shall favourably take into account women prisoners' caretaking responsibilities, as well as their specific social reintegration needs.

2. Pregnant women and women with dependent children

Rule 64

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

3. Juvenile female offenders

Rule 65

Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making.

4. Foreign nationals

Rule 66

Maximum effort shall be made to ratify the United Nations Convention against Transnational Organized Crime²⁵ and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime²⁶ to fully implement their provisions so as to provide maximum protection to victims of trafficking in order to avoid secondary victimization of many foreign-national women.

IV. Research, planning, evaluation and public awareness-raising

1. Research, planning and evaluation

Rule 67

Efforts shall be made to organize and promote comprehensive, result-oriented research on the offences committed by women, the reasons that trigger women's confrontation with the criminal justice system, the impact of secondary criminalization and imprisonment on women, the characteristics of women offenders, as well as programmes designed to reduce reoffending by women, as a basis for effective planning, programme development and policy formulation to respond to the social reintegration needs of women offenders.

Rule 68

Efforts shall be made to organize and promote research on the number of children affected by their mothers' confrontation with the criminal justice system, and imprisonment in particular, and the impact of this on the children, in order to contribute to policy formulation and programme development, taking into account the best interests of the children.

Rule 69

Efforts shall be made to review, evaluate and make public periodically the trends, problems and factors associated with offending behaviour in women and the effectiveness in responding to the social reintegration needs of women offenders, as well as their children, in order to reduce the stigmatization and negative impact of those women's confrontation with the criminal justice system on them.

²⁵ United Nations, Treaty Series, vol. 2225, No. 39574

²⁶ *Ibid.*, vol. 2237, No. 39574.

2. Raising public awareness, sharing information and training

Rule 70

1. The media and the public shall be informed about the reasons that lead to women's entrapment in the criminal justice system and the most effective ways to respond to it, in order to enable women's social reintegration, taking into account the best interests of their children.
2. Publication and dissemination of research and good practice examples shall form comprehensive elements of policies that aim to improve the outcomes and the fairness to women and their children of criminal justice responses to women offenders.
3. The media, the public and those with professional responsibility in matters concerning women prisoners and offenders shall be provided regularly with factual information about the matters covered in these rules and about their implementation.
4. Training programmes on the present rules and the results of research shall be developed and implemented for relevant criminal justice officials to raise their awareness and sensitize them to their provisions contained therein.

B7. ASYLUM SEEKERS

Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012

Introduction

1. The rights to liberty and security of person are fundamental human rights, reflected in the international prohibition on arbitrary detention, and supported by the right to freedom of movement. While acknowledging the array of contemporary challenges to national asylum systems caused by irregular migration as well as the right of States to control the entry and stay of non- nationals on their territory, subject to refugee and human rights standards,¹ these Guidelines reflect the current state of international law relating to the detention of asylum-seekers and are intended to guide:
 - (a) governments in their elaboration and implementation of asylum and migration policies which involve an element of detention; and
 - (b) decision-makers, including judges, in making assessments about the necessity of detention in individual cases.
2. In view of the hardship which it entails, and consistent with international refugee and human rights law and standards, detention of asylum-seekers should normally be avoided and be a measure of last resort. As seeking asylum is not an unlawful act, any restrictions on liberty imposed on persons exercising this right need to be provided for in law, carefully circumscribed and subject to prompt review. Detention can only be applied where it pursues a legitimate purpose and has been determined to be both necessary and proportionate in each individual case. Respecting the right to seek asylum entails instituting open and humane reception arrangements for asylum-seekers, including safe, dignified and human rights-compatible treatment.²
3. There are various ways for governments to address irregular migration—other than through detention – that take due account of the concerns of governments as well as the particular circumstances of the individual concerned.³ In fact, there is no evidence that detention has any deterrent effect on irregular migration.⁴ Regardless of any such effect, detention policies aimed at deterrence are generally unlawful under international

human rights law as they are not based on an individual assessment as to the necessity to detain. Apart from ensuring compliance with human rights standards, governments are encouraged to review their detention policies and practices in light of the latest research in relation to alternatives to detention (some of which is documented in these Guidelines). UNHCR stands ready to assist governments in devising alternative to detention programmes.

Scope

4. These Guidelines reflect the state of international law relating to detention—on immigration-related grounds – of asylum-seekers and other persons seeking international protection. They equally apply to refugees and other persons found to be in need of international protection should they exceptionally be detained for immigration-related reasons. They also apply to stateless persons who are seeking asylum, although they do not specifically cover the situation of non-asylum-seeking stateless persons,⁵ persons found not to be in need of international protection⁶ or other migrants, although many of the standards detailed herein may apply to them *mutatis mutandis*. This is particularly true with regard to non-refugee stateless persons in the migratory context who face a heightened risk of arbitrary detention. The Guidelines do not cover asylum-seekers or refugees imprisoned on the basis of criminal offences.

Terminology

Detention

5. For the purposes of these Guidelines, “**detention**” refers to the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.
6. The place of detention may be administered either by public authorities or private contractors; the confinement may be authorised by an administrative or judicial procedure, or the person may have been confined with or without “lawful” authority. Detention or full confinement is at the extreme end of a spectrum of deprivations of liberty (see Figure 1). Other restrictions on freedom of movement in the immigration context are likewise subject to international standards.⁷ Distinctions

between deprivation of liberty (detention) and lesser restrictions on movement is one of “*degree or intensity and not one of nature or substance*”.⁸ While these Guidelines focus more closely on detention (or total confinement), they also address in part measures short of full confinement.

7. Detention can take place in a range of locations, including at land and sea borders, in the “international zones” at airports,⁹ on islands,¹⁰ on boats,¹¹ as well as in closed refugee camps, in one’s own home (house arrest) and even extraterritorially.¹² Regardless of the name given to a particular place of detention, the important questions are whether an asylum-seeker is being deprived of his or her liberty *de facto* and whether this deprivation is lawful according to international law.



Figure 1¹³

Alternatives to Detention

8. “**Alternatives to detention**” is not a legal term but is used in these Guidelines as short-hand to refer to any legislation, policy or practice that allows asylum-seekers to reside in the community subject to a number of conditions or restrictions on their freedom of movement. As some alternatives to detention also involve various restrictions on movement or liberty (and some can be classified as forms of detention), they are also subject to human rights standards (see Figure 2).

Asylum-seeker

9. The term “**asylum-seeker**” in these Guidelines refers to persons applying for refugee status pursuant to the definition of a “refugee” in the 1951 Convention and 1967 Protocol relating to the Status of Refugees (“1951 Convention”)¹⁴ or any regional refugee instrument,¹⁵ as well as other persons seeking complementary, subsidiary or temporary forms of protection.¹⁶ The Guidelines cover those whose claims are being considered within status determination procedures, as well as admissibility, pre-screening or other similar procedures. They also apply to those exercising their right to seek judicial review of their request for international protection.

Stateless Person

10.A “**stateless person**” is defined under international law as a person “*who is not considered as a national by any State under the operation of its law.*”¹⁷ An **asylum-seeking stateless person** refers to a stateless person who seeks to obtain refugee status under the 1951 Convention,¹⁸ or another form of international protection.

GUIDELINE 1:

The right to seek asylum must be respected

11. Every person has the right to seek and enjoy in other countries asylum from persecution, serious human rights violations and other serious harm. Seeking asylum is not, therefore, an unlawful act.¹⁹ Furthermore, the 1951 Convention provides that asylum-seekers shall not be penalised for their illegal entry or stay, provided they present themselves to the authorities without delay and show good cause for their illegal entry or presence.²⁰ In exercising the right to seek asylum, asylum-seekers are often forced to arrive at, or enter, a territory without prior authorisation. The position of asylum-seekers may thus differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with the legal formalities for entry. They may, for example, be unable to obtain the necessary documentation in advance of their right because of their fear of persecution and/or the urgency of their departure. These factors, as well as the fact that asylum-seekers have often experienced traumatic events, need to be taken into account in determining any restrictions on freedom of movement based on irregular entry or presence.

GUIDELINE 2:

The rights to liberty and security of person and to freedom of movement apply to asylum-seekers

12. The fundamental rights to liberty and security of person²¹ and freedom of movement²² are expressed in all the major international and regional human rights instruments, and are essential components of legal systems built on the rule of law. The Executive Committee of the High Commissioner’s Programme (ExCom) has addressed on a number of occasions the detention of asylum-seekers.²³ These rights apply in

principle to all human beings, regardless of their immigration, refugee, asylum-seeker or other status.²⁴

12. Article 31 of the 1951 Convention specifically provides for the non-penalisation of refugees (and asylum-seekers) having entered or stayed irregularly if they present themselves without delay and show good cause for their illegal entry or stay. It further provides that restrictions on movement shall not be applied to such refugees (or asylum-seekers) other than those which are necessary and such restrictions shall only be applied until their status is regularised or they gain admission into another country.²⁵ Article 26 of the 1951 Convention further provides for the freedom of movement and choice of residence for refugees lawfully in the territory.²⁶ Asylum-seekers are considered lawfully in the territory for the purposes of benefiting from this provision.²⁷

13. These rights taken together – the right to seek asylum, the non-penalisation for irregular entry or stay and the rights to liberty and security of person and freedom of movement – mean that the detention of asylum-seekers should be a measure of last resort, with liberty being the default position.

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GUIDELINE 3:

Detention must be in accordance with and authorised by law

15. Any detention or deprivation of liberty must be in accordance with and authorised by national law.²⁸ Any deprivation of liberty that is not in conformity with national law would be unlawful, both as a matter of national as well as international law. At the same time, although national legislation is the primary consideration for determining the lawfulness of detention, it is “*not always the decisive element in assessing the justification of deprivation of liberty.*”²⁹ In particular, a specific factor that needs to be considered is the underlying purpose of preventing persons being deprived of their liberty arbitrarily.³⁰

16. Detention laws must conform to the principle of legal certainty. This requires, *inter alia*, that the law and its legal consequences be foreseeable and predictable.³¹ The law permitting detention must not, for example, have retroactive effect.³² Explicitly identifying the grounds for detention in national legislation would meet the requirement of legal certainty.³³
17. Insufficient guarantees in law to protect against arbitrary detention, such as no limits on the maximum period of detention or no access to an effective remedy to contest it, could also call into question the legal validity of any detention.³⁴

GUIDELINE 4:

Detention must not be arbitrary, and any decision to detain must be based on an assessment of the individual's particular circumstances

18. Detention in the migration context is neither prohibited under international law *per se*, nor is the right to liberty of person absolute.³⁵ However, international law provides substantive safeguards against unlawful (see Guideline 3) as well as arbitrary detention. "Arbitrariness" is to be interpreted broadly to include not only unlawfulness, but also elements of inappropriateness, injustice and lack of predictability.³⁶ To guard against arbitrariness, any detention needs to be necessary in the individual case, reasonable in all the circumstances and proportionate to a legitimate purpose (see Guidelines 4.1 and 4.2).³⁷ Further, failure to consider less coercive or intrusive means could also render detention arbitrary (Guideline 4.3).
19. As a fundamental right, decisions to detain are to be based on a detailed and individualised assessment of the necessity to detain in line with a legitimate purpose. Appropriate screening or assessment tools can guide decision-makers in this regard, and should take into account the special circumstances or needs of particular categories of asylum-seekers (see Guideline 9). Factors to guide such decisions can include the stage of the asylum process, the intended final destination, family and/or community ties, past behaviour of compliance and character, and risk of absconding or articulation of a willingness and understanding of the need to comply.
20. In relation to alternatives to detention (Guideline 4.3 and Annex A), the level and appropriateness of placement in the community need to

balance the circumstances of the individual with any risks to the community. Matching an individual and/or his/her family to the appropriate community should also be part of any assessment, including the level of support services needed and available.

Mandatory or automatic detention is arbitrary as it is not based on an examination of the necessity of the detention in the individual case.³⁸

Guideline 4.1:

Detention is an exceptional measure and can only be justified for a legitimate purpose

21. Detention can only be exceptionally resorted to for a legitimate purpose. Without such a purpose, detention will be considered arbitrary, even if entry was illegal.³⁹ The purposes of detention ought to be clearly defined in legislation and/or regulations (see Guideline 3).⁴⁰ In the context of the detention of asylum-seekers, there are three purposes for which detention may be necessary in an individual case, and which are generally in line with international law, namely public order, public health or national security.

4.1.1 To protect public order

To prevent absconding and/or in cases of likelihood of non-cooperation

22. Where there are strong grounds for believing that the specific asylum-seeker is likely to abscond or otherwise to refuse to cooperate with the authorities, detention may be necessary in an individual case.⁴¹ Factors to balance in an overall assessment of the necessity of such detention could include, for example, a past history of cooperation or non-cooperation, past compliance or non-compliance with conditions of release or bail, family or community links or other support networks in the country of asylum, the willingness or refusal to provide information about the basic elements of their claim, or whether the claim is considered manifestly unfounded or abusive.⁴² Appropriate screening and assessment methods need to be in place in order to ensure that persons who are *bona de* asylum-seekers are not wrongly detained in this way.⁴³

In connection with accelerated procedures for manifestly unfounded or clearly abusive claims

23. Detention associated with accelerated procedures for manifestly unfounded or clearly abusive cases must be regulated by law and, as required by proportionality considerations, must weigh the various interests at play.⁴⁴ Any detention in connection with accelerated procedures should only be applied to cases that are determined to be “manifestly unfounded” or “clearly abusive”;⁴⁵ and those detained are entitled to the protections outlined in these Guidelines.

For initial identity and/or security verification

24. Minimal periods in detention may be permissible to carry out initial identity and security checks in cases where identity is undetermined or in dispute, or there are indications of security risks.⁴⁶ At the same time, the detention must last only as long as reasonable efforts are being made to establish identity or to carry out the security checks, and within strict time limits established in law (see below).

25. Mindful that asylum-seekers often have justifiable reasons for illegal entry or irregular movement,⁴⁷ including travelling without identity documentation, it is important to ensure that their immigration provisions do not impose unrealistic demands regarding the quantity and quality of identification documents asylum-seekers can reasonably be expected to produce. Also in the absence of documentation, identity can be established through other information as well. The inability to produce documentation should not automatically be interpreted as an unwillingness to cooperate, or lead to an adverse security assessment. Asylum-seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason. Rather, what needs to be assessed is whether the asylum-seeker has a plausible explanation for the absence or destruction of documentation or the possession of false documentation, whether he or she had an intention to mislead the authorities, or whether he or she refuses to cooperate with the identity verification process.

26. Strict time limits need to be imposed on detention for the purposes of identity verification, as lack of documentation can lead to, and is one of the main causes of, indefinite or prolonged detention.

27. While nationality is usually part of someone's identity, it is a complicated assessment and as far as it relates to stateless asylum-seekers, it should be undertaken in a proper procedure.⁴⁸

In order to record, within the context of a preliminary interview, the elements on which the application for international protection is based, which could not be obtained in the absence of detention

28. It is permissible to detain an asylum-seeker for a limited initial period for the purpose of recording, within the context of a preliminary interview, the elements of their claim to international protection.⁴⁹ However, such detention can only be justified where that information could not be obtained in the absence of detention. This would involve obtaining essential facts from the asylum-seeker as to why asylum is being sought but would not ordinarily extend to a determination of the full merits of the claim. This exception to the general principle – that detention of asylum-seekers is a measure of last resort – cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.

4.1.2 To protect public health

29. Carrying out health checks on individual asylum-seekers may be a legitimate basis for a period of confinement, provided it is justified in the individual case or, alternatively, as a preventive measure in the event of specific communicable diseases or epidemics. In the immigration context, such health checks may be carried out upon entry to the country or as soon as possible thereafter. Any extension of their confinement or restriction on movement on this basis should only occur if it can be justified for the purposes of treatment, authorised by qualified medical personnel, and in such circumstances, only until the treatment has been completed. Such confinement needs to be carried out in suitable facilities, such as health clinics, hospitals, or in specially designated medical centres in airports/borders. Only qualified medical personnel, subject to judicial oversight, can order the further confinement on health grounds beyond an initial medical check.

4.1.3 To protect national security

30. Governments may need to detain a particular individual who presents a threat to national security.⁵⁰ Even though determining what constitutes a national security threat lies primarily within the domain of the

government, the measures taken (such as detention) need to comply with the standards in these Guidelines, in particular that the detention is necessary, proportionate to the threat, non-discriminatory, and subject to judicial oversight.⁵¹

4.1.4 Purposes not justifying detention

31. Detention that is not pursued for a legitimate purpose would be arbitrary.⁵² Some examples are outlined below.

Detention as a penalty for illegal entry and/or as a deterrent to seeking asylum

32. As noted in Guidelines 1 and 2, detention for the sole reason that the person is seeking asylum is not lawful under international law.⁵³ Illegal entry or stay of asylum-seekers does not give the State an automatic power to detain or to otherwise restrict freedom of movement. Detention that is imposed in order to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is inconsistent with international norms. Furthermore, detention is not permitted as a punitive – for example, criminal – measure or a disciplinary sanction for irregular entry or presence in the country.⁵⁴ Apart from constituting a penalty under Article 31 of the 1951 Convention, it may also amount to collective punishment in violation of international human rights law.⁵⁵

Detention of asylum-seekers on grounds of expulsion

33. As a general rule, it is unlawful to detain asylum-seekers in on-going asylum proceedings on **grounds of expulsion** as they are not available for removal until a final decision on their claim has been made. Detention for the purposes of expulsion can only occur after the asylum claim has been finally determined and rejected.⁵⁶ However, where there are grounds for believing that the specific asylum-seeker has lodged an appeal or introduced an asylum claim merely in order to delay or frustrate an expulsion or deportation decision which would result in his or her removal, the authorities may consider detention – as determined to be necessary and proportionate in the individual case – in order to prevent their absconding, while the claim is being assessed.

Guideline 4.2:

Detention can only be resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose

34. The necessity, reasonableness and proportionality of detention are to be judged in each individual case, initially as well as over time (see Guideline 6). The need to detain the individual is to be assessed in light of the purpose of the detention (see Guideline 4.1), as well as the overall reasonableness of that detention in all the circumstances, the latter requiring an assessment of any special needs or considerations in the individual's case (see Guideline 9). The general principle of proportionality requires that a balance be struck between the importance of respecting the rights to liberty and security of person and freedom of movement, and the public policy objectives of limiting or denying these rights.⁵⁷ The authorities must not take any action exceeding that which is strictly necessary to achieve the pursued purpose in the individual case. The necessity and proportionality tests further require an assessment of whether there were less restrictive or coercive measures (that is, alternatives to detention) that could have been applied to the individual concerned and which would be effective in the individual case (see Guidelines 4.3 and Annex A).

Guideline 4.3:

Alternatives to detention need to be considered

35. The consideration of **alternatives to detention**—from reporting requirements to structured community supervision and/or case management programmes (see Annex A) – is part of an overall assessment of the necessity, reasonableness and proportionality of detention (see Guideline 4.2). Such consideration ensures that detention of asylum-seekers is a measure of last, rather than first, resort. It must be shown that in light of the asylum-seeker's particular circumstances, there were not less invasive or coercive means of achieving the same ends.⁵⁸ Thus, consideration of the availability, effectiveness and appropriateness of alternatives to detention in each individual case needs to be undertaken.⁵⁹
36. Like detention, alternatives to detention equally need to be governed by **laws and regulations** in order to avoid the arbitrary imposition of

restrictions on liberty or freedom of movement.⁶⁰ The principle of legal certainty calls for proper regulation of these alternatives (see Guideline 3). Legal regulations ought to specify and explain the various alternatives available, the criteria governing their use, as well as the authority(ies) responsible for their implementation and enforcement.⁶¹

37. Alternatives to detention that restrict the liberty of asylum-seekers may impact on their human rights and are **subject to human rights standards**, including periodic review in individual cases by an independent body.⁶² Individuals subject to alternatives need to have timely access to effective complaints mechanisms as well as remedies, as applicable.⁶³ Alternatives to detention need to be available not only on paper, but they need to be accessible in practice.
38. Notably, alternatives to detention **should not be used as alternative forms of detention**; nor should alternatives to detention become alternatives to release. Furthermore, they should not become substitutes for normal open reception arrangements that do not involve restrictions on the freedom of movement of asylum-seekers.⁶⁴
39. In designing alternatives to detention, it is important that States observe the principle of **minimum intervention** and pay close attention to the specific situation of particular vulnerable groups such as children, pregnant women, the elderly, or persons with disabilities or experiencing trauma (see Guideline 9).⁶⁵
40. Alternatives to detention may take **various forms**, depending on the particular circumstances of the individual, including registration and/or deposit/ surrender of documents, bond/bail/sureties, reporting conditions, community release and supervision, designated residence, electronic monitoring, or home curfew (for explanations of some of these alternatives, see Annex A). They may involve more or less restrictions on freedom of movement or liberty, and are not equal in this regard (see Figure 2). While phone reporting and the use of other modern technologies can be seen as good practice, especially for individuals with mobility difficulties,⁶⁷ other forms of electronic monitoring – such as wrist or ankle bracelets – are considered harsh, not least because of the criminal stigma attached to their use;⁶⁸ and should as far as possible be avoided.

41. Best practice indicates that alternatives are most effective when asylum-seekers are:

- treated with dignity, humanity and respect throughout the asylum procedure;
- informed clearly and concisely at an early stage about their rights and duties associated with the alternative to detention as well as the consequences of non-compliance;
- given access to legal advice throughout the asylum procedure;
- provided with adequate material support, accommodation and other reception conditions, or access to means of self-sufficiency (including the right to work); and
- able to benefit from individualised case management services in relation to their asylum claim (explained further in Annex A).⁶⁹

42. **Documentation** is a necessary feature of alternative to detention programmes in order to ensure that asylum-seekers (and all members of their families) possess evidence of their right to reside in the community. Documents also serve as a safeguard against (re-)detention; and can facilitate their ability to rent accommodation, and to access employment, health care, education and/ or other services, as applicable.⁷⁰ Additional information about various types of alternative to detention and other complementary measures can be found at Annex A.

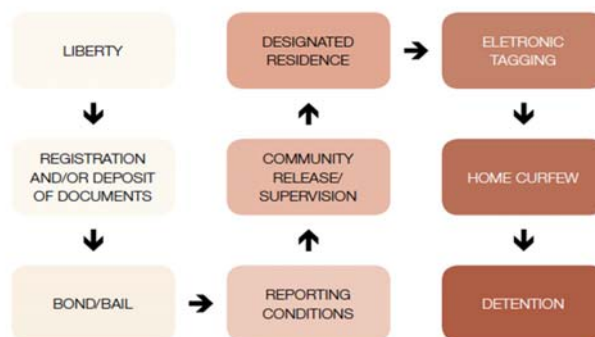


Figure 2⁶⁶

GUIDELINE 5:

Detention must not be discriminatory

43. International law prohibits detention or restrictions on the movement of a person on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

such as asylum-seeker or refugee status.⁷¹ This applies even when derogations in states of emergency are in place.⁷² States may also be liable to charges of racial discrimination if they impose detention on persons of a “particular nationality”.⁷³ At a minimum, an individual has the right to challenge his or her detention on such grounds; and the State will need to show that there was an objective and reasonable basis for distinguishing between nationals and non-nationals, or between non-nationals, in this regard.⁷⁴

GUIDELINE 6:

Indefinite detention is arbitrary and maximum limits on detention should be established in law

44. As indicated in Guideline 4.2, the test of proportionality applies in relation to both the initial order of detention as well as any extensions. The length of detention can render an otherwise lawful decision to detain disproportionate and, therefore, arbitrary. Indefinite detention for immigration purposes is arbitrary as a matter of international human rights law.⁷⁵
45. Asylum-seekers should not be held in detention for any longer than necessary; and where the justification is no longer valid, the asylum-seeker should be released immediately (Guideline 4.1).⁷⁶
46. To guard against arbitrariness, maximum periods of detention should be set in national legislation. Without maximum periods, detention can become prolonged, and in some cases indefinite, including particularly for stateless asylum-seekers.⁷⁷ Maximum periods in detention cannot be circumvented by ordering the release of an asylum-seeker only to re-detain them on the same grounds shortly afterwards.

GUIDELINE 7:

Decisions to detain or to extend detention must be subject to minimum procedural safeguards

47. If faced with the prospect of being detained, as well as during detention, asylum-seekers are entitled to the following minimum procedural guarantees:
 - (i) to be informed at the time of arrest or detention of the reasons for their detention,⁷⁸ and their rights in connection with the order, including review procedures, in a language and in terms which they understand.⁷⁹

(ii) to be informed of the right to legal counsel. Free legal assistance should be provided where it is also available to nationals similarly situated,⁸⁰ and should be available as soon as possible after arrest or detention to help the detainee understand his/her rights. Communication between legal counsel and the asylum-seeker must be subject to lawyer-client confidentiality principles. Lawyers need to have access to their client, to records held on their client, and be able to meet with their client in a secure, private setting.

(iii) to be brought promptly before a judicial or other independent authority to have the detention decision reviewed. This review should ideally be automatic, and take place in the first instance within 24-48 hours of the initial decision to hold the asylum-seeker. The reviewing body must be independent of the initial detaining authority, and possess the power to order release or to vary any conditions of release.⁸¹

(iv) following the initial review of detention, regular periodic reviews of the necessity for the continuation of detention before a court or an independent body must be in place, which the asylum-seeker and his/her representative would have the right to attend. Good practice indicates that following an initial judicial confirmation of the right to detain, review would take place every seven days until the one month mark and thereafter every month until the maximum period set by law is reached.

(V) irrespective of the reviews in (iii) and (iv), either personally or through a representative, the right to challenge the lawfulness of detention before a court of law at any time needs to be respected.⁸² The burden of proof to establish the lawfulness of the detention rests on the authorities in question. As highlighted in Guideline 4, the authorities need to establish that there is a legal basis for the detention in question, that the detention is justified according to the principles of necessity, reasonableness and proportionality, and that other, less intrusive means of achieving the same objectives have been considered in the individual case.

(vi) persons in detention must be given access to asylum procedures, and detention should not constitute an obstacle to an asylum-seeker's possibilities to pursue their asylum application.⁸³ Access to asylum procedures must be realistic and effective, including that timeframes for lodging supporting materials are appropriate for someone in detention, and access to legal and linguistic assistance should be made available.⁸⁴

It is also important that asylum-seekers in detention are provided with accurate legal information about the asylum process and their rights.

(vii) to contact and be contacted by UNHCR.⁸⁵ Access to other bodies, such as an available national refugee body or other agencies, including ombudsman of ces, human rights commissions or NGOs, should be available as appropriate. The right to communicate with these representatives in private, and the means to make such contact, should be made available.

(viii) general data protection and confidentiality principles must be respected in relation to information about the asylum-seeker, including health matters.

(ix) illiteracy should be identified as early as possible and a mechanism that allows illiterate asylum-seekers to make “submissions” should be in place, such as requests to meet with a lawyer, doctor, visitor, or to make complaints.⁸⁶

GUIDELINE 8:

Conditions of detention must be humane and dignified

48.If detained, asylum-seekers are entitled to the following minimum conditions of detention:

(i) Detention can only lawfully be in places officially recognised as places of detention. Detention in police cells is not appropriate.⁸⁷

(ii) Asylum-seekers should be treated with dignity and in accordance with international standards.⁸⁸

(iii) Detention of asylum-seekers for immigration-related reasons should not be punitive in nature.⁸⁹ The use of prisons, jails, and facilities designed or operated as prisons or jails, should be avoided. If asylum-seekers are held in such facilities, they should be separated from the general prison population.⁹⁰ Criminal standards (such as wearing prisoner uniforms or shackling) are not appropriate.

(iv) Detainees’ names and the location of their detention, as well as the names of persons responsible for their detention, need to be kept in registers readily available and accessible to those concerned, including relatives and legal counsel. Access to this information, however, needs to be balanced with issues of confidentiality.

(v) In co-sex facilities, men and women should be segregated unless they are within the same family unit. Children should also be separated from adults unless these are relatives.⁹¹ Where possible, accommodation for families ought to be provided. Family accommodation can also prevent some families (particularly fathers travelling alone with their children) from being put in solitary confinement in the absence of any alternative.

(vi) **Appropriate medical treatment must be provided where needed**, including psychological counselling. Detainees needing medical attention should be transferred to appropriate facilities or treated on site where such facilities exist. A medical and mental health examination should be offered to detainees as promptly as possible after arrival, and conducted by competent medical professionals. While in detention, detainees should receive periodic assessments of their physical and mental well-being. Many detainees suffer psychological and physical effects as a result of their detention, and thus periodic assessments should also be undertaken even where they presented no such symptoms upon arrival. Where medical or mental health concerns are presented or develop in detention, those affected need to be provided with appropriate care and treatment, including consideration for release.

(vii) Asylum-seekers in detention should be able to make **regular contact** (including through telephone or internet, where possible) and receive visits from **relatives, friends, as well as religious, international and/ or non-governmental organisations**, if they so desire. Access to and by UNHCR must be assured. Facilities should be made available to enable such visits. Such visits should normally take place in private unless there are compelling reasons relevant to safety and security to warrant otherwise.

(viii) The opportunity to conduct some form of **physical exercise** through daily indoor and outdoor recreational activities needs to be available; as well as access to suitable outside space, including fresh air and natural light. Activities tailored to women and children, and which take account of cultural factors, are also needed.⁹²

(ix) The right to **practice one's religion** needs to be observed.

(x) **Basic necessities** such as beds, climate-appropriate bedding, shower facilities, basic toiletries, and clean clothing, are to be provided to asylum-seekers in detention. They should have the right to wear their

own clothes, and to enjoy privacy in showers and toilets, consistent with safe management of the facility.

- xi) **Food of nutritional value** suitable to age, health, and cultural/religious background, is to be provided. Special diets for pregnant or breastfeeding women should be available.⁹³ Facilities in which the food is prepared and eaten need to respect basic rules on sanitation and cleanliness.
- (xii) Asylum-seekers should have **access to reading materials and timely information** where possible (for example through newspapers, the internet, and television).
- (xiii) Asylum-seekers should have access to **education and/or vocational training, as appropriate to the length of their stay**. Children, regardless of their status or length of stay, have a right to access at least primary education.⁹⁴ Preferably children should be educated off- site in local schools.
- (xiv) The frequent transfer of asylum-seekers from one detention facility to another should be avoided, not least because they can hinder access to and contact with legal representatives.
- (xv) Non-discriminatory **complaints mechanism** (or grievance procedure) needs to be in place,⁹⁵ where complaints may be submitted either directly or confidentially to the detaining authority, as well as to an independent or oversight authority. Procedures for lodging complaints, including time limits and appeal procedures, should be displayed and made available to detainees in different languages.
- (xvi) All staff working with detainees should receive **proper training**, including in relation to asylum, sexual and gender- based violence,⁹⁶ the identification of the symptoms of trauma and/or stress, and refugee and human rights standards relating to detention. Staff-detainee ratios need to meet international standards;⁹⁷ and codes of conduct should be signed and respected.
- (xvii) With regard to private contractors, subjecting them to a statutory duty to take account of the welfare of detainees has been identified as good practice. However, it is also clear that responsible national authorities cannot contract out of their obligations under international refugee or human rights law and remain accountable as a matter of

international law. Accordingly, States need to ensure that they can effectively oversee the activities of private contractors, including through the provision of adequate independent monitoring and accountability mechanisms, including termination of contracts or other work agreements where duty of care is not fulfilled.⁹⁸

(xviii) Children born in detention need to be registered immediately after birth in line with international standards and issued with birth certificates.⁹⁹

GUIDELINE 9:

The special circumstances and needs of particular asylum-seekers must be taken into account

Guideline 9.1

Victims of trauma or torture

49. Because of the experience of seeking asylum, and the often traumatic events precipitating flight, asylum-seekers may present with psychological illness, trauma, depression, anxiety, aggression, and other physical, psychological and emotional consequences. Such factors need to be weighed in the assessment of the necessity to detain (see Guideline 4). Victims of torture and other serious physical, psychological or sexual violence also need special attention and should generally not be detained.

50. Detention can and has been shown to aggravate and even cause the aforementioned illnesses and symptoms.¹⁰⁰ This can be the case even if individuals present no symptoms at the time of detention.¹⁰¹ Because of the serious consequences of detention, initial and periodic assessments of detainees' physical and mental state are required, carried out by qualified medical practitioners. Appropriate treatment needs to be provided to such persons, and medical reports presented at periodic reviews of their detention.

Guideline 9.2

Children

51.51. General principles relating to detention outlined in these Guidelines apply *a fortiori* to children,¹⁰² who should in principle not be detained at all. The United Nations Convention on the Rights of the Child (CRC) provides specific international legal obligations in relation to children

and sets out a number of guiding principles regarding the protection of children:

- The **best interests of the child** shall be a primary consideration in all actions affecting children, including asylum-seeking and refugee children (Article 3 in conjunction with Article 22, CRC).
- There shall be **no discrimination** on the grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status, or on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members (Article 2, CRC).
- Children should be assured the **right to express their views freely** and their views should be given "due weight" in accordance with the child's age and level of maturity (Article 12, CRC).¹⁰³
- Children have the right to **family unity** (*inter alia*, Articles 5, 8 and 16, CRC) and the right not to be separated from their parents against their will (Article 9, CRC). Article 20(1) of the CRC establishes that a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to **special protection and assistance** provided by the State.
- Article 20(2) and (3) of the CRC require that States Parties shall, in accordance with their national laws, ensure **alternative care for such a child**. Such care could include, *inter alia*, foster placement or, if necessary, placement in suitable institutions for the care of children. When considering options, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.
- Article 22 of the CRC requires that States Parties take appropriate measures to ensure that children who are seeking refugee status or who are recognised refugees, whether accompanied or not, receive **appropriate protection and assistance**.
- Article 37 of the CRC requires States Parties to ensure that the **detention of children be used only as a measure of last resort** and for the **shortest appropriate period of time**.

- Where separation of a child or children from their parents is unavoidable in the context of detention, both parents and child are entitled to essential information from the State on the whereabouts of the other unless such information would be detrimental to the child (Article 9(4), CRC).

52. Overall an **ethic of care**—and not enforcement—needs to govern interactions with asylum-seeking children, including children in families, with the best interests of the child a primary consideration. The extreme vulnerability of a child takes precedence over the status of an “illegal alien”.¹⁰³ States should “*utilize, within the framework of the respective child protection systems, appropriate procedures for the determination of the child’s best interests, which facilitate adequate child participation without discrimination, where the views of the child are given due weight in accordance with age and maturity, where decision makers with relevant areas of expertise are involved, and where there is a balancing of all relevant factors in order to assess the best option.*”¹⁰⁵

53. All appropriate alternative care arrangements should be considered in the case of **children accompanying their parents**, not least because of the well-documented deleterious effects of detention on children’s well-being, including on their physical and mental development. The detention of children with their parents or primary caregivers needs to balance, *inter alia*, the right to family and private life of the family as a whole, the appropriateness of the detention facilities for children,¹⁰⁶ and the best interests of the child.

54. As a general rule, **unaccompanied or separated children** should not be detained. Detention cannot be justified based solely on the fact that the child is unaccompanied or separated, or on the basis of his or her migration or residence status.¹⁰⁷ Where possible they should be released into the care of family members who already have residency within the asylum country. Where this is not possible, alternative care arrangements, such as foster placement or residential homes, should be made by the competent child care authorities, ensuring that the child receives appropriate supervision. Residential homes or foster care placements need to cater for the child’s proper development (both physical and mental) while longer term solutions are being

considered.¹⁰⁸ A primary objective must be the best interests of the child.

55. Ensuring accurate age assessments of asylum-seeking children is a specific challenge in many circumstances, which requires the use of appropriate assessment methods that respect human rights standards.¹⁰⁹ Inadequate age assessments can lead to the arbitrary detention of children.¹¹⁰ It can also lead to the housing of adults with children. Age- and gender-appropriate accommodation needs to be made available.
56. Children who are detained benefit from the same **minimum procedural guarantees** as adults, but these should be tailored to their particular needs (see Guideline 9). An independent and qualified **guardian as well as a legal adviser** should be appointed for unaccompanied or separated children.¹¹¹ During detention, children have a **right to education** which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release. Provision should be made for their **recreation and play, including with other children**, which is essential to a child's mental development and will alleviate stress and trauma (see also Guideline 8).
57. All efforts, including prioritisation of asylum processing, should be made to allow for the immediate release of children from detention and their placement in other forms of appropriate accommodation.¹¹²

Guideline 9.3

Women

58. As a general rule, pregnant women and nursing mothers, who both have special needs, should not be detained.¹¹³ Alternative arrangements should also take into account the particular needs of women, including safeguards against sexual and gender-based violence and exploitation.¹¹⁴ Alternatives to detention would need to be pursued in particular when separate facilities for women and/or families are not available.
59. Where detention is unavoidable for women asylum-seekers, facilities and materials are required to meet women's specific hygiene needs.¹¹⁵ The use of female guards and warders should be promoted.¹¹⁶ All staff assigned to work with women detainees should receive training relating to the gender-specific needs and human rights of women.¹¹⁷

60. Women asylum-seekers in detention who report abuse are to be provided immediate protection, support and counselling, and their claims must be investigated by competent and independent authorities, with full respect for the principle of confidentiality, including where women are detained together with their husbands/partners/other relatives. Protection measures should take into account specifically the risks of retaliation. ¹¹⁸

61. Women asylum-seekers in detention who have been subjected to sexual abuse need to receive appropriate medical advice and counselling, including where pregnancy results, and are to be provided with the requisite physical and mental health care, support and legal aid. ¹¹⁹

Guideline 9.4

Victims or potential victims of trafficking

62. The prevention of trafficking or re-trafficking cannot be used as a blanket ground for detention, unless it can be justified in the individual case (see Guideline 4.1). Alternatives to detention, including safe houses and other care arrangements, are sometimes necessary for such victims or potential victims, including in particular children. ¹²⁰

Guideline 9.5

Asylum-seekers with disabilities

63. Asylum-seekers with disabilities must enjoy the rights included in these Guidelines without discrimination. This may require States to make “reasonable accommodations” or changes to detention policy and practices to match their specific requirements and needs. ¹²¹ A swift and systematic identification and registration of such persons is needed to avoid arbitrary detention. ¹²² A swift and systematic identification and registration of such persons is needed to avoid arbitrary detention ¹²³, and any alternative arrangements may need to be tailored to their specific needs, such as telephone reporting for persons with physical constraints. As a general rule, asylum-seekers with long-term physical, mental, intellectual and sensory impairments ¹²³ should not be detained. In addition, immigration proceedings need to be accessible to persons with disabilities, including where this is needed to facilitate their rights to freedom of movement. ¹²⁴

Guideline 9.6

Older Asylum-seekers

64. Older asylum-seekers may require special care and assistance owing to their age, vulnerability, lessened mobility, psychological or physical health, or other conditions. Without such care and assistance, their detention may become unlawful. Alternative arrangements would need to take into account their particular circumstances, including physical and mental well-being.¹²⁵

Guideline 9.7

Lesbian, gay, bisexual, transgender or intersex asylum-seekers

65. Measures may need to be taken to ensure that any placement in detention of lesbian, gay, bisexual, transgender or intersex asylum-seekers avoids exposing them to risk of violence, ill-treatment or physical, mental or sexual abuse; that they have access to appropriate medical care and counselling, where applicable; and that detention personnel and all other officials in the public and private sector who are engaged in detention facilities are trained and qualified, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation or gender identity.¹²⁶ Where their security cannot be assured in detention, release or referral to alternatives to detention would need to be considered. In this regard, solitary confinement is not an appropriate way to manage or ensure the protection of such individuals.

GUIDELINE 10:

Detention should be subject to independent monitoring and inspection

66. To ensure systems of immigration detention comply with international legal principles, it is important that immigration detention centres are open to scrutiny and monitoring by independent national and international institutions and bodies.¹²⁷ This could include regular visits to detainees, respecting principles of confidentiality and privacy, or unannounced inspection visits. In line with treaty obligations, and relevant international protection standards, access by UNHCR¹²⁸ and other relevant international and regional bodies with mandates related to detention or humane treatment.¹²⁹ needs to be made possible. Access to civil society actors and NGOs for monitoring purposes should also be

facilitated, as appropriate. Independent and transparent evaluation and monitoring are likewise important facets of any alternative programme.¹³⁰

66. In respect of monitoring the conditions of detention and treatment of women detainees, any monitoring body would need to include women members.¹³¹

Annex A

Alternatives to Detention

There are a range of alternatives to detention, which are outlined below. Some are used in combination, and as indicated in the main text, some impose greater restrictions on liberty or freedom of movement than others. The list is non-exhaustive.

(i) **Deposit or surrender of documentation:** Asylum-seekers may be required to deposit or surrender identity and/or travel documentation (such as passports). In such cases, individuals need to be issued with substitute documentation that authorises their stay in the territory and/or release into the community.¹³²

(ii) **Reporting conditions:** Periodic reporting to immigration or other authorities (for example, the police) may be a condition imposed on particular asylum-seekers during the status determination procedure. Such reporting could be periodic, or scheduled around asylum hearings and/or other official appointments. Reporting could also be to an NGO or private contractor within community supervision arrangements (see vii).

However, overly onerous reporting conditions can lead to non-cooperation, and can set up individuals willing to comply to instead fail. Reporting, for example, that requires an individual and/or his or her family to travel long distances and/or at their own expense can lead to non-cooperation through inability to fulfil the conditions, and can unfairly discriminate on the basis of economic position.¹³³

The frequency of reporting obligations would be reduced over time—either automatically or upon request—so as to ensure that any conditions imposed continue to meet the necessity, reasonableness and proportionality tests. Any increase in reporting conditions or other additional restrictions would need to be proportionate to the objective

pursued, and be based on an objective and individual assessment of a heightened risk of absconding, for example.

(iii) **Directed residence:** Asylum-seekers may be released on condition they reside at a specific address or within a particular administrative region until their status has been determined. Asylum-seekers may also be required to obtain prior approval if they wish to move out of the designated administrative region; or to inform the authorities if they change address within the same administrative region. Efforts should be made to approve residency that facilitates family reunification or closeness to relatives, ¹³⁴ and/or other support networks. Residency conditions might also involve residence at a designated open reception or asylum facility, subject to the rules of those centres (see iv).

(iv) **Residence at open or semi-open reception or asylum centres:** Release to open or semi-open reception or asylum centres with the condition to reside at that address is another form of directed residence (see above iii). Semi-open centres may impose some rules and regulations for the good administration of the centre, such as curfews and/or signing in or out of the centre. General freedom of movement within and outside the centre should, however, be observed to ensure that it does not become a form of detention.

(v) **Provision of a guarantor/surety:** Another alternative arrangement is for asylum-seekers to provide a guarantor/surety who would be responsible for ensuring their attendance at official appointments and hearings, or to otherwise report as specified in any conditions of release. Failure to appear could lead to a penalty – most likely the forfeiture of a sum of money – being levied against the guarantor/surety. A guarantor, for example, could be a family member, NGO or community group.

(vi) **Release on bail/bond:** This alternative allows for asylum-seekers already in detention to apply for release on bail. Any of the above-mentioned conditions (ii)-(v) may be imposed. For bail to be genuinely available to asylum-seekers, bail hearings would preferably be automatic. Alternatively, asylum-seekers must be informed of their availability and they need to be accessible and effective. Access to legal counsel is an important component in making bail accessible. The bond amount set must be reasonable given the particular situation of asylum-seekers, and should not be so high as to render bail systems merely theoretical.

Bail/bond and guarantor/surety systems tend to discriminate against persons with limited funds, or those who do not have previous connections in the community. As a consequence, where bail/bond and guarantor/surety systems exist, governments are encouraged to explore options that do not require asylum-seekers to hand over any funds. They could, for example, be “bailed” to an NGO – either upon the NGO acting as guarantor (see v above) – or under agreement with the government.¹³⁵ Safeguards against abuse and/or exploitation, such as inspection and oversight, also need to be in place in these systems involving NGOs and others. In all cases, what needs to be assessed is whether payment of a bond or the designation of a guarantor/surety is necessary to ensure compliance in the individual case. Systematically requiring asylum-seekers to pay a bond and/or to designate a guarantor/surety, with any failure to be able to do so resulting in detention (or its continuation), would suggest that the system is arbitrary and not tailored to individual circumstances.

(vii) **Community supervision arrangements:** Community supervision arrangements refer to a wide range of practices in which individuals and families are released into the community, with a degree of support and guidance (that is, “supervision”). Support arrangements can include support in finding local accommodation, schools, or work; or, in other cases, the direct provision of goods, social security payments, or other services. The “supervision” aspect may take place within open or semi-open reception or asylum facilities, or at the offices of the relevant service provider while the individual lives freely in the community. Supervision may be a condition of the asylum-seeker’s release and may thus involve direct reporting to the service provider, or alternatively, to the immigration or other relevant authorities separately (see ii).

Supervision may also be optional, such that individuals are informed about the services available to them without any obligation to participate in them. Community supervision may also involve case management (see next).

Complementary measures and other considerations

Case management

Case management has been identified as an important component in several successful alternative to detention policies and programmes, and also as an aspect of good asylum systems. Case management is a strategy for supporting

and managing individuals and their asylum claims whilst their status is being resolved, with a focus on informed decision-making, timely and fair status resolution and improved coping mechanisms and well-being on the part of individuals.¹³⁶ Such policies have led to constructive engagement with the asylum process, and improvements in compliance/cooperation rates.

Case management is part of an integrated process, starting at an early stage in the asylum process and continuing until refugee status or other legal stay is granted, or deportation is carried out. The concept is that each asylum-seeker is assigned a “case manager” who is responsible for their entire case, including providing clear and consistent information and advice about the asylum process (as well as other migration and/or return processes, as applicable), as well as about any conditions on their release and the consequences of non-cooperation. It is a stand-alone process, but it has been identified as an element of successful alternative to detention programmes. Transparency, active information-sharing and good cooperation between all actors involved have also been shown to develop trust among the individuals concerned and to improve compliance rates.¹³⁷

Skill sets and personalities of staff

Skill sets and personalities of staff can contribute to the success or failure of alternatives. Recruitment and training of staff need to be well managed, including through tailored training, courses and/or certification.¹³⁸ Codes of conduct or other regulations relating to staff behaviour can be important aspects of detention measures and alternatives to detention.

Alternatives operated by NGOs or private contractors

Where alternatives are operated by **non-governmental or private organisations**, a legally binding agreement would need to be entered into with the relevant governmental authority, and be subject to regular compliance monitoring by the government, independent national inspectorates and/or international organisations or bodies (such as UNHCR). The agreement would set out the roles and responsibilities of each body as well as complaints and inspection arrangements, and provide for termination of the agreement if terms are not met. It is important that agreements do not provide incentives to use more restrictive measures than are strictly necessary. Despite the role of non-governmental or private organisations in the management and/or implementation of alternatives, and while good practice might impose a statutory duty on such entities to take account of the welfare of detainees, the State remains responsible as a matter of international law for ensuring human

rights and refugee law standards are met. It is important to keep in mind that the decision to impose restrictions on liberty or freedom of movement can never be taken by a non-State body.¹³⁹

The role of non-governmental or private organisations in the process of **enforcement of non-compliance orders** (such as by reporting on absences or absconding to the authorities for their follow-up) varies. It is, however, not necessary that these organisations participate in the enforcement process.

Endnotes

¹ United Nations Human Rights Committee (HRC), CCPR General Comment No. 15: *The Position of Aliens under the Covenant*, 11 April 1986, para. 5, available at: <http://www.unhcr.org/refworld/docid/45139acfc.html>. See, also, *Moustaquim v. Belgium*, (1991), Council of Europe: European Court of Human Rights (ECtHR), App. No. 26/1989/186/246, para. 43, available at:

<http://www.unhcr.org/refworld/docid/3ae6b7018.html> and *Vilvarajah and Others v. the United Kingdom*, (1991), ECtHR, App. No. 45/1990/236/302-306, para. 103, available at: <http://www.unhcr.org/refworld/docid/3ae6b7008.html>.

² See, in particular, UN High Commissioner for Refugees (UNHCR), Executive Committee of the High Commissioner's Programme (ExCom), *Conclusion on Reception of Asylum-seekers in the Context of Individual Asylum Systems*, No. 93 (LIII) – 2002, available at:

<http://www.unhcr.org/refworld/docid/3dafdd344.html>. All ExCom Conclusions are also available by subject in UNHCR, *A Thematic Compilation of Executive Committee Conclusions*, 6th edition, June 2011,

<http://www.unhcr.org/refworld/docid/3dafdd344.html>.

³ UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, February 2011, available at:

<http://www.unhcr.org/refworld/docid/4d9430ea2.html>.

⁴ A. Edwards, *Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention" of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, UNHCR Legal and Protection Policy Research Series, PPLA/2011/01.Rev.1, April 2011, page 1 (“There is no empirical evidence that the prospect of being detained deters irregular migration, or discourages persons from seeking asylum.”) (Edwards, *Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention"*), available at: <http://www.unhcr.org/refworld/docid/4dc935fd2.html>; as restated in United Nations, Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, A/HRC/20/24, 2 April 2012, para. 8, available at:

<http://www.unhcr.org/refworld/docid/502e0bb62.html>

⁵ A clear distinction is required between stateless persons who are seeking asylum in other countries and stateless persons who are residing in their “own” country in the sense envisaged by Article 12(4) of the *International Covenant on Civil and Political Rights*, 1966 (ICCPR). The latter include individuals who are long-term, habitual residents of a State which is often their country of birth. Being in their “own country” they have a right to enter and remain there with significant implications for their status under national law. Rules governing the acceptable grounds for detention will vary between these two groups (Guideline 4.1). In relation to the former, the grounds outlined in these Guidelines apply; however, such justifications for the detention of stateless persons residing in their “own” country will in many instances lead to arbitrary and unlawful (including indefinite) detention. For more on detention and stateless persons, see UNHCR, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, 5 April 2012, HCR/GS/12/02, paras. 59-62, available at:

<http://www.unhcr.org/refworld/docid/4f7dafb52.html>.

⁶ The term “‘persons found not to be in need of international protection’ is understood to mean persons who have sought international protection and who after due consideration of their claims in fair procedures, are found neither to qualify for refugee status on the basis of criteria laid down in the 1951 Convention, nor to be in need of international protection in accordance with other international obligations or national law”, see UNHCR, ExCom, *Conclusion on the Return of Persons Found Not to be in Need of International Protection*, No. 96 (LIV) – 2003, preambular para. 6, available at:

<http://www.unhcr.org/3f93b1ca4.html>.

⁷ See, below note 22.

⁸ *Guzzardi v. Italy*, (1980), ECtHR, App. No. 7367/76, para. 93, available at:

<http://www.unhcr.org/refworld/docid/502d42952.html>

⁹ *Amuur v. France*, (1996), ECtHR, App. No. 19776/92, available at:

<http://www.unhcr.org/refworld/docid/502d42952.html>

¹⁰ See, for example, *Guzzardi v. Italy*, above note 8.

¹¹ See, for example, *Medvedyev v. France*, (2010), ECtHR, App. No. 3394/03, available at: <http://www.unhcr.org/refworld/docid/502d45dc2.html> and *J.H.A. v. Spain*, UN Committee against Torture (CAT), CAT/C/41/D/323/2007, 21 November 2008, available at <http://www.unhcr.org/refworld/docid/4a939d542.html>.

¹² “Extraterritorial” detention refers to, *inter alia*, the transfer and detention of asylum-seekers in another country’s territory, including under agreement with that State. The responsibility of the sending State for the human rights standards in that place of detention will depend on a range of factors, see, for example, UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at: <http://www.unhcr.org/refworld/pd/d/45f17a1a4.pdf>.

¹³ Edwards, *Back to Basics: The Right to Liberty and Security of Person and “Alternatives to Detention”*, above note 4, Figure 1.

¹⁴ Article 1(A)(2), *Convention relating to the Status of Refugees*, 1951 (1951 Convention) as amended by the *Protocol relating to the Status of Refugees*, 1967.

¹⁵ See, in particular, Article I(2), *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 1969 (OAU Convention); Conclusion No. 3, *Cartagena Declaration on Refugees*, *Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 1984 (1984 Cartagena Declaration).

¹⁶ See, in particular, European Union, *Council Directive 2011/95/EU of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (recast)*, 20 December 2011, available at:

<http://www.unhcr.org/refworld/docid/4f197df02.html>; European Union, *Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof*, 7 August 2001, available at: <http://www.unhcr.org/refworld/docid/3ddcee2e4.html>.

¹⁷ Article 1 of the *Convention relating to the Status of Stateless Persons*, 1954 (1954 Statelessness Convention). See, further, UNHCR, *Guidelines on Statelessness No. 1: The Definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, 20 February 2012, HCR/GS/12/01, available at:

<http://www.unhcr.org/refworld/docid/4f4371b82.html>.

¹⁸ Article 1(A)(2), second paragraph, 1951 Convention.

¹⁹ Article 14, *Universal Declaration of Human Rights*, 1948 (UDHR); Article 22 (7) ACHR; Article 12(3), ACHPR; Article 27, *American Declaration of the Rights and Duties of Man*, 1948 (ADRDM); Article 18, *Charter of Fundamental Rights of the European Union*, 2000, (CFREU).

²⁰ Article 31, 1951 Convention.

²¹ See, for example, Articles 3 and 9, UDHR; Article 9, ICCPR; Articles 1 and 25, ADRDM; Article 6, ACHPR; Article 7 ACHR; Article 5, ECHR; Article 6, CFREU.

²² See, for example, Article 12, ICCPR, covers the right to freedom of movement and choice of residence for persons lawfully staying in the territory, as well as the right to leave any country, including one’s own. See, also, Article 12, *African Charter on Human and Peoples’ Rights*, 1981 (ACHPR); Article 22, *American Convention on Human Rights*, 1969 (ACHR); Article 2, *Convention for the Protection of Human Rights and Fundamental Freedoms* (as amended), 1950 (ECHR); Article 2, Protocol No. 4 to the ECHR, *Securing Certain Rights and Freedoms Other Than Those Already Included in the Convention and the First Protocol Thereto*, 1963; Article 45, CFREU.

²³ See, UNHCR ExCom, *Conclusion on Detention of Refugees and Asylum-Seekers*, No. 44 (XXXVII) –1986, para. (b), available at:

<http://www.unhcr.org/refworld/docid/3ae68c43c0.html>. See also in particular, UNHCR ExCom, Nos. 55 (XL) – 1989, para (g); 85 (XLIX) –1998, paras. (cc), (dd) and (ee); and 89 (LI) –2000, third paragraph, all available at: <http://www.unhcr.org/3d4ab3ff2.html>.

²⁴ UN Human Rights Committee (HRC), General Comment No. 18: *Non-discrimination*, 10 November 1989, para. 1, available at:

<http://www.unhcr.org/refworld/docid/453883fa8.html>; HRC, General Comment No. 15: *The Position of Aliens under the Covenant*, above note 1.

²⁵ Article 31(2) of the 1951 Convention provides: “*The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country*”. See UNHCR, *Global Consultations on International Protection: Summary Conclusions on Article 31 of the 1951 Convention – Revised*, Geneva Expert Roundtable, 8-9 November 2001 (UNHCR Global Consultations Summary Conclusions: Article 31 of the 1951 Convention), para. 3, available at:

<http://www.unhcr.org/419c783f4.pdf>. See, also, UNHCR, *Global Consultations on International Protection/Third Track: Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems*, 4 September 2001, EC/GC/01/17 (UNHCR Global Consultations: Reception of Asylum-Seekers), available at:

<http://www.unhcr.org/refworld/docid/3bfa81864.html>.

²⁶ Article 26 of the 1951 Convention provides: “*Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.*” Article 26 of the 1954 Convention relating to the Status of Stateless Persons provides an identical provision.

²⁷ UNHCR, “*Lawfully Staying*” – A Note on Interpretation, 1988, http://www.unhcr.org/refworld/pd_d/42ad93304.pdf; UNHCR Global Consultations: Reception of Asylum-Seekers, above note 25, para. 3, available at: <http://www.unhcr.org/refworld/docid/3bfa81864.html>.

²⁸ For example, Article 9(1) of the ICCPR provides explicitly that: “*No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*”

²⁹ *Lokpo and Touré v. Hungary*, (2011), ECtHR, App. No. 10816/10, para. 21 (final decision), available at: <http://www.unhcr.org/refworld/docid/4e8ac6652.html>.

³⁰ *Ibid.* The ECtHR stated: “*It must in addition be satisfied that detention during the period under consideration was compatible with the purpose of the relevant provision, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.*”

³¹ *Bozano v. France*, (1986), ECtHR, App. No. 9990/82, para. 54, available at: <http://www.unhcr.org/refworld/docid/4029fa4f4.html>; *H.L. v. United Kingdom*, (2004), ECtHR, App. No. 45508/99, para. 114, available at: <http://www.unhcr.org/refworld/docid/502d48822.html>. See, also, *Dougoz v. Greece*, (2001), ECtHR, App. No. 40907/98, para 55: the law must be “*sufficiently accessible and precise, in order to avoid all risk of arbitrariness*”, available at: <http://www.unhcr.org/refworld/docid/3deb8d884.html>.

³² The general principle that laws ought not to have retroactive effect is well- established in most legal jurisdictions, especially as regards criminal prosecution, arrest or detention: see, for example, Article 25 of the ADRDM, which provides in part that “[n]o person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.” See, also, *Amuur v. France*, above note 9, para. 53.

³³ This is the recommendation of the UN Working Group on Arbitrary Detention (WGAD), *Report to the Fifty-sixth session of the Commission on Human Rights*, E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5, available at: http://www.unhcr.org/refworld/pd_d/3b00f25a6.pdf.

³⁴ *Louled Massoud v. Malta*, (2010), ECtHR, App. No. 24340/08, available at: <http://www.unhcr.org/refworld/docid/4c6ba1232.html>.

³⁵ Article 9 of the ICCPR may be derogated from in a public emergency subject to being “*strictly required by the exigencies of the situation*” and “*provided such measures are not inconsistent with their other obligations under international law and do not involve discrimination ...*” (Article 4, ICCPR). Also, *A v. Australia*, HRC, Comm. No. 560/1993, 3 April 1997, available at: <http://www.unhcr.org/refworld/docid/3ae6b71a0.html>, which found no basis to suggest that detention of asylum-seekers was prohibited as a matter of

customary international law (para. 9.3).

³⁶ *Van Alphen v. The Netherlands*, HRC, Comm. No. 305/1988, 23 July 1990, para. 5.8, available at:

<http://www.ohchr.org/Documents/Publications/SDecisionsVol3en.pdf>.

³⁷ *Ibid.* and *A v. Australia*, above note 35, paras. 9.2-9.4 (on proportionality).

³⁸ See, for example, *A v. Australia*, above note 35; *C v. Australia*, HRC, Comm. No. 900/1999, 28 October 2002, available at:

<http://www.unhcr.org/refworld/docid/3f588ef00.html>.

³⁹ *A v. Australia*, above note 35, para. 9.

⁴⁰ WGAD, *Report to the Tenth Session of the Human Rights Council*, 16 February 2009, A/HRC/10/21, para. 67, available at:

<http://www.unhcr.org/refworld/docid/502e0de72.html>. Some regional instruments explicitly limit the grounds of immigration detention: for example, Article 5(f) of the ECHR: “No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

⁴¹ *A v. Australia*, above note 35, para. 9.4.

⁴² UNHCR ExCom, *Conclusion on Detention of Refugees and Asylum-Seekers*, above note 23, para. (b).

⁴³ International Detention Coalition (IDC), *There are Alternatives*, 2011, Introducing the Community Assessment and Placement Model, available at:

<http://idcoalition.org/cap/handbook>.

⁴⁴ *R (on the application of Suckrajh) v. (1) Asylum and Immigration Tribunal and (2) The Secretary of State for the Home Department*, EWCA Civ 938, United Kingdom: Court of Appeal (England and Wales), 29 July 2011, available at:

<http://www.unhcr.org/refworld/docid/4e38024f2.html>.

⁴⁵ UNHCR ExCom, *Conclusion on the Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum*, 20 October 1983, No. 30 (XXXIV) -1983, para. (d), available at: <http://www.unhcr.org/refworld/docid/3ae68c6118.html>.

⁴⁶ UNHCR ExCom, *Conclusion on Detention of Refugees and Asylum-Seekers*, above note 23, para. (b).

⁴⁷ See, for example, UNHCR ExCom Conclusions No. 58 (XL) – 1989, *Problem of Refugees and Asylum-Seekers who Move in an Irregular Manner from a Country in Which They Had Already Found Protection*, available at: <http://www.unhcr.org/3ae68c4380.html>. See, also, UNHCR Global Consultations Summary Conclusions: Article 31 of the 1951 Convention, above note 25.

⁴⁸ UNHCR and the Office of the High Commissioner for Human Rights (OHCHR), *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions*, May 2011 (Global Roundtable Summary Conclusions), para 6, available at: <http://www.unhcr.org/refworld/docid/4e315b882.html>. See also, UNHCR, *Guidelines on Statelessness No.2: Procedures for Determining Whether*

an Individual is a Stateless Person, 5 April 2012, HCR/GS/12/02, available at: <http://www.unhcr.org/refworld/docid/4f7dafb52.html>.

⁴⁹ UNHCR ExCom, *Conclusion on Detention of Refugees and Asylum-Seekers*, above note 23, para. (b)

⁵⁰ On the meaning of national security, see UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, paragraphs 29-32, available at:

<http://www.unhcr.org/refworld/docid/4672bc122.html>.

⁵¹ See, for example, *A. and others v. the United Kingdom*, (2009), ECtHR, App. No. 3455/05, available at:

<http://www.unhcr.org/refworld/docid/499d4a1b2.html>.

⁵² See, *Bozano v. France*, above note 31; *Shamsa v. Poland*, (2003), ECtHR, App. Nos. 45355/99 and 45357/99, available at:

<http://www.unhcr.org/refworld/docid/402b584e4.html>; *Gonzalez v. Spain*, (2008), ECtHR, App. No. 30643/04, available at:

<http://www.unhcr.org/refworld/docid/502e31e42.html>, and *Amuur v. France*, above note 9.

⁵³ Article 31, 1951 Convention; Article 18(1), *European Union Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, available at:

<http://www.unhcr.org/refworld/docid/4394203c4.html>.

⁵⁴ WGAD, *Report to the Seventh Session of the Human Rights Council*, A/HRC/7/4/, 10 January 2008, para. 53: “criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary [and therefore arbitrary] detention.” Available at:

<http://www.unhcr.org/refworld/docid/502e0eb02.html>

⁵⁵ Article 5 (3), ACHR; Article 7(2) ACHPR; Article 5(3) CFREU.

⁵⁶ See *Lokpo and Touré v. Hungary*, above note 29; *R.U. v. Greece*, (2011), ECtHR, App. No. 2237/08, para. 94, available at:

<http://www.unhcr.org/refworld/docid/4f2aafc42.html>. See, also, *S.D. v. Greece*, (2009), ECtHR, App. No. 53541/07, para. 62, available at:

<http://www.unhcr.org/refworld/docid/4a37735f2.html>. The ECtHR has held that detention for the purposes of expulsion can only occur after an asylum claim has been finally determined. See, also, UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the Case of Alaa Al-Tayyar Abdelhakim v. Hungary*, 30 March 2012, App. No. 13058/11, available at:

<http://www.unhcr.org/refworld/docid/4f75d5212.html>; UN High Commissioner for Refugees, *Submission by the Office of the United Nations High Commissioner [SEP] for Refugees in the Case of Said v. Hungary*, 30 March 2012, App. No. 13457/11, available at: <http://www.unhcr.org/refworld/docid/4f75d5e72.html>.

⁵⁷ *Vasileva v. Denmark*, (2003), ECtHR, App. No. 52792/99, para. 37, available at: <http://www.unhcr.org/refworld/docid/502d4ae62.html> and *Lokpo and Touré v. Hungary*, above note 29.

58 *C v. Australia*, above note 38, para. 8.2.

59 See, for example, *Sahin v. Canada, (Minister of Citizenship and Immigration)* [1995] 1 FC 214 available at:

<http://www.unhcr.org/refworld/docid/3ae6b6e610.html>. See, also, WGAD, *Opinion No. 45/2006*, UN Doc. A/HRC/7/4/Add.1, 16 January 2008, para. 25, available at:

<http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm> and WGAD, *Legal Opinion on the Situation regarding Immigrants and Asylum-seekers*, UN Doc. E/CN.4/1999/63, para. 69: “Possibility for the alien to benefit from alternatives to administrative custody.” available at:

http://ap.ohchr.org/documents/alldocs.aspx?doc_id=1520 and WGAD, *Report to the Thirteenth Session of the Human Rights Council*, A/HRC/13/30, 15 January 2010, para. 65, available at:

<http://www.unhcr.org/refworld/docid/502e0fa62.html>

60 Global Roundtable Summary Conclusions, above note 48, para 2.

61 Global Roundtable Summary Conclusions, above note 48, para 20.

62 These other rights could include: the right to privacy (Article 12, UDHR; Article 17(1), ICCPR; Article 16(1), CRC; Article 11 ACHR; Article 5 ADRDM; Article 8 ECHR; Article 7 CFREU), the right to family life (Articles 12 and 16(3), UDHR; Article 23(1), ICCPR; Article 10(1) ICESCR; Article 12(2), 1951 Convention and Recommendation B of the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, available at:

<http://www.unhcr.org/refworld/docid/40a8a7394.html>; Article 18, ACHPR; Article 17(1), ACHR; Article 6, ADPDM; Article 2 and 8 ECHR; Article 9, CFREU), the prohibition on inhuman or degrading treatment (Article 7, ICCPR; Article 1, CAT; Article 3, ECHR; Article 25 ADRDM; Article 4 CFREU; Article 5 ACHR; Article 5 ACHPR).

63 Global Roundtable Summary Conclusions, above note 48, para 31.

64 Global Roundtable Summary Conclusions, above note 48, para. 19.

65 Global Roundtable Summary Conclusions, above note 48, para. 21.

66 Edwards, *Back to Basics: The Right to Liberty and Security of Person and “Alternatives to Detention”*, above note 4, page 1.

67 Global Roundtable Summary Conclusions, above note 48, para. 21.

68 Global Roundtable Summary Conclusions, above note 48, para. 21.

69 Edwards, *Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’*, above note 4; International Detention Coalition, *There are Alternatives, A Handbook for Preventing Unnecessary Immigration Detention*, 2011, available at:

<http://idcoalition.org/cap/handbook/>.

70 Global Roundtable Summary Conclusions, above note 48, para. 24.

71 Article 3, 1951 Refugee Convention; Article 2, UDHR; Article 2, ICCPR; Article 2(2), ICESCR; Article 2, CRC; Article 7, CMW and Article 5, CRPD as well as in regional instruments such as Article 2, ADRDM; Article 24, ACHR; Art. 14 ECHR; Article 21, CFREU and Articles 2 and 3, ACHPR.

⁷² No derogations may be based on discriminatory grounds: Article 4, ICCPR. A like provision is found in Article 15, ECHR and in Article 27, ACHR. See, also, Article 8, 1951 Convention.

⁷³ CERD, General Recommendation No. 30: *Discrimination against Non-Citizens*, UN Doc. A/59/18, 10 January 2004, para. 19: The CERD Committee has called in particular for States to respect the security of non-citizens, in particular in the context of arbitrary detention, and to ensure that conditions in centres for refugees and asylum-seekers meet international standards, available at:

<http://www.unhchr.ch/tbs/doc.nsf/0/e3980a673769e229c1256f8d0057cd3d>.

⁷⁴ For example, in deportation proceedings there may be a justified distinction drawn between nationals and non-nationals, in the sense that the national has a right of abode in their own country and cannot be expelled from it: *Moustaquim v Belgium* (1991) 13 EHRR 802, available at: <http://www.unhcr.org/refworld/docid/3ae6b7018.html>. See, also, *Agee v. UK* (1976) 7 DR 164 (European Commission on Human Rights decision), available at: <http://www.unhcr.org/refworld/docid/4721af792.html>.

⁷⁵ See, *A v. Australia*, above note 35, para. 9.2; *Mukong v. Cameroon*, HRC Comm. No. 458/1991, 21 July 1994, para. 9.8, available at:

<http://www.unhcr.org/refworld/docid/4ae9acc1d.html>.

⁷⁶ *A v. Australia*, above note 35, para. 9.4; WGAD, *Report to the Thirteenth Session of the Human Rights Council*, above note 59, para. 61; WGAD, *Report to Fifty-sixth Session of the Commission on Human Rights*, E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5, Principle 7, available at:

<http://www.unhcr.org/refworld/docid/502e10612.html>. <sup>[L
SEP]</sup>See, too, *Massoud v. Malta*, above note 34.

⁷⁷ WGAD *Report to the Thirteenth Session of the Human Rights Council*, above note 59, para. 62. See also, UNHCR, *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, 17 July 2012, HCR/GS/12/03, available at: <http://www.unhcr.org/refworld/docid/5005520f2.html>.

⁷⁸ Article 9 (2), ICCPR; Article 7 (4), ACHR; Article 5 (2) ECHR and Article 6, ACHPR.

⁷⁹ See, further WGAD, *Report to the Fifty-sixth session of the Commission on Human Rights*, E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5 available at: <http://www.unhcr.org/refworld/pd d/3b00f25a6.pdf>.

⁸⁰ Article 16(2), 1951 Convention.

⁸¹ *A. v. Australia*, above note 35 and *C. v. Australia*, above note 38.

⁸² Article 9(4), ICCPR; Article 7(6), ACHR; Article 5(4), ECHR; Article 25, paragraph 3, ADRDM; Article 7(6), ACHR; Article 6 read in conjunction with Article 7, ACHPR; Article 5, ECHR. See, for example, Article 2(3), ICCPR; Article 25, ACHR; Article 13, ECHR.

⁸³ UNHCR ExCom Standing Committee Conference Room Paper, *Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice*, June 1999, EC/49/SC/CRP.13, Figure 2, available at: <http://www.unhcr.org/refworld/pd d/47fdfaf33b5.pdf>.

⁸⁴ UNHCR ExCom, *Conclusion on Detention of Refugees and Asylum-Seekers*, above note

23, para. (c). See, further, UNHCR Global Consultations: Summary Conclusions on Article 31 of the 1951 Convention, above note 25; and *I.M. v. France*, ECtHR, App. no. 9152/09, 2 February 2012, available at:

<http://www.unhcr.org/refworld/docid/4f2932442.html>.

85 UNHCR ExCom Conclusion, No. 85 (XLIX) – 1998, available at: <http://www.unhcr.org/refworld/docid/3ae68c6e30.html>. See, also, WGAD, *Report to the Fifty-sixth session to the Commission on Human Rights*, E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5; WGAD, *Report to the Fifty-fifth Session of the Commission on Human Rights*, E/CN.4/1999/63, 18 December 1998, paras. 69 and 70, referring to principles 3, 6, 7, 8, 9 and 10.

86 For further information refer to UNHCR, *Age, Gender and Diversity Mainstreaming*, 31 May 2010, EC/61/SC/CRP.14, available at:

<http://www.unhcr.org/refworld/docid/4cc96e1d2.html>.

87 *Abdolkhani and Karimnia v. Turkey* (No.2), (2010), ECtHR App. No.50213/08, available at: <http://www.unhcr.org/refworld/docid/4c5149cf2.html>, which found a violation of Article 3 of the ECHR on account of the detention of refugees for three months in the basement of police headquarters.

88 A number of human rights provisions are specifically relevant to conditions in detention, such as Articles 7 (prohibition against torture and cruel, inhuman or degrading treatment), 10 (right to humane conditions in detention) and 17 (right to family life and privacy) of the ICCPR. See, also, UN *Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*, General Assembly resolution 43/173 of 9 December 1988, available at:

<http://www.unhcr.org/refworld/docid/3b00f219c.html>; UN *Standard Minimum Rules for the Treatment of Prisoners*, 1955, available at:

<http://www.unhcr.org/refworld/docid/3ae6b36e8.html>; UN *Rules for the Protection of Juveniles Deprived of their Liberty*, 1990, A/RES/45/113, 14 December 1990, available at: <http://www.unhcr.org/refworld/docid/3b00f18628.html>.

89 Inter-American Commission on Human Rights, *Human Rights of Migrants, International Standards and the Return Directive of the EU*, resolution 03/08, 25 July 2008, available at: <http://www.unhcr.org/refworld/docid/488ed6522.html>; *Abdolkhani and Karimnia v. Turkey*, above note 87.

90 WGAD, *Report to the Seventh Session of the Human Rights Council*, above note 54.

91 *Muskhadzhiyeva and others v. Belgium*, (2010), ECtHR, App. No. 41442/07, available at:

<http://www.unhcr.org/refworld/docid/4bd55f202.html>, in which it was held *inter alia* that detaining children in transit facilities designed for adults not only amounted to inhuman or degrading treatment in contravention of Article 3 of the ECHR, it also rendered their detention unlawful.

92 UN, *Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders* (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rule 42, available at:

<http://www.unhcr.org/refworld/docid/4dcbb0ae2.html>.

⁹³ Rule 48, Bangkok Rules, *ibid*.

⁹⁴ Article 22, 1951 Convention; Art. 26, UDHR; Art. 13 and 14, ICESCR; Art. 28, CRC; Art. 10, CEDAW.

⁹⁵ See, UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power*, 29 November 1985, A/RES/40/43 available at: <http://www.un.org/documents/ga/res/40/a40r034.htm>.

⁹⁶ UNHCR ExCom, *Conclusion on Refugee Women and International Protection*, No. 39 (XXXVI) – 1985, available at: <http://www.unhcr.org/3ae68c43a8.html> and UNHCR ExCom, *Conclusion on Women and Girls at Risk*, No. 105 (LVII) – 2005, available at: <http://www.unhcr.org/refworld/docid/45339d922.html>.

⁹⁷ Council of Europe *Committee on Prevention of Torture Standards*, December 2010, available at: <http://www.cpt.coe.int/en/documents/eng-standards.pdf>.

⁹⁸ UN, *Guiding Principles on Business and Human Rights*, A/HRC/17/31, 21 March 2011, para. 5; Global Roundtable Summary Conclusions, above note 48, para. 14.

⁹⁹ Article 7(1), CRC and Article 24(2), ICCPR. See, also, UNHCR ExCom, *Conclusion on Refugee Children*, No. 47 (XXXVIII) – 1987, para. (f) and (g), available at: <http://www.unhcr.org/refworld/docid/3ae68c432c.html>; UN Human Rights Council, *Resolution on Rights of the Child*, 20 March 2012, A/HRC/19/L.31, paras. 16(c) and 29-31, available at: <http://www.unhcr.org/refworld/docid/502e10f42.html>; UN Human Rights Council, *Resolution on Action on Birth Registration and the Right of Everyone to Recognition Everywhere as a Person Before the Law*, 15 March 2012, A/HRC/19/L.24, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/19/L.24.

¹⁰⁰ Global Roundtable Summary Conclusions, above note 48, para. 10.

¹⁰¹ See, Jesuit Refugee Service - Europe (JRS-E), *Becoming Vulnerable in Detention*, June 2010, available at: <http://www.unhcr.org/refworld/docid/4ec269f62.html>.

¹⁰² For the purposes of these Guidelines, a child is defined as “a human being below the age of 18 years”, Article 1, United Nations Convention on the Rights of the Child (CRC), 1990. See also UN *Rules for the Protection of Juveniles Deprived of their Liberty*, above note 88.

¹⁰³ UNHCR, *Best Interests Determination Children – Protection and Care Information Sheet*, June 2008, available at: <http://www.unhcr.org/refworld/docid/49103ece2.html>. UNHCR, *Guidelines on Determining the Best Interests of the Child*, May 2008, para. 20, available at: <http://www.unhcr.org/refworld/docid/48480c342.html>. UNHCR, *Field Handbook for the Implementation of UNHCR BID Guidelines*, November 2011, available at: <http://www.unhcr.org/refworld/docid/4e4a57d02.html>. UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08 (UNHCR Guidelines on International Protection on Child Asylum

Claims) para. 5, available at: <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>. CRC General Comment No. 6: *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6 available at: <http://www.unhcr.org/refworld/docid/42dd174b4.html>.

104 *Muskhadzhiyeva and others v. Belgium*, above note 91.

105 UNHCR ExCom Conclusion No. 107 (LVIII) – 2007, on *Children at Risk*, para. G (i), available at:

<http://www.unhcr.org/refworld/docid/471897232.html>. UNHCR, *Guidelines on International Protection on Child Asylum Claims*, above note 103. See, also, International Detention Coalition, *Captured Childhood: Introducing a New Model to Ensure the Rights and Liberty of Refugee, Asylum-Seeking and Irregular Migrant Children Affected by Immigration Detention*, 2012,

<http://idcoalition.org/wp-content/uploads/2012/03/Captured-Childhood-FINAL-June-2012.pdf>; IDC, *Child Sensitive Community Assessment and Placement Model*, available at: <http://idcoalition.org/ccap-5step-model/>.

106 *Popov v. France*, (2012), ECtHR, App. No. 39472/07 and 39474/07, available at: <http://www.unhcr.org/refworld/docid/4f1990b22.html>.

107 *Ibid.*

108 On reception conditions for children, see UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, para. 92, available at:

<http://www.unhcr.org/refworld/docid/3ae6b3470.html>. WGAD *Report to the Thirteenth Session of the Human Rights Council*, above note 59, para. 60: “Given the availability of alternatives to detention, it is difficult to conceive of a situation in which the detention of unaccompanied minors would comply with the requirements of article 37(b), clause 2, of the [CRC], according to which detention can only be used as a last resort.” *Mitunga v. Belgium*, (2006), ECtHR, App. No.13178/03, para. 103, available at: <http://www.unhcr.org/refworld/docid/45d5cef72.html>.

109 Global Roundtable Summary Conclusions, above note 48, para. 7. UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, February 1997, available at:

<http://www.unhcr.org/refworld/docid/3ae6b3360.html>. UNHCR, *Guidelines on International Protection on Child Asylum Claims*, above note 103.

110 UNHCR, *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, *ibid.*

111 An adult who is familiar with the child’s language and culture may also alleviate the stress and trauma of being alone in unfamiliar surroundings.

112 See CRC General Comment No. 6: *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, above note 103, para. 61.

113 See, also, the Bangkok Rules, above note 92.

114 Special measures, for example, would need to be in place to protect the right to live in dignity of women who have been trafficked into the country.

115 Rule 5, Bangkok Rules, above note 92.

- 116 Rule 19, Bangkok Rules, above note 92.
- 117 Rule 33(1), Bangkok Rules, above note 92.
- 118 Rule 25(1), Bangkok Rules, above note 92.
- 119 Rule 25(2), Bangkok Rules, above note 92.
- 120 See OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add. 1, available at: <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.
- 121 Article 14, *International Convention on the Rights of Persons with Disabilities*, 2008 (ICRPD).
- 122 UNHCR ExCom, *Conclusion on Refugees with Disabilities and Other Persons with Disabilities Protected and Assisted by UNHCR*, No. 110 (LXI) –2010, paras. (c), (f), (h), (j), available at: <http://www.unhcr.org/refworld/docid/4cbeaf8c2.html>.
- 123 Language taken from ExCom Conclusion, *ibid.*, preambular para. 3.
- 124 Article 18(1)(b), ICRPD.
- 125 See, for example, Article 17(1), *European Union: Council of the European Union, Council Directive 2003/9/EC of 27 January 2003, Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States*, available at: <http://www.unhcr.org/refworld/docid/3ddcfda14.html>.
- 126 *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, 2006, Principle 9: The right to treatment with humanity while in detention, available at: <http://www.yogyakartaprinciples.org/index.html>.
- 127 OHCHR, Chapter V, (pp. 87-93) of the *Training Manual on Human Rights Monitoring, Professional Training Series n°7*, 2001, available at: <http://www.ohchr.org/Documents/Publications/training7Introen.pdf>; OHCHR, *Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Professional Training Series no. 8, 2001, available at: <http://www.unhcr.org/refworld/docid/4638aca62.html>; Association for the Prevention of Torture, *Monitoring Places of Detention: A Practical Guide*, 2004, available at: <http://www.ap.t.ch>.
- 128 Relevant treaty provisions include paragraph 8 of the UNHCR Statute in conjunction with States' obligations to cooperate with UNHCR in the exercise of its international protection mandate, found in Articles 35 and 36 of the 1951 Convention and Article 2 of the 1967 Protocol; Article 45, ACHPR; European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, Article 35, available at: <http://www.unhcr.org/refworld/pd d/4157e75e4.pdf>.
- 129 A range of international, regional and national bodies exist which have a monitoring or inspection function, such as the Sub-Committee on the Prevention of Torture and national preventive mechanisms set up pursuant to the *Optional Protocol to the Convention Against Torture*, 2002 (OPCAT). National mechanisms would include National Preventive

Mechanisms, National Human Rights Institutions, Ombudsmans, and/or NGOs.

130 Global Roundtable Summary Conclusions, above note 48, para. 25.

131 Rule 25(3), Bangkok Rules, above note 92.

132 Article 27, 1951 Convention. Global Roundtable Summary Conclusions, above note 48, para. 24.

133 Global Roundtable Summary Conclusions, above note 48, para. 22.

134 On the right to family and personal life, see above note 62.

135 Edwards, *Back to Basics: The Right to Liberty and Security of Person and "Alternatives to Detention"*, above note 4, page 1.

136 Global Roundtable Summary Conclusions, above note 48, para. 29.

137 Global Roundtable Summary Conclusions, above note 48, para. 30.

138 Global Roundtable Summary Conclusions, above note 48, para. 31.

139 Global Roundtable Summary Conclusions, above note 48, para. 14.

B8. ACCESS TO JUSTICE FOR PRISONERS

1. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Adopted by General Assembly resolution 40/34 of 29 November 1985

A. Victims of Crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

B. Victims of abuse of power

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

2. Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Whereas in the Charter of the United Nations the peoples of the world affirm, *inter alia*, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

3. Guidelines on the Role of Prosecutors

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, *inter alia*, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts undertaken to translate them fully into reality,

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions,

Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Committee on Crime Prevention and Control was called upon to include among its priorities the

elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas, in resolution 7 of the Seventh Congress the Committee was called upon to consider the need for guidelines relating, *inter alia*, to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses,

The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

Qualifications, selection and training

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.

2. States shall ensure that:

(a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;

(b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.

4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.

6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.

7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

Freedom of expression and association

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.

11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

13. In the performance of their duties, prosecutors shall:

(a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;

(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform

the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Discretionary functions

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

Alternatives to prosecution

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special consideration shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

Relations with other government agencies or institutions

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

Disciplinary proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

Observance of the Guidelines

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.

24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

4. Basic Principles on the Role of Lawyers

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

Whereas in the Charter of the United Nations the peoples of the world affirm, *inter alia*, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safeguards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and

national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest,

The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law

and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

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.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past

discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it

for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

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.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

5. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005

The General Assembly,

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, other relevant human rights instruments and the Vienna Declaration and Programme of Action,

Affirming the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels,

Recognizing that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms international law in the field,

Recalling the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law by the Commission on Human Rights in its resolution 2005/35 of 19 April 2005 and by the Economic and Social Council in its resolution 2005/30 of 25 July 2005, in which the Council recommended to the General Assembly that it adopt the Basic Principles and Guidelines,

1. *Adopts* the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law annexed to the present resolution;
2. *Recommends* that States take the Basic Principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general;

3. *Requests* the Secretary-General to take steps to ensure the widest possible dissemination of the Basic Principles and Guidelines in all the official languages of the United Nations, including by transmitting them to Governments and intergovernmental and non-governmental organizations and by including the Basic Principles and Guidelines in the United Nations publication entitled *Human Rights: A Compilation of International Instruments*.

64th plenary meeting 16 December 2005

Annex

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Preamble

The General Assembly,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, and articles 68 and 75 of the Rome Statute of the International Criminal Court,

Recalling the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular article 7 of the African Charter on Human and Peoples' Rights, article 25 of the American Convention on Human Rights, and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and General Assembly resolution 40/34 of 29 November 1985 by which the Assembly adopted the text recommended by the Congress,

Reaffirming the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation

to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

Noting that the Rome Statute of the International Criminal Court requires the establishment of “principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation”, requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court “to protect the safety, physical and psychological well-being, dignity and privacy of victims” and to permit the participation of victims at all “stages of the proceedings determined to be appropriate by the Court”,

Affirming that the Basic Principles and Guidelines contained herein are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity,

Emphasizing that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

Recalling that international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity,

Noting that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively,

Recognizing that, in honouring the victims’ right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law,

Convinced that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and

international humanitarian law, as well as with humanity at large, in accordance with the following Basic Principles and Guidelines,

Adopts the following Basic Principles and Guidelines:

I. Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law

1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from:

- (a) Treaties to which a State is a party;
- (b) Customary international law;
- (c) The domestic law of each State.

2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

- (a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
- (b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
- (c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;
- (d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

II. Scope of the obligation

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

- (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
- (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

(c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and

(d) Provide effective remedies to victims, including reparation, as described below.

III. Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

IV. Statutes of limitations

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.

7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

V. Victims of gross violations of international human rights law and serious violations of international humanitarian law

8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

VI. Treatment of victims

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

VII. Victims’ right to remedies

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

VIII. Access to justice

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

(a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;

(b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;

(c) Provide proper assistance to victims seeking access to justice;

(d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

IX. Reparation for harm suffered

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State

shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;

(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. *Rehabilitation* should include medical and psychological care as well as legal and social services.

22. *Satisfaction* should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
- (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
- (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
- (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

X. Access to relevant information concerning violations and reparation mechanisms

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

XI. Non-discrimination

25. The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.

XII. Non-derogation

26. Nothing in these Basic Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic

and international law. In particular, it is understood that the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Basic Principles and Guidelines are without prejudice to special rules of international law.

XIII. Rights of others

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

B9. NON-CUSTODIAL MEASURES

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

Adopted by General Assembly resolution 45/110 of 14 December 1990.

I. General principles

1. Fundamental aims

1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

2. The scope of non-custodial measures

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with

the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible.

2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

2.5 Consideration shall be given to dealing with offenders in the community avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.

2.7 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.

3. Legal safeguards

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, background of the offender, the purposes of sentencing and the rights of victims.

3.3 Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.

3.4 Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.

3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender.

3.6 The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.

3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

3.9 The dignity of the offender subject to non-custodial measures shall be protected at all times.

3.10 In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.

3.11 In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family.

3.12 The offender's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons.

4. Saving clause

4.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

II. Pre-trial stage

5. Pre-trial dispositions

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal

system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

6. Avoidance of pre-trial detention

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

III. Trial and sentencing stage

7. Social inquiry reports

7.1 If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

8. Sentencing dispositions

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;

- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.

IV. Post-sentencing stage

9. Post-sentencing dispositions

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

- (a) Furlough and half-way houses;
- (b) Work or education release;
- (c) Various forms of parole;
- (d) Remission;
- (e) Pardon.

9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

V. Implementation of non-custodial measures

10. Supervision

10.1 The purpose of supervision is to reduce reoffending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.

10.2 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

10.3 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual

case aimed at assisting the offender to work on his or her offending. Supervision and treatment should be periodically reviewed and adjusted as necessary.

10.4 Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

11. Duration

11.1 The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.

11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it.

12. Conditions

12.1 If the competent authority shall determine the conditions to be observed by the offender, it should take into account both the needs of society and the needs and rights of the offender and the victim.

12.2 The conditions to be observed shall be practical, precise and as few as possible, and be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and of increasing the offender's chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.

12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the offender.

13. Treatment process

13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence,

values and, especially, the circumstances leading to the commission of the offence.

13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

13.6 For each offender, a case record shall be established and maintained by the competent authority.

14. Discipline and breach of conditions

14.1 A breach of the conditions to be observed by the offender may result in a modification or revocation of the non-custodial measure.

14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the offender.

14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.

14.5 The power to arrest and detain the offender under supervision in cases where there is a breach of the conditions shall be prescribed by law.

14.6 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a judicial or other competent independent authority.

VI. Staff

15. Recruitment

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the offenders to be supervised.

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

16 . Staff training

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to cooperate in and coordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

VII. Volunteers and other community resources

17. Public participation

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

18. Public understanding and cooperation

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote noncustodial measures.

18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

19. Volunteers

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

19.2 Volunteers should encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance according to their capacity and the offenders' needs.

19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for authorized expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

VIII. Research, planning, policy formulation and evaluation

20. Research and planning

20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of offenders.

20.2 Research on the problems that confront clients, practitioners, the community and policy-makers should be carried out on a regular basis.

20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.

21. Policy formulation and programme development

21.1 Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.

21.2 Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively.

21.3 Periodic reviews should be concluded to assess the objectives, functioning and effectiveness of non-custodial measures.

22. Linkages with relevant agencies and activities

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

23. International cooperation

23.1 Efforts shall be made to promote scientific cooperation between countries in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released.

2. Basic principles on the use of restorative justice programmes in criminal matters

ECOSOC Resolution 2002/12

Preamble

Recalling that there has been, worldwide, a significant growth of restorative justice initiatives,

Recognizing that those initiatives often draw upon traditional and indigenous forms of justice which view crime as fundamentally harmful to people,

Emphasizing that restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities,

Stressing that this approach enables those affected by crime to share openly their feelings and experiences, and aims at addressing their needs,

Aware that this approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community wellbeing and to prevent crime,

Noting that restorative justice gives rise to a range of measures that are flexible in their adaptation to established criminal justice systems and that complement those systems, taking into account legal, social and cultural circumstances,

Recognizing that the use of restorative justice does not prejudice the right of States to prosecute alleged offenders,

I. Use of terms

1. “Restorative justice programme” means any programme that uses restorative processes and seeks to achieve restorative outcomes.
2. “Restorative process” means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

3. “Restorative outcome” means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

4. “Parties” means the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative process.

5. “Facilitator” means a person whose role is to facilitate, in a fair and impartial manner, the participation of the parties in a restorative process.

II. Use of restorative justice programmes

6. Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law.

7. Restorative processes should be used only where there is sufficient evidence to charge the offender and with the free and voluntary consent of the victim and the offender. The victim and the offender should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily and should contain only reasonable and proportionate obligations.

8. The victim and the offender should normally agree on the basic facts of a case as the basis for their participation in a restorative process. Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings.

9. Disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring a case to, and in conducting, a restorative process.

10. The safety of the parties shall be considered in referring any case to, and in conducting, a restorative process.

11. Where restorative processes are not suitable or possible, the case should be referred to the criminal justice authorities and a decision should be taken as to how to proceed without delay. In such cases, criminal justice officials should endeavour to encourage the offender to take responsibility vis-à-vis the victim and affected communities, and support the reintegration of the victim and the offender into the community.

III. Operation of restorative justice programmes

12. Member States should consider establishing guidelines and standards, with legislative authority when necessary, that govern the use of restorative justice programmes. Such guidelines and standards should respect the basic principles set forth in the present instrument and should address, inter alia:

- (a) The conditions for the referral of cases to restorative justice programmes;
- (b) The handling of cases following a restorative process;
- (c) The qualifications, training and assessment of facilitators;
- (d) The administration of restorative justice programmes;
- (e) Standards of competence and rules of conduct governing the operation of restorative justice programmes.

13. Fundamental procedural safeguards guaranteeing fairness to the offender and the victim should be applied to restorative justice programmes and in particular to restorative processes:

- (a) Subject to national law, the victim and the offender should have the right to consult with legal counsel concerning the restorative process and, where necessary, to translation and/or interpretation. Minors should, in addition, have the right to the assistance of a parent or guardian;
- (b) Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision;
- (c) Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes.

14. Discussions in restorative processes that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties or as required by national law.

15. The results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements. Where that occurs, the outcome should have the same status as any other judicial decision or judgement and should preclude prosecution in respect of the same facts.

16. Where no agreement is reached among the parties, the case should be referred back to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to reach an agreement alone shall not be used in subsequent criminal justice proceedings.

17. Failure to implement an agreement made in the course of a restorative process should be referred back to the restorative programme or, where required by national law, to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to implement an agreement, other than a judicial decision or judgement, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

18. Facilitators should perform their duties in an impartial manner, with due respect to the dignity of the parties. In that capacity, facilitators should ensure that the parties act with respect towards each other and enable the parties to find a relevant solution among themselves.

19. Facilitators shall possess a good understanding of local cultures and communities and, where appropriate, receive initial training before taking up facilitation duties.

IV. Continuing development of restorative justice programmes

20. Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and at the promotion of a culture favourable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities.

21. There should be regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding and enhance the effectiveness of restorative processes and outcomes, to increase the extent to which restorative programmes are used, and to explore ways in which restorative approaches might be incorporated into criminal justice practices.

22. Member States, in cooperation with civil society where appropriate, should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to the criminal justice process and provide positive outcomes for all parties. Restorative justice processes may need to undergo change in concrete form over time. Member States should therefore encourage regular evaluation and modification of such programmes. The results of research and evaluation should guide further policy and programme development.

V. Saving clause

23. Nothing in these basic principles shall affect any rights of an offender or a victim which are established in national law or applicable international law.

II

INTERNATIONAL HUMANITARIAN LAW

1. Geneva Convention (III) relative to the treatment of Prisoners of War of 12 August 1949

Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949. Entry into force 21 October 1950.

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War, have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 4

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

1. Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

2. Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

- (a) That of being commanded by a person responsible for his subordinates;
- (b) That of having a fixed distinctive sign recognizable at a distance;
- (c) That of carrying arms openly;
- (d) That of conducting their operations in accordance with the laws and customs of war.

3. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

4. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

5. Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention:

1. Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to

which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

2. The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

Article 5

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

Article 6

In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60,

65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where

more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Article 7

Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Article 8

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Article 9

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

Article 10

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the

present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

Article 11

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

PART II

GENERAL PROTECTION OF PRISONERS OF WAR

Article 12

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

Article 13

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

Article 14

Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men. Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either

within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

Article 15

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.

Article 16

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

PART III

CAPTIVITY

SECTION I

BEGINNING OF CAPTIVITY

Article 17

Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information. If he wilfully infringes this rule, he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand.

Article 18

All effects and articles of personal use, except arms, horses, military equipment and military documents shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise the sums taken away in any currency other than that of the Detaining Power and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity.

Article 19

Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

Article 20

The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible.

SECTION II

INTERNMENT OF PRISONERS OF WAR

Chapter I

GENERAL OBSERVATIONS

Article 21

The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or forbidding its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and towards the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given.

Article 22

Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.

Article 23

No prisoner of war may at any time be sent to or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner of war camps.

Whenever military considerations permit, prisoner of war camps shall be indicated in the day-time by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such.

Article 24

Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment as in other camps.

Chapter II

QUARTERS, FOOD AND CLOTHING OF PRISONERS OF WAR

Article 25

Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

Article 26

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

Article 27

Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.

Article 28

Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices. The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Chapter III

HYGIENE AND MEDICAL ATTENTION

Article 29

The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

Article 30

Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.

Article 31

Medical inspections of prisoners of war shall be held at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.

Article 32

Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49.

Chapter IV

MEDICAL PERSONNEL AND CHAPLAINS RETAINED TO ASSIST PRISONERS OF WAR

Article 33

Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministrations to, prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

- (a) They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.
- (b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.
- (c) Although they shall be subject to the internal discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.

During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

Chapter V

RELIGIOUS, INTELLECTUAL AND PHYSICAL ACTIVITIES

Article 34

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held.

Article 35

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing

prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

Article 36

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

Article 37

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed, at the request of the prisoners concerned, to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

Article 38

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise, including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

Chapter VI

DISCIPLINE

Article 39

Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the camp commander regardless of his rank.

Article 40

The wearing of badges of rank and nationality, as well as of decorations, shall be permitted.

Article 41

In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, at places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

Article 42

The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.

Chapter VII

RANK OF PRISONERS OF WAR

Article 43

Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognize promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.

Article 44

Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

Article 45

Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

Chapter VIII

TRANSFER OF PRISONERS OF WAR AFTER THEIR ARRIVAL IN CAMP

Article 46

The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

Article 47

Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or if they are exposed to greater risks by remaining on the spot than by being transferred.

Article 48

In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.

The costs of transfers shall be borne by the Detaining Power.

SECTION III

LABOUR OF PRISONERS OF WAR

Article 49

The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

Article 50

Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

- (a) Agriculture;
- (b) Industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose;
- (c) Transport and handling of stores which are not military in character or purpose;
- (d) Commercial business, and arts and crafts;
- (e) Domestic service;
- (f) Public utility services having no military character or purpose.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

Article 51

Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures.

Article 52

Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour.

Article 53

The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece-work are employed, the length of the working period shall not be rendered excessive thereby.

Article 54

The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123.

Article 55

The fitness of prisoners of war for work shall be periodically verified by medical examinations at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom.

Article 56

The organization and administration of labour detachments shall be similar to those of prisoner of war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

Article 57

The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

SECTION IV

FINANCIAL RESOURCES OF PRISONERS OF WAR

Article 58

Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or by the camp administration who will charge them to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

Article 59

Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

Article 60

The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

Category I: Prisoners ranking below sergeant: eight Swiss francs.

Category II: Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss francs.

Category III: Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: fifty Swiss francs.

Category IV: Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: sixty Swiss francs.

Category V: General officers or prisoners of equivalent rank: seventy-five Swiss francs.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

- (a) Shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above;
- (b) May temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitations will be given without delay to the Protecting Power.

Article 61

The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

Article 62

Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The

Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay.

Article 63

Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependants shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

Article 64

The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

1. The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.
2. The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 63, third paragraph.

Article 65

Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war.

Article 66

On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

Article 67

Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities.

Article 68

Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim by a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123.

SECTION V

RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

Article 69

Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section.

They shall likewise inform the parties concerned of any subsequent modifications of such measures.

Article 70

Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

Article 71

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the

prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner of war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.

Article 72

Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels.

Article 73

In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations concerning collective shipments, which are annexed to the present Convention, shall be applied.

The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Article 74

All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them.

Article 75

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with

such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

- (a) Correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaux referred to in Article 122;
- (b) Correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby.

Article 76

The censoring of correspondence addressed to prisoners of war or despatched by them shall be done as quickly as possible. Mail shall be censored only by the despatching State and the receiving State, and once only by each.

The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Article 77

The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instruments, papers or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures.

SECTION VI

RELATIONS BETWEEN PRISONERS OF WAR AND THE AUTHORITIES

Chapter I

COMPLAINTS OF PRISONERS OF WAR RESPECTING THE CONDITIONS OF CAPTIVITY

Article 78

Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited nor considered to be a part of the correspondence quota referred to in Article 71. They must be transmitted immediately. Even if they are recognized to be unfounded, they may not give rise to any punishment.

Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers.

Chapter II

PRISONER OF WAR REPRESENTATIVES

Article 79

In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing

them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.

Article 80

Prisoners' representatives shall further the physical, spiritual and intellectual wellbeing of prisoners of war.

In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance, this organization will be within the province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention.

Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war.

Article 81

Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspection of labour detachments, receipt of supplies, etc.).

Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to consult freely his prisoners' representative.

All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and with the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 71.

Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

In case of dismissal, the reasons therefor shall be communicated to the Protecting Power.

Chapter III

PENAL AND DISCIPLINARY SANCTIONS

I. General provisions

Article 82

A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only.

Article 83

In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures.

Article 84

A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.

Article 85

Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

Article 86

No prisoner of war may be punished more than once for the same act, or on the same charge.

Article 87

Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent

of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

Collective punishment for individual acts, corporal punishments, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges.

Article 88

Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.

In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.

Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war.

II. Disciplinary sanctions

Article 89

The disciplinary punishments applicable to prisoners of war are the following:

1. A fine which shall not exceed 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days.
2. Discontinuance of privileges granted over and above the treatment provided for by the present Convention.
3. Fatigue duties not exceeding two hours daily.
4. Confinement.

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.

Article 90

The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

Article 91

The escape of a prisoner of war shall be deemed to have succeeded when:

1. He has joined the armed forces of the Power on which he depends, or those of an allied Power;
2. He has left the territory under the control of the Detaining Power, or of an ally of the said Power;
3. He has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last-named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

Article 92

A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

Article 93

Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, the wearing of civilian clothing, shall occasion disciplinary punishment only.

Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only.

Article 94

If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made.

Article 95

A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interests of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline.

Article 96

Acts which constitute offences against discipline shall be investigated immediately.

Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.

Article 97

Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women.

Article 98

A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is

confined. In no case may he be deprived of the benefits of the provisions of Articles 78 and 126.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand over to the infirmary the perishable goods contained in such parcels.

III. Judicial proceedings

Article 99

No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel.

Article 100

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

Article 101

If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.

Article 102

A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.

Article 103

Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.

The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial.

Article 104

In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This period of three weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

The said notification shall contain the following information:

1. Surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any;
2. Place of internment or confinement;

3. Specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable;
4. Designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned.

Article 105

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held in camera in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

Article 106

Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

Article 107

Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced on a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

1. The precise wording of the finding and sentence;
2. A summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defence;
3. Notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing subparagraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

Article 108

Sentences pronounced on prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same

conditions as in the case of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and despatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph.

PART IV

TERMINATION OF CAPTIVITY

SECTION I

DIRECT REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES

Article 109

Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.

Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the cooperation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the following Article. They may, in addition, conclude agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity.

No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this article, may be repatriated against his will during hostilities.

Article 110

The following shall be repatriated direct:

1. Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.
2. Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.
3. Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

The following may be accommodated in a neutral country:

1. Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.
2. Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

1. Those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation;
2. Those whose mental or physical powers remain, even after treatment, considerably impaired.

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention.

Article 111

The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers, shall endeavour to conclude

agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities.

Article 112

Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them. The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission.

Article 113

Besides those who are designated by the medical authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories listed below shall be entitled to present themselves for examination by the Mixed Medical Commissions provided for in the foregoing Article:

1. Wounded and sick proposed by a physician or surgeon who is of the same nationality, or a national of a Party to the conflict allied with the Power on which the said prisoners depend, and who exercises his functions in the camp.
2. Wounded and sick proposed by their prisoners' representative.
3. Wounded and sick proposed by the Power on which they depend, or by an organization duly recognized by the said Power and giving assistance to the prisoners.

Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by Mixed Medical Commissions, but shall be examined only after those belonging to the said categories.

The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the Mixed Medical Commission, likewise the prisoners' representative of the said prisoners, shall have permission to be present at the examination.

Article 114

Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country.

Article 115

No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

Prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment.

Article 116

The costs of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend.

Article 117

No repatriated person may be employed on active military service.

SECTION II

RELEASE AND REPATRIATION OF PRISONERS OF WAR AT THE CLOSE OF HOSTILITIES

Article 118

Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the Power on which the

prisoners depend. This apportionment shall be carried out on the following basis:

- (a) If the two Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.
- (b) If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as its frontier or its port of embarkation nearest to the territory of the Power on which the prisoners of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war.

Article 119

Repatriation shall be effected in conditions similar to those laid down in Articles 46 to 48 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 118 and to those of the following paragraphs.

On repatriation, any articles of value impounded from prisoners of war under Article 18, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 122.

Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can reasonably carry. Each prisoner shall in all cases be authorized to carry at least twenty-five kilograms.

The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.

Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if

necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence.

Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of the proceedings or until punishment has been completed.

By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

SECTION III

DEATH OF PRISONERS OF WAR

Article 120

Wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power; a certified copy shall be sent to the Central Agency.

Death certificates in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 122. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 17, and also the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The detaining authorities shall ensure that prisoners of war who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

Article 121

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

PART V

INFORMATION BUREAUX AND RELIEF SOCIETIES FOR PRISONERS OF WAR

Article 122

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who

may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in the fourth, fifth and sixth paragraphs of this Article regarding any enemy person belonging to one of the categories referred to in Article 4, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.

The Bureau shall immediately forward such information by the most rapid means to the Powers concerned, through the intermediary of the Protecting Powers and likewise of the Central Agency provided for in Article 123.

This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 17, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names, rank, army, regimental, personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital, and deaths, and shall transmit such information in the manner described in the third paragraph above.

Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

The Information Bureau shall also be responsible for replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any enquiries necessary to obtain the information which is asked for if this is not in its possession.

All written communications made by the Bureau shall be authenticated by a signature or a seal.

The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full particulars of the identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the Parties to the conflict concerned.

Article 123

A Central Prisoners of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency.

The function of the Agency shall be to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief Societies provided for in Article 125.

Article 124

The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 74, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

Article 125

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such societies or organizations may be constituted in the territory of the Detaining Power or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

As soon as relief supplies or material intended for the above-mentioned purposes are handed over to prisoners of war, or very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organization making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners.

PART VI

EXECUTION OF THE CONVENTION

SECTION I

GENERAL PROVISIONS

Article 126

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They

shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

Article 127

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.

Article 128

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Article 129

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave

breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

Article 130

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

Article 131

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Article 132

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

SECTION 11

FINAL PROVISIONS

Article 133

The present Convention is established in English and in French. Both texts are equally authentic. The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Article 134

The present Convention replaces the Convention of 27 July 1929, in relations between the High Contracting Parties.

Article 135

In the relations between the Powers which are bound by The Hague Convention respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of The Hague.

Article 136

The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Convention of July 27, 1929.

Article 137

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 138

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

Article 139

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Article 140

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 141

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Article 142

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

Article 143

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform

the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

IN WITNESS WHEREOF the undersigned, having deposited their respective full powers, have signed the present Convention.

DONE at Geneva this twelfth day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

ANNEX I
MODEL AGREEMENT CONCERNING DIRECT REPATRIATION
AND ACCOMMODATION IN NEUTRAL COUNTRIES OF
WOUNDED AND SICK PRISONERS OF WAR

(see Article 110)

**I. PRINCIPLES FOR DIRECT REPATRIATION AND
ACCOMMODATION IN NEUTRAL COUNTRIES**

A. DIRECT REPATRIATION

The following shall be repatriated direct:

1. All prisoners of war suffering from the following disabilities as the result of trauma: loss of limb, paralysis, articular or other disabilities, when this disability is at least the loss of a hand or a foot, or the equivalent of the loss of a hand or a foot.

Without prejudice to a more generous interpretation, the following shall be considered as equivalent to the loss of a hand or a foot:

- (a) Loss of a hand or of all the fingers, or of the thumb and forefinger of one hand; loss of a foot, or of all the toes and metatarsals of one foot.
- (b) Ankylosis, loss of osseous tissue, cicatricial contracture preventing the functioning of one of the large articulations or of all the digital joints of one hand.
- (c) Pseudarthrosis of the long bones.
- (d) Deformities due to fracture or other injury which seriously interfere with function and weight-bearing power.

2. All wounded prisoners of war whose condition has become chronic, to the extent that prognosis appears to exclude recovery-in spite of treatment-within one year from the date of the injury, as, for example, in case of:

- (a) Projectile in the heart, even if the Mixed Medical Commission should fail, at the time of their examination, to detect any serious disorders.
- (b) Metallic splinter in the brain or the lungs, even if the Mixed Medical Commission cannot, at the time of examination, detect any local or general reaction.

- (c) Osteomyelitis, when recovery cannot be foreseen in the course of the year following the injury, and which seems likely to result in ankylosis of a joint, or other impairments equivalent to the loss of a hand or a foot.
- (d) Perforating and suppurating injury to the large joints.
- (e) Injury to the skull, with loss or shifting of bony tissue.
- (f) Injury or burning of the face with loss of tissue and functional lesions.
- (g) Injury to the spinal cord.
- (h) Lesion of the peripheral nerves, the sequelae of which are equivalent to the loss of a hand or foot, and the cure of which requires more than a year from the date of injury, for example: injury to the brachial or lumbosacral plexus, the median or sciatic nerves, likewise combined injury to the radial and cubital nerves or to the lateral popliteal nerve (*N. peroneus communes*) and medial popliteal nerve (*N. tibialis*); etc. The separate injury of the 'radial (musculo-spiral), cubital. lateral or medial popliteal nerves shall not, however, warrant repatriation except in case of contractures or of serious neurotrophic disturbance.
- (i) Injury to the urinary system, with incapacitating results.

3. All sick prisoners of war whose condition has become chronic to the extent that prognosis seems to exclude recovery-in spite of treatment-within one year from the inception of the disease, as, for example, in case of:

- (a) Progressive tuberculosis of any organ which, according to medical prognosis, cannot be cured, or at least considerably improved, by treatment in a neutral country.
- (b) Exudate pleurisy.
- (c) Serious diseases of the respiratory organs of non-tubercular etiology, presumed incurable, for example: serious pulmonary emphysema, with or without bronchitis, chronic asthma;* chronic bronchitis* lasting more than one year in captivity; bronchiectasis,* etc.
- (d) Serious chronic affections of the circulatory system, for example: valvular lesions and myocarditis* which have shown signs of circulatory failure during captivity, even though the Mixed Medical Commission cannot detect any such signs at the time of examination; affections of the pericardium and the vessels (Buerger's disease, aneurism of the large vessels); etc.
- (e) Serious chronic affections of the digestive organs, for example: gastric or duodenal ulcer-, sequelae of gastric operations performed in captivity;

chronic gastritis, enteritis or colitis, having lasted more than one year and seriously affecting the general condition: cirrhosis of the liver, chronic cholecystopathy;* etc.

- (f) Serious chronic affections of the genito-urinary organs, for example: chronic diseases of the kidney with consequent disorders; nephrectomy because of a tubercular kidney; chronic pyelitis or chronic cystitis: hydronephrosis or pyonephrosis; chronic grave gynaecological conditions, normal pregnancy, and obstetrical disorder, where it is impossible to accommodate in a neutral country; etc.
- (g) Serious chronic diseases of the central and peripheral nervous system, for example: all obvious psychoses and psychoneuroses, such as serious hysteria, serious captivity psychoneurosis, etc., duly verified by a specialist;* any epilepsy duly verified by the camp physicians.' cerebral arteriosclerosis- chronic neuritis lasting more than one year, etc.
- (h) Serious chronic disease of the neuro-vegetative system, with considerable diminution of mental or physical fitness noticeable loss of weight and general asthenia.
- (i) Blindness of both eyes, or of one eye when the vision of the other is less than I in spite of the use of corrective glasses; diminution of visual acuity in cases where it is impossible to restore it by correction to an acuity of 1/2 in at least one eye;* other grave ocular affections, for example: glaucoma, iritis, choroiditis; trachoma, etc.
- (j) Auditive disorders, such as total unilateral deafness, if the other ear does not discern the ordinary spoken word at a distance of one metre;* etc.
- (k) Serious affections of metabolism, for example: diabetes mellitus requiring insulin treatment; etc.
- (l) Serious disorders of the endocrine glands, for example: thyrotoxicosis; hypothyrosis; Addison's disease; Simmonds' cachexia; tetany; etc.
- (m) Grave and chronic disorders of the blood-forming organs.
- (n) Serious cases of chronic intoxication, for example: lead poisoning, mercury poisoning, morphinism, cocaineism, alcoholism; gas or radiation poisoning; etc.
- (o) Chronic affections of locomotion, with obvious functional disorders, for example: arthritis deformans, primary and secondary progressive chronic polyarthritis; rheumatism with serious clinical symptoms; etc.
- (p) Serious chronic skin diseases not amenable to treatment.
- (q) Any malignant growth.
- (r) Serious chronic infectious diseases, persisting for one year after their inception, for example: malaria with decided organic impairment, amoebic

or bacillary dysentery with grave disorders; tertiary visceral syphilis resistant to treatment; leprosy; etc.

(s) Serious avitaminosis or serious inanition.

B. ACCOMMODATION IN NEUTRAL COUNTRIES

The following shall be eligible for accommodation in a neutral country:

1. All wounded prisoners of war who are not likely to recover in captivity, but who might be cured or whose condition might be considerably improved by accommodation in a neutral country.
2. Prisoners of war suffering from any form of tuberculosis, of whatever organ, and whose treatment in a neutral country would be likely to lead to recovery or at least to considerable improvement, with the exception of primary tuberculosis cured before captivity.
3. Prisoners of war suffering from affections requiring treatment of the respiratory, circulatory, digestive, nervous, sensory, genito-urinary, cutaneous, locomotive organs, etc., if such treatment would clearly have better results in a neutral country than in captivity.
4. Prisoners of war who have undergone a nephrectomy in captivity for a nontubercular renal affection; cases of osteomyelitis, on the way to recovery or latent; diabetes mellitus not requiring insulin treatment; etc.
5. Prisoners of war suffering from war or captivity neuroses.

Cases of captivity neurosis which are not cured after three months of accommodation in a neutral country, or which after that length of time are not clearly on the way to complete cure, shall be repatriated.

6. All prisoners of war suffering from chronic intoxication (gases, metals, alkaloids, etc.), for whom the prospects of cure in a neutral country are especially favourable.
7. All women prisoners of war who are pregnant or mothers with infants and small children.

The following cases shall not be eligible for accommodation in a neutral country:

1. All duly verified chronic psychoses.
2. All organic or functional nervous affections considered to be incurable.
3. All contagious diseases during the period in which they are transmissible, with the exception of tuberculosis.

II. GENERAL OBSERVATIONS

1. The conditions given shall, in a general way, be interpreted and applied in as broad a spirit as possible.

Neuropathic and psychopathic conditions caused by war or captivity, as well as cases of tuberculosis in all stages, shall above all benefit by such liberal interpretation. Prisoners of war Who have sustained several wounds, none of which, considered by itself, justifies repatriation, shall be examined in the same spirit, with due regard for the psychic traumatism due to the number of their wounds.

2. All unquestionable cases giving the right to direct repatriation (amputation, total blindness or deafness. open pulmonary tuberculosis, mental disorder. malignant growth, etc.) shall be examined and repatriated as soon as possible by the camp physicians or by military medical commissions appointed by the Detaining Power.

3. Injuries and diseases which existed before the war and which have not become worse. as well as war injuries which have not prevented subsequent military service, shall not entitle to direct repatriation.

4. The provisions of this Annex shall be interpreted and applied in a similar manner in all countries party to the conflict. The Powers and authorities concerned shall grant to Mixed Medical Commissions all the facilities necessary for the accomplishment of their task.

5. The examples quoted under (1) above represent only typical cases, cases which do not correspond exactly to these provisions shall be judged in the spirit of the provisions of Article I 10 of the present Convention, and of the principles embodied in the present Agreement.

ANNEX II
REGULATIONS CONCERNING MIXED MEDICAL COMMISSIONS
(see Article 112)

Article 1

The Mixed Medical Commissions provided for in Article 112 of the Convention shall be composed of three members, two of whom shall belong to a neutral country, the third being appointed by the Detaining Power. One of the neutral members shall take the chair.

Article 2

The two neutral members shall be appointed by the International Committee of the Red Cross, acting in agreement with the Protecting Power, at the request of the Detaining Power. They may be domiciled either in their country of origin, in any other neutral country, or in the territory of the Detaining Power.

Article 3

The neutral members shall be approved by the Parties to the conflict concerned, who notify their approval to the International Committee of the Red Cross and to the Protecting Power. Upon such notification, the neutral members shall be considered as effectively appointed.

Article 4

Deputy members shall also be appointed in sufficient number to replace the regular members in case of need. They shall be appointed at the same time as the regular members or, at least, as soon as possible.

Article 5

If for any reason the International Committee of the Red Cross cannot arrange for the appointment of the neutral members, this shall be done by the Power protecting the interests of the prisoners of war to be examined.

Article 6

So far as possible, one of the two neutral members shall be a surgeon and the other a physician.

Article 7

The neutral members shall be entirely independent of the Parties to the conflict, which shall grant them all facilities in the accomplishment of their duties.

Article 8

By agreement with the Detaining Power, the International Committee of the Red Cross, when making the appointments provided for in Articles 2 and 4 of the present Regulations, shall settle the terms of service of the nominees.

Article 9

The Mixed Medical Commissions shall begin their work as soon as possible after the neutral members have been approved, and in any case within a period of three months from the date of such approval.

Article 10

The Mixed Medical Commissions shall examine all the prisoners designated in Article 113 of the Convention. They shall propose repatriation, rejection, or reference to a later examination. Their decisions shall be made by a majority vote.

Article 11

The decisions made by the Mixed Medical Commissions in each specific case shall be communicated, during the month following their visit, to the Detaining Power, the Protecting Power and the International Committee of the Red Cross. The Mixed Medical Commissions shall also inform each prisoner of war examined of the decision made, and shall issue to those whose repatriation has been proposed, certificates similar to the model appended to the present Convention.

Article 12

The Detaining Power shall be required to carry out the decisions of the Mixed Medical Commissions within three months of the time when it receives due notification of such decisions.

Article 13

If there is no neutral physician in a country where the services of a Mixed Medical Commission seem to be required, and if it is for any reason impossible to appoint neutral doctors who are resident in another country, the Detaining Power, acting in agreement with the Protecting Power, shall set up a Medical Commission which shall undertake the same duties as a Mixed Medical Commission, subject to the provisions of Articles 1, 2, 3, 4, 5 and 8 of the Present Regulations.

Article 14

Mixed Medical Commissions shall function permanently and shall visit each camp at intervals of not more than six months.

ANNEX III
REGULATIONS CONCERNING COLLECTIVE RELIEF
(see Article 73)

Article 1

Prisoners' representatives shall be allowed to distribute collective relief shipments for which they are sible, to all prisoners of war administered by their camp, including those who am in hospitals or in prisons or other penal establishments.

Article 2

The distribution of collective relief shipments shall be effected in accordance with the instructions of the donors and with a plan drawn up by the prisoners' representatives. 'Me issue of medical stores shall. however, be made for preference in agreement with the senior medical officers, and the latter may. in hospitals and infirmaries, waive the said instructions, if the needs of their patients so demand. Within the limits thus defined, the distribution shall always be carried out equitably.

Article 3

The said prisoners' representatives or their assistants shall be allowed to go to the points of arrival of relief supplies near their camps. so as to enable the prisoners' representatives or their assistants to verify the quality as well as the quantity of the goods received, and to make out detailed reports thereon for the donors.

Article 4

Prisoners' representatives shall be given the facilities necessary for verifying whether the distribution of collective relief in all sub-divisions and annexes of their camps has been carried out in accordance with their instructions.

Article 5

Prisoners' representatives shall be allowed to fill up, and cause to be filled up by the prisoners' representatives of labour detachments or by the senior medical officers of infirmaries and hospitals, forms or questionnaires intended for the donors, relating to collective relief supplies (distribution. requirements, quantities, etc.). Such forms and questionnaires, duly completed, shall be forwarded to the donors without delay.

Article 6

In order to secure the regular issue of collective relief to the prisoners of war in their camp. and to meet any needs that may arise from the arrival of new contingents of prisoners, prisoners' representatives shall be allowed to build up and maintain adequate reserve stocks of collective relief. For this purpose, they shall have suitable warehouses at their disposal; each warehouse shall be provided with two locks, the prisoners' representative holding the keys of one lock and the camp commander the keys of the other.

Article 7

When collective consignments of clothing are available each prisoner of war shall retain in his possession at least one complete set of clothes. If a prisoner has more than one set of clothes, the prisoners' representative shall be permitted to withdraw excess clothing from those with the largest number of sets, or particular articles in excess of one, if this is necessary in order to supply prisoners who are less well provided. He shall not, however, withdraw second sets of underclothing, socks or footwear, unless this is the only means of providing for prisoners of war with none.

Article 8

The High Contracting Parties, and the Detaining Powers in particular, shall authorize, as far as possible and subject to the regulations governing the supply of the population, all purchases of goods made in their territories for the distribution of collective relief to prisoners of war. They shall similarly facilitate the transfer of funds and other financial measures of a technical or administrative nature taken for the purpose of making such purchases.

Article 9

The foregoing provisions shall not constitute an obstacle to the right of prisoners of war to receive collective relief before their arrival in a camp or in the course of transfer, nor to the possibility of representatives of the Protecting Power, the International Committee of the Red Cross, or any other body giving assistance to prisoners which may be responsible for the forwarding of such supplies, ensuring the distribution thereof to the addressees by any other means that they may deem useful.

ANNEX IV

A. IDENTITY CARD

(See Article 4)

<p>NOTICE</p> <p>This identity card is issued to persons who accompany the Armed Forces of but are not part of them. The card must be carried at all times by the person to whom it is issued. If the bearer is taken prisoner, he shall at once hand the card to the Detaining Authorities, to assist in his identification.</p>		<p>Finger-prints (optional)</p> <p>(Left forefinger) _____ (Right forefinger) _____</p>		<p>Any other mark of identification</p> <p>.....</p> <p>.....</p>
<p>Official seal imprint</p>	<p>Blood type</p> <p>Religion</p>			
<p>Hair</p>	<p>Eyes</p>	<p>Weight</p>	<p>Height</p>	
<p>(Name of the country and military authority issuing this card)</p> <p>IDENTITY CARD</p> <p>FOR A PERSON WHO ACCOMPANIES THE ARMED FORCES</p> <p>Name</p> <p>First names.....</p> <p>Date and place of birth.....</p> <p>Accompanies the Armed Forces as</p> <p>Date of issue _____ Signature of bearer _____</p> <p>.....</p>				

Remarks. — This card should be made out for preference in two or three languages, one of which is in international use. Actual size of the card: 13 by 10 centimetres. It should be folded along the dotted line.

ANNEX IV

B. CAPTURE CARD

(See Article 70)

1. Front	<u>PRISONER OF WAR MAIL</u> <div style="float: right; border: 1px solid black; padding: 2px 10px;">Postage free</div>	
	CAPTURE CARD FOR PRISONER OF WAR	
2. Reverse side	<p style="text-align: center;">IMPORTANT</p> <p>This card must be completed by each prisoner immediately after being taken prisoner and each time his address is changed (by reason of transfer to a hospital or to another camp).</p> <p>This card is distinct from the special card which each prisoner is allowed to send to his relatives.</p>	<p style="text-align: center;">CENTRAL PRISONERS OF WAR AGENCY</p> <p style="text-align: center;">International Committee of the Red Cross</p> <p style="text-align: center;">GENEVA (Switzerland)</p>
	<p>Write legibly and in block letters</p> <p>1. Power on which the prisoner depends</p> <hr/> <p>2. Name 3. First names (in full) 4. First name of father</p> <hr/> <p>5. Date of birth 6. Place of birth</p> <p>7. Rank</p> <p>8. Service number</p> <p>9. Address of next of kin</p> <hr/> <p>*10. Taken prisoner on: (or) Coming from (Camp No., hospital, etc.)</p> <hr/> <p>*11. a) Good health—b) Not wounded—c) Recovered—d) Convalescent—e) Sick— f) Slightly wounded—g) Seriously wounded.</p> <hr/> <p>12. My present address is: Prisoner No. Name of camp.....</p> <hr/> <p>13. Date..... 14. Signature</p> <hr/> <p>* Strike out what is not applicable—Do not add any remarks—See explanations overleaf.</p>	

Remarks. — This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. Actual size of the form: 15 by 10.5 centimetres.

ANNEX IV

C. CORRESPONDENCE CARD AND LETTER

(See Article 71)

1. LETTER

Remarks. — This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. It should be folded along the dotted line, the tab being inserted in the slit (marked by a line of asterisks); it then has the appearance of an envelope. Overleaf, it is lined like the postcard above (*Annex IV C1*); this space can contain about 250 words which the prisoner is free to write. Actual size of the folded form: 29 by 15 centimetres.

PRISONER OF WAR MAIL	
—	
Postage free	
To	
.....	
Place .....	.....
Street .....	.....
Country .....	.....
Department or Province .....	.....
.....	
.....	
Country where posted	
Name of camp	
Prisoner of War No.	
Date and place of birth	
Name and first names	
Sender:	

.....	

ANNEX IV

D. NOTIFICATION OF DEATH*(See Article 120)*

(Title of responsible authority)		NOTIFICATION OF DEATH
		Power on which the prisoner depended
Name and first names		
First name of father	.....
Place and date of birth	.....
Place and date of death	.....
Rank and service number (as given on identity disc)	.....
Address of next of kin	.....
Where and when taken prisoner	.....
Cause and circumstances of death	.....
Place of burial	.....
Is the grave marked and can it be found later by the relatives ?	.....
Are the personal effects of the deceased in the keeping of the Detaining Power or are they being forwarded together with this notification ?	.....
If forwarded, through what agency ?	.....
Can the person who cared for the deceased during sickness or during his last moments (doctor, nurse, minister of religion, fellow prisoner) give here or on an attached sheet a short account of the circumstances of the death and burial ?	.....
(Date, seal and signature of responsible authority)	Signature and address of two witnesses	
.....	

Remarks. — This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. Actual size of the form: 21 by 30 centimetres.

ANNEX IV

E. REPATRIATION CERTIFICATE

(see Annex II, Article 11)

REPATRIATION CERTIFICATE

Date:

Camp:

Hospital:

Surname:

First names:

Date of birth:

Rank:

Army number:

P. W. number:

Injury-Disease:

Decision of the Commission:

Chairman of the
Mixed Medical Commission:

A = direct repatriation

B = accommodation in a neutral country

NC = re-examination by next Commission

ANNEX V

MODEL REGULATIONS CONCERNING PAYMENTS SENT BY PRISONERS TO THEIR OWN COUNTRY

(see Article 63)

1. The notification referred to in the third paragraph of Article 63 will show:
 - (a) Number as specified in Article 17, rank, surname and first names of the prisoner of war who is the payer;
 - (b) The name and address of the payee in the country of origin;
 - (c) The amount to be so paid in the currency of the country in which he is detained.
2. The notification will be signed by the prisoner of war, or his witnessed mark made upon if it he cannot write, and shall be countersigned by the prisoners' representative.
3. The camp commander will add to this notification a certificate that the prisoner of war concerned has a credit balance of not less than the amount registered as payable.
4. The notification may be made up in lists, each sheet of such lists witnessed by the prisoners' representative and certified by the camp commander.

2. Geneva Convention (IV) relative to the Protection of Civilian Persons in time of War of 12 August 1949

Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949. Entry into force 21 October 1950.

(Extracts)

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War, have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 4

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it.

Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention.

Article 5

Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Article 6

The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory,

by the provisions of the following Articles of the present Convention: I to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, and 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention.

Article 7

In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.

Protected persons shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Article 8

Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Article 9

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Article 10

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

Article 11

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When persons protected by the present Convention do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

The provisions of this Article shall extend and be adapted to cases of nationals of a neutral State who are in occupied territory or who find themselves in the territory of a belligerent State with which the State of which they are nationals has not normal diplomatic representation.

Article 12

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement. For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for protected person, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross who shall be invited to take part in such a meeting.

PART II

GENERAL PROTECTION OF POPULATIONS AGAINST CERTAIN CONSEQUENCES OF WAR

Article 13

The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

Article 14

In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities.

Article 15

Any Party to the conflict may, either directly or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction:

- (a) Wounded and sick combatants or non-combatants;
- (b) Civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralized zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralization of the zone.

Article 16

The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

Article 17

The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.

(...)

PART III

STATUS AND TREATMENT OF PROTECTED PERSONS

SECTION I

PROVISIONS COMMON TO THE TERRITORIES OF THE PARTIES TO THE CONFLICT AND TO OCCUPIED TERRITORIES

Article 27

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Article 28

The presence of a protected person may not be used to render certain points or areas immune from military operations.

Article 29

The Party to the conflict in whose hands protected persons may be is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

Article 30

Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them.

These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations.

Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the Detaining or Occupying Powers shall facilitate as much as possible visits to protected persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons.

Article 31

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

Article 32

The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person but also to any other measures of brutality whether applied by civilian or military agents.

Article 33

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

Article 34

The taking of hostages is prohibited.

SECTION 11

ALIENS IN THE TERRITORY OF A PARTY TO THE CONFLICT

(...)

Article 37

Protected persons who are confined pending proceedings or serving a sentence involving loss of liberty shall during their confinement be humanely treated.

As soon as they are released, they may ask to leave the territory in conformity with the foregoing Articles.

Article 38

With the exception of special measures authorized by the present Convention, in particular by Articles 27 and 41 thereof, the situation of protected persons shall continue to be regulated, in principle, by the provisions concerning aliens in time of peace. In any case, the following rights shall be granted to them:

1. They shall be enabled to receive the individual or collective relief that may be sent to them.
2. They shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned.
3. They shall be allowed to practise their religion and to receive spiritual assistance from ministers of their faith.
4. If they reside in an area particularly exposed to the dangers of war, they shall be authorized to move from that area to the same extent as the nationals of the State concerned.
5. Children under fifteen years, pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned.

(...)

Article 41

Should the Power in whose hands protected persons may be consider the measures of control mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more severe than that of assigned residence or internment, in accordance with the provisions of Articles 42 and 43.

In applying the provisions of Article 39, second paragraph, to the cases of persons required to leave their usual places of residences by virtue of a decision placing them in assigned residence elsewhere. the Detaining Power shall be guided as closely as possible by the standards of welfare set forth in Part III, Section IV of this Convention.

Article 42

The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.

If any person, acting through the representatives of the Protecting Power, voluntarily demands internment, and if his situation renders this step necessary, he shall be interned by the Power in whose hands he may be.

Article 43

Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favourable amendment of the initial decision, if circumstances permit.

Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of any protected persons who have been interned or subjected to assigned residence, or who have been released from internment or assigned residence. The decisions of the courts or boards mentioned in the first paragraph of the present Article shall also, subject to the same conditions, be notified as rapidly as possible to the Protecting Power.

Article 44

In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any government.

Article 45

Protected persons shall not be transferred to a Power which is not a party to the Convention.

This provision shall in no way constitute an obstacle to the repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities.

Protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention. If protected persons are transferred under such circumstances, responsibility for the application of the present Convention rests on the Power accepting them, while they are in its custody. Nevertheless, if that Power fails to carry out the provisions of the present Convention in any

important respect, the Power by which the protected persons were transferred shall, upon being so notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the protected persons. Such request must be complied with.

In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.

The provisions of this Article do not constitute an obstacle to the extradition, in pursuance of extradition treaties concluded before the outbreak of hostilities, of protected persons accused of offences against ordinary criminal law.

Article 46

In so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons shall be cancelled as soon as possible after the close of hostilities.

Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities.

SECTION 111

OCCUPIED TERRITORIES

Article 47

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

(...)

Article 64

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the

tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

(...)

Article 65

The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive.

Article 66

In case of a breach of the penal provisions promulgated by it by virtue of the second paragraph of Article 64, the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country.

Article 67

The courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportioned to the offence. They shall take into consideration the fact that the accused is not a national of the Occupying Power.

Article 68

Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed. Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. The courts provided for under Article 66 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.

The penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 may impose the death penalty on a protected person only in cases where the person is guilty of espionage, of serious acts of sabotage

against the military installations of the Occupying Power or of intentional offences which have caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.

The death penalty may not be pronounced against a protected person unless the attention of the court has been particularly called to the fact that, since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offence.

Article 69

In all cases, the duration of the period during which a protected person accused of an offence is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment awarded.

Article 70

Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.

Article 71

No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and shall be brought to trial as rapidly as possible. The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it shall be enabled, at any time, to obtain information regarding the

state of such proceedings. Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons.

The notification to the Protecting Power, as provided for in the second paragraph above, shall be sent immediately, and shall in any case reach the Protecting Power three weeks before the date of the first hearing. Unless, at the opening of the trial, evidence is submitted that the provisions of this Article are fully complied with, the trial shall not proceed. The notification shall include the following particulars:

- (a) Description of the accused;
- (b) Place of residence or detention;
- (c) Specification of the charge or charges (with mention of the penal provisions under which it is brought);
- (d) Designation of the court which will hear the case; (e) Place and date of the first hearing.

Article 72

Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.

Failing a choice by the accused, the Protecting Power may provide him with an advocate or counsel. When an accused person has to meet a serious charge and the Protecting Power is not functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel.

Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have the right at any time to object to the interpreter and to ask for his replacement.

Article 73

A convicted person shall have the right of appeal provided for by the laws applied by the court. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

The penal procedure provided in the present Section shall apply, as far as it is applicable, to appeals. Where the laws applied by the Court make no provision

for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power.

Article 74

Representatives of the Protecting Power shall have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held in camera in the interests of the security of the Occupying Power, which shall then notify the Protecting Power. A notification in respect of the date and place of trial shall be sent to the Protecting Power.

Any judgment involving a sentence of death, or imprisonment for two years or more, shall be communicated, with the relevant grounds, as rapidly as possible to the Protecting Power. The notification shall contain a reference to the notification made under Article 71, and in the case of sentences of imprisonment, the name of the place where the sentence is to be served. A record of judgments other than those referred to above shall be kept by the court and shall be open to inspection by representatives of the Protecting Power. Any period allowed for appeal in the case of sentences involving the death penalty, or imprisonment for two years or more, shall not run until notification of judgment has been received by the Protecting Power.

Article 75

In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of at least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

Article 76

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which

will be at least equal to those obtaining in prisons in the occupied country. They shall receive the medical attention required by their state of health.

They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Such persons shall have the right to receive at least one relief parcel monthly.

Article 77

Protected persons who have been accused of offences or convicted by the courts in occupied territory shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory.

Article 78

If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power.

Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention.

SECTION IV

REGULATIONS FOR THE TREATMENT OF INTERNEES

Chapter I

GENERAL PROVISIONS

Article 79

The Parties to the conflict shall not intern protected persons, except in accordance with the provisions of Articles 41, 42, 43, 68 and 78.

Article 80

Internees shall retain their full civil capacity and shall exercise such attendant rights as may be compatible with their status.

Article 81

Parties to the conflict who intern protected persons shall be bound to provide free of charge for their maintenance, and to grant them also the medical attention required by their state of health.

No deduction from the allowances, salaries or credits due to the internees shall be made for the repayment of these costs.

The Detaining Power shall provide for the support of those dependent on the internees, if such dependants are without adequate means of support or are unable to earn a living.

Article 82

The Detaining Power shall, as far as possible, accommodate the internees according to their nationality, language and customs. Internees who are nationals of the same country shall not be separated merely because they have different languages.

Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health or for the purposes of enforcement of the provisions of Chapter IX of the present Section. Internees may request that their children who are left at liberty without parental care shall be interned with them.

Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.

Chapter II

PLACES OF INTERNMENT

Article 83

The Detaining Power shall not set up places of internment in areas particularly exposed to the dangers of war.

The Detaining Power shall give the enemy Powers, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of places of internment.

Whenever military considerations permit, internment camps shall be indicated by the letters IC, placed so as to be clearly visible in the daytime from the air. The

Powers concerned may, however, agree upon any other system of marking. No place other than an internment camp shall be marked as such.

Article 84

Internees shall be accommodated and administered separately from prisoners of war and from persons deprived of liberty for any other reason.

Article 85

The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas or in districts the climate of which is injurious to the internees. In all cases where the district, in which a protected person is temporarily interned, is in an unhealthy area or has a climate which is harmful to his health, he shall be removed to a more suitable place of internment as rapidly as circumstances permit.

The premises shall be fully protected from dampness, adequately heated and lighted, in particular between dusk and lights out. The sleeping quarters shall be sufficiently spacious and well ventilated, and the internees shall have suitable bedding and sufficient blankets, account being taken of the climate, and the age, sex, and state of health of the internees.

Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their

daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them.

Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning.

Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory.

Article 86

The Detaining Power shall place at the disposal of interned persons, of whatever denomination, premises suitable for the holding of their religious services.

Article 87

Canteens shall be installed in every place of internment, except where other suitable facilities are available. Their purpose shall be to enable internees to make purchases, at prices not higher than local market prices, of foodstuffs and articles of everyday use, including soap and tobacco, such as would increase their personal well-being and comfort.

Profits made by canteens shall be credited to a welfare fund to be set up for each place of internment, and administered for the benefit of the internees attached to such place of internment. The Internee Committee provided for in Article 102 shall have the right to check the management of the canteen and of the said fund.

When a place of internment is closed down, the balance of the welfare fund shall be transferred to the welfare fund of a place of internment for internees of the same nationality, or, if such a place does not exist, to a central welfare fund which shall be administered for the benefit of all internees remaining in the custody of the Detaining Power. In case of a general release, the said profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Article 88

In all places of internment exposed to air raids and other hazards of war, shelters adequate in number and structure to ensure the necessary protection shall be installed. In case of alarms, the internees shall be free to enter such

shelters as quickly as possible, excepting those who remain for the protection of their quarters against the aforesaid hazards. Any protective measures taken in favour of the population shall also apply to them.

All due precautions must be taken in places of internment against the danger of fire.

Chapter III

FOOD AND CLOTHING

Article 89

Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.

Internees shall also be given the means by which they can prepare for themselves any additional food in their possession.

Sufficient drinking water shall be supplied to internees. The use of tobacco shall be permitted.

Internees who work shall receive additional rations in proportion to the kind of labour which they perform.

Expectant and nursing mothers and children under fifteen years of age shall be given additional food, in proportion to their physiological needs.

Article 90

When taken into custody, internees shall be given all facilities to provide themselves with the necessary clothing, footwear and change of underwear, and later on, to procure further supplies if required. Should any internees not have sufficient clothing, account being taken of the climate, and be unable to procure any, it shall be provided free of charge to them by the Detaining Power.

The clothing supplied by the Detaining Power to internees and the outward markings placed on their own clothes shall not be ignominious nor expose them to ridicule.

Workers shall receive suitable working outfits, including protective clothing, whenever the nature of their work so requires.

Chapter IV

HYGIENE AND MEDICAL ATTENTION

Article 91

Every place of internment shall have an adequate infirmary, under the direction of a qualified doctor, where internees may have the attention they require, as well as an appropriate diet. Isolation wards shall be set aside for cases of contagious or mental diseases.

Maternity cases and internees suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital care, must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population.

Internees shall, for preference, have the attention of medical personnel of their own nationality.

Internees may not be prevented from presenting themselves to the medical authorities for examination. The medical authorities of the Detaining Power shall, upon request, issue to every internee who has undergone treatment an official certificate showing the nature of his illness or injury, and the duration and nature of the treatment given. A duplicate of this certificate shall be forwarded to the Central Agency provided for in Article 140.

Treatment, including the provision of any apparatus necessary for the maintenance of internees in good health, particularly dentures and other artificial appliances and spectacles, shall be free of charge to the internee.

Article 92

Medical inspections of internees shall be made at least once a month. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of internees, and to detect contagious diseases, especially tuberculosis, malaria, and venereal diseases. Such inspections shall include, in particular, the checking of weight of each internee and, at least once a year, radioscopic examination.

Chapter V

RELIGIOUS, INTELLECTUAL AND PHYSICAL ACTIVITIES

Article 93

Internees shall enjoy complete latitude in the exercise of their religious duties, including attendance at the services of their faith, on condition that they comply with the disciplinary routine prescribed by the detaining authorities.

Ministers of religion who are interned shall be allowed to minister freely to the members of their community. For this purpose, the Detaining Power shall ensure their equitable allocation amongst the various places of internment in which there are internees speaking the same language and be longing to the same religion. Should such ministers be too few in number, the Detaining Power shall provide them with the necessary facilities, including means of transport, for moving from one place to another, and they shall be authorized to visit any internees who are in hospital. Ministers of religion shall be at liberty to correspond on matters concerning their ministry with the religious authorities in the country of detention and, as far as possible, with the international religious organizations of their faith. Such correspondence shall not be considered as forming a part of the quota mentioned in Article 107. It shall, however, be subject to the provisions of Article 112.

When internees do not have at their disposal the assistance of ministers of their faith, or should these latter be too few in number, the local religious authorities of the same faith may appoint, in agreement with the Detaining Power, a minister of the internees' faith or, if such a course is feasible from a denominational point of view, a minister of similar religion or a qualified layman. The latter shall enjoy the facilities granted to the ministry he has assumed. Persons so appointed shall comply with all regulations laid down by the Detaining Power in the interests of discipline and security.

Article 94

The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees, whilst leaving them free to take part in them or not. It shall take all practicable measures to ensure the exercise thereof, in particular by providing suitable premises.

All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside.

Internees shall be given opportunities for physical exercise, sports and outdoor games. For this purpose, sufficient open spaces shall be set aside in all places of internment. Special playgrounds shall be reserved for children and young people.

Article 95

The Detaining Power shall not employ internees as workers, unless they so desire. Employment which, if undertaken under compulsion by a protected person not in internment, would involve a breach of Articles 40 or 51 of the present Convention, and employment on work which is of a degrading or humiliating character are in any case prohibited.

After a working period of six weeks, internees shall be free to give up work at any moment, subject to eight days' notice.

These provisions constitute no obstacle to the right of the Detaining Power to employ interned doctors, dentists and other medical personnel in their professional capacity on behalf of their fellow internees, or to employ internees for administrative and maintenance work in places of internment and to detail such persons for work in the kitchens or for other domestic tasks, or to require such persons to undertake duties connected with the protection of internees against aerial bombardment or other war risks. No internee may, however, be required to perform tasks for which he is, in the opinion of a medical officer, physically unsuited.

The Detaining Power shall take entire responsibility for all working conditions, for medical attention, for the payment of wages, and for ensuring that all employed internees receive compensation for occupational accidents and diseases. The standards prescribed for the said working conditions and for compensation shall be in accordance with the national laws and regulations, and with the existing practice; they shall in no case be inferior to those obtaining for work of the same nature in the same district. Wages for work done shall be determined on an equitable basis by special agreements between the internees, the Detaining Power, and, if the case arises, employers other than the Detaining Power, due regard being paid to the obligation of the Detaining Power to provide for free maintenance of internees and for the medical attention which their state of health may require. Internees permanently detailed for categories of work mentioned in the third paragraph of this Article shall be paid fair wages by the Detaining Power. The working conditions and the scale of compensation for occupational accidents and diseases to internees

thus detailed shall not be inferior to those applicable to work of the same nature in the same district.

Article 96

All labour detachments shall remain part of and dependent upon a place of internment. The competent authorities of the Detaining Power and the commandant of a place of internment shall be responsible for the observance in a labour detachment of the provisions of the present Convention. The commandant shall keep an up-to-date list of the labour detachments subordinate to him and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross and of other humanitarian organizations who may visit the places of internment.

Chapter VI

PERSONAL PROPER AND FINANCIAL RESOURCES

Article 97

Internees shall be permitted to retain articles of personal use. Monies, cheques, bonds, etc., and valuables in their possession may not be taken from them except in accordance with established procedure. Detailed receipts shall be given therefor.

The amounts shall be paid into the account of every internee as provided for in Article 98. Such amounts may not be converted into any other currency unless legislation in force in the territory in which the owner is interned so requires or the internee gives his consent.

Articles which have above all a personal or sentimental value may not be taken away.

A woman internee shall not be searched except by a woman.

On release or repatriation, internees shall be given all articles, monies or other valuables taken from them during internment and shall receive in currency the balance of any credit to their accounts kept in accordance with Article 98, with the exception of any articles or amounts withheld by the Detaining Power by virtue of its legislation in force. If the property of an internee is so withheld, the owner shall receive a detailed receipt.

Family or identity documents in the possession of internees may not be taken away without a receipt being given. At no time shall internees be left without identity documents. If they have none, they shall be issued with special

documents drawn up by the detaining authorities, which will serve as their identity papers until the end of their internment.

Internees may keep on their persons a certain amount of money, in cash or in the shape of purchase coupons, to enable them to make purchases.

Article 98

All internees shall receive regular allowances, sufficient to enable them to purchase goods and articles, such as tobacco, toilet requisites, etc. Such allowances may take the form of credits or purchase coupons.

Furthermore, internees may receive allowances from the Power to which they owe allegiance, the Protecting Powers, the organizations which may assist them, or their families, as well as the income on their property in accordance with the law of the Detaining Power. The amount of allowances granted by the Power to which they owe allegiance shall be the same for each category of internees (infirm, sick, pregnant women, etc.), but may not be allocated by that Power or distributed by the Detaining Power on the basis of discrimination between internees which are prohibited by Article 27 of the present Convention.

The Detaining Power shall open a regular account for every internee, to which shall be credited the allowances named in the present Article, the wages earned and the remittances received, together with such sums taken from him as may be available under the legislation in force in the territory in which he is interned. Internees shall be granted all facilities consistent with the legislation in force in such territory to make remittances to their families and to other dependants. They may draw from their accounts the amounts necessary for their personal expenses, within the limits fixed by the Detaining Power. They shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts. A statement of accounts shall be furnished to the Protecting Power on request, and shall accompany the internee in case of transfer.

Chapter VII

ADMINISTRATION AND DISCIPLINE

Article 99

Every place of internment shall be put under the authority of a responsible officer, chosen from the regular military forces or the regular civil

administration of the Detaining Power. The officer in charge of the place of internment must have in his possession a copy of the present Convention in the official language, or one

of the official languages, of his country and shall be responsible for its application. The staff in control of internees shall be instructed in the provisions of the present Convention and of the administrative measures adopted to ensure its application.

The text of the present Convention and the texts of special agreements concluded under the said Convention shall be posted inside the place of internment, in a language which the internees understand, or shall be in the possession of the Internee Committee.

Regulations, orders, notices and publications of every kind shall be communicated to the internees and posted inside the places of internment, in a language which they understand.

Every order and command addressed to internees individually must likewise be given in a language which they understand.

Article 100

The disciplinary regime in places of internment shall be consistent with humanitarian principles, and shall in no circumstances include regulations imposing on internees any physical exertion dangerous to their health or involving physical or moral victimization. Identification by tattooing or imprinting signs or markings on the body is prohibited.

In particular, prolonged standing and roll-calls, punishment drill, military drill and manoeuvres, or the reduction of food rations, are prohibited.

Article 101

Internees shall have the right to present to the authorities in whose power they are any petition with regard to the conditions of internment to which they are subjected.

They shall also have the right to apply without restriction through the Internee Committee or, if they consider it necessary, direct to the representatives of the Protecting Power, in order to indicate to them any points on which they may have complaints to make with regard to the conditions of internment.

Such petitions and complaints shall be transmitted forthwith and without alteration, and even if the latter are recognized to be unfounded, they may not occasion any punishment.

Periodic reports on the situation in places of internment and as to the needs of the internees may be sent by the Internee Committees to the representatives of the Protecting Powers.

Article 102

In every place of internment, the internees shall freely elect by secret ballot every six months, the members of a Committee empowered to represent them before the Detaining and the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. The members of the Committee shall be eligible for re-election.

Internees so elected shall enter upon their duties after their election has been approved by the detaining authorities. The reasons for any refusals or dismissals shall be communicated to the Protecting Powers concerned.

Article 103

The Internee Committees shall further the physical, spiritual and intellectual wellbeing of the internees.

In case the internees decide, in particular, to organize a system of mutual assistance amongst themselves, this organization would be within the competence of the Committees in addition to the special duties entrusted to them under other provisions of the present Convention.

Article 104

Members of Internee Committees shall not be required to perform any other work, if the accomplishment of their duties is rendered more difficult thereby.

Members of Internee Committees may appoint from amongst the internees such assistants as they may require. All material facilities shall be granted to them, particularly a certain freedom of movement necessary for the accomplishment of their duties (visits to labour detachments, receipt of supplies, etc.).

All facilities shall likewise be accorded to members of Internee Committees for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, and with the organizations which give assistance to internees. Committee members in labour detachments shall enjoy similar facilities for communication with their Internee Committee in the principal place of internment. Such communications shall not be limited, nor considered as forming a part of the quota mentioned in Article 107.

Members of Internee Committees who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

Chapter VIII

RELATIONS WITH THE EXTERIOR

Article 105

Immediately upon interning protected persons, the Detaining Power shall inform them, the Power to which they owe allegiance and their Protecting Power of the measures taken for executing the provisions of the present Chapter. The Detaining Power shall likewise inform the Parties concerned of any subsequent modifications of such measures.

Article 106

As soon as he is interned, or at the latest not more than one week after his arrival in a place of internment, and likewise in cases of sickness or transfer to another place of internment or to a hospital, every internee shall be enabled to send direct to his family, on the one hand, and to the Central Agency provided for by Article 140, on the other, an internment card similar, if possible, to the model annexed to the present Convention, informing his relatives of his detention, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any way.

Article 107

Internees shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each internee, the said number shall not be less than two letters and four cards monthly; these shall be drawn up so as to conform as closely as possible to the models annexed to the present Convention. If limitations must be placed on the correspondence addressed to internees, they may be ordered only by the Power to which such internees owe allegiance, possibly at the request of the Detaining Power. Such letters and cards must be conveyed with reasonable despatch; they may not be delayed or retained for disciplinary reasons.

Internees who have been a long time without news, or who find it impossible to receive news from their relatives, or to give them news by the ordinary postal route, as well as those who are at a considerable distance from their homes, shall be allowed to send telegrams, the charges being paid by them in the

currency at their disposal. They shall likewise benefit by this provision in cases which are recognized to be urgent.

As a rule, internees' mail shall be written in their own language. The Parties to the conflict may authorize correspondence in other languages.

Article 108

Internees shall be allowed to receive, by post or by any other means, individual parcels or collective shipments containing in particular foodstuffs, clothing, medical supplies, as well as books and objects of a devotional, educational or recreational character which may meet their needs. Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

Should military necessity require the quantity of such shipments to be limited, due notice thereof shall be given to the Protecting Power and to the International Committee of the Red Cross, or to any other organization giving assistance to the internees and responsible for the forwarding of such shipments.

The conditions for the sending of individual parcels and collective shipments shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the internees of relief supplies. Parcels of clothing and foodstuffs may not include books. Medical relief supplies shall, as a rule, be sent in collective parcels.

Article 109

In the absence of special agreements between Parties to the conflict regarding the conditions for the receipt and distribution of collective relief shipments, the regulations concerning collective relief which are annexed to the present Convention shall be applied.

The special agreements provided for above shall in no case restrict the right of Internee Committees to take possession of collective relief shipments intended for internees, to undertake their distribution and to dispose of them in the interests of the recipients.

Nor shall such agreements restrict the right of representatives of the Protecting Powers, the International Committee of the Red Cross, or any other organization giving assistance to internees and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Article 110

All relief shipments for internees shall be exempt from import, customs and other dues.

All matter sent by mail, including relief parcels sent by parcel post and remittances of money, addressed from other countries to internees or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 136 and the Central Information Agency provided for in Article 140, shall be exempt from all postal dues both in the countries of origin and destination and in intermediate countries. To this end in particular, the exemption provided by the Universal Postal Convention of 1947 and by the agreements of the Universal Postal Union in favour of civilians of enemy nationality detained in camps or civilian prisons, shall be extended to the other interned persons protected by the present Convention. The countries not signatory to the above-mentioned agreements shall be bound to grant freedom from charges in the same circumstances.

The cost of transporting relief shipments which are intended for internees and which, by reason of their weight or any other cause, cannot be sent through the post office, shall be borne by the Detaining Power in all the territories under its control. Other Powers which are Parties to the present Convention shall bear the cost of transport in their respective territories.

Costs connected with the transport of such shipments, which are not covered by the above paragraphs, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the charges for telegrams sent by internees, or addressed to them.

Article 111

Should military operations prevent the Powers concerned from fulfilling their obligation to ensure the conveyance of the mail and relief shipments provided for in Articles 106, 107, 108 and 113, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake the conveyance of such shipments by suitable means (rail, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport, and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

- (a) Correspondence, lists and reports exchanged between the Central

Information Agency referred to in Article 140 and the National Bureaux referred to in Article 136;

- (b) Correspondence and reports relating to internees which the Protecting Powers, the International Committee of the Red Cross or any other organization assisting the internees exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

The costs occasioned by the use of such means of transport shall be borne, in proportion to the importance of the shipments, by the Parties to the conflict whose nationals are benefited thereby.

Article 112

The censoring of correspondence addressed to internees or despatched by them shall be done as quickly as possible.

The examination of consignments intended for internees shall not be carried out under conditions that will expose the goods contained in them to deterioration. It shall be done in the presence of the addressee, or of a fellow-internee duly delegated by him. The delivery to internees of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by the Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Article 113

The Detaining Powers shall provide all reasonable facilities for the transmission, through the Protecting Power or the Central Agency provided for in Article 140, or as otherwise required, of wills, powers of attorney letters of authority, or any other documents intended for internees or despatched by them.

In all cases the Detaining Power shall facilitate the execution and authentication in due legal form of such documents on behalf of internees, in particular by allowing them to consult a lawyer.

Article 114

The Detaining Power shall afford internees all facilities to enable them to manage their property, provided this is not incompatible with the conditions of internment and the law which is applicable. For this purpose, the said Power may give them permission to leave the place of internment in urgent cases and if circumstances allow.

Article 115

In all cases where an internee is a party to proceedings in any court, the Detaining Power shall, if he so requests, cause the court to be informed of his detention and shall, within legal limits, ensure that all necessary steps are taken to prevent him from being in any way prejudiced, by reason of his internment, as regards the preparation and conduct of his case or as regards the execution of any judgment of the court.

Article 116

Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible.

As far as is possible, internees shall be permitted to visit their homes in urgent cases, particularly in cases of death or serious illness of relatives.

Chapter IX

PENAL AND DISCIPLINARY SANCTIONS

Article 117

Subject to the provisions of the present Chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment.

If general laws, regulations or orders declare acts committed by internees to be punishable, whereas the same acts are not punishable when committed by persons who are not internees, such acts shall entail disciplinary punishments only.

No internee may be punished more than once for the same act, or on the same count.

Article 118

The courts or authorities shall in passing sentence take as far as possible into account the fact that the defendant is not a national of the Detaining Power.

They shall be free to reduce the penalty prescribed for the offence with which the internee is charged and shall not be obliged, to this end, to apply the minimum sentence prescribed.

Imprisonment in premises without daylight, and, in general, all forms of cruelty without exception are forbidden.

Internees who have served disciplinary or judicial sentences shall not be treated differently from other internees.

The duration of preventive detention undergone by an internee shall be deducted from any disciplinary or judicial penalty involving confinement to which he may be sentenced.

Internee Committees shall be informed of all judicial proceedings instituted against internees whom they represent, and of their result.

Article 119

The disciplinary punishments applicable to internees shall be the following:

1. A fine which shall not exceed 50 per cent of the wages which the internee would otherwise receive under the provisions of Article 95 during a period of not more than thirty days.
2. Discontinuance of privileges granted over and above the treatment provided for by the present Convention.
3. Fatigue duties, not exceeding two hours daily, in connection with the maintenance of the place of internment.
4. Confinement.

In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee's age, sex and state of health.

The duration of any single punishment shall in no case exceed a maximum of thirty consecutive days, even if the internee is answerable for several breaches of discipline when his case is dealt with, whether such breaches are connected or not.

Article 120

Internees who are recaptured after having escaped or when attempting to escape shall be liable only to disciplinary punishment in respect of this act, even if it is a repeated offence.

Article 118, paragraph 3, notwithstanding, internees punished as a result of escape or attempt to escape, may be subjected to special surveillance, on condition that such surveillance does not affect the state of their health, that it is exercised in a place of internment and that it does not entail the abolition of any of the safeguards granted by the present Convention.

Internees who aid and abet an escape, or attempt to escape, shall be liable on this count to disciplinary punishment only.

Article 121

Escape, or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance in cases where an internee is prosecuted for offences committed during his escape.

The Parties to the conflict shall ensure that the competent authorities exercise leniency in deciding whether punishment inflicted for an offence shall be of a disciplinary or judicial nature, especially in respect of acts committed in connection with an escape, whether successful or not.

Article 122

Acts which constitute offences against discipline shall be investigated immediately. This rule shall be applied, in particular, in cases of escape or attempt to escape. Recaptured internees shall be handed over to the competent authorities as soon as possible.

In case of offences against discipline, confinement awaiting trial shall be reduced to an absolute minimum for all internees, and shall not exceed fourteen days. Its duration shall in any case be deducted from any sentence of confinement.

The provisions of Articles 124 and 125 shall apply to internees who are in confinement awaiting trial for offences against discipline.

Article 123

Without prejudice to the competence of courts and higher authorities, disciplinary punishment may be ordered only by the commandant of the place of internment, or by a responsible officer or official who replaces him, or to whom he has delegated his disciplinary powers.

Before any disciplinary punishment is awarded, the accused internee shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if

necessary, to the services of a qualified interpreter. The decision shall be announced in the presence of the accused and of a member of the Internee Committee.

The period elapsing between the time of award of a disciplinary punishment and its execution shall not exceed one month.

When an internee is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

A record of disciplinary punishments shall be maintained by the commandant of the place of internment and shall be open to inspection by representatives of the Protecting Power.

Article 124

Internees shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

The premises in which disciplinary punishments are undergone shall conform to sanitary requirements; they shall in particular be provided with adequate bedding. Internees undergoing punishment shall be enabled to keep themselves in a state of cleanliness.

Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women.

Article 125

Internees awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, if they so request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the infirmary of the place of internment or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of their punishment; such consignments shall meanwhile be entrusted to the Internee Committee, who will hand over to the infirmary the perishable goods contained in the parcels.

No internee given a disciplinary punishment may be deprived of the benefit of the provisions of Articles 107 and 143 of the present Convention.

Article 126

The provisions of Articles 71 to 76 inclusive shall apply, by analogy, to proceedings against internees who are in the national territory of the Detaining Power.

Chapter X

TRANSFERS OF INTERNEES

Article 127

The transfer of internees shall always be effected humanely. As a general rule, it shall be carried out by rail or other means of transport, and under conditions at least equal to those obtaining for the forces of the Detaining Power in their changes of station. If, as an exceptional measure, such removals have to be effected on foot, they may not take place unless the internees are in a fit state of health, and may not in any case expose them to excessive fatigue.

The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred.

Sick, wounded or infirm internees and maternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands.

If the combat zone draws close to a place of internment, the internees in the said place shall not be transferred unless their removal can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

When making decisions regarding the transfer of internees, the Detaining Power shall take their interests into account and, in particular, shall not do anything to increase the difficulties of repatriating them or returning them to their own homes.

Article 128

In the event of transfer, internees shall be officially advised of their departure and of their new postal address. Such notification shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited if the conditions of transfer so require, but in no case to less than twenty-five kilograms per internee.

Mail and parcels addressed to their former place of internment shall be forwarded to them without delay.

The commandant of the place of internment shall take, in agreement with the Internee Committee, any measures needed to ensure the transport of the internees' community property and of the luggage the internees are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph.

Chapter XI

DEATHS

Article 129

The wills of internees shall be received for safe-keeping by the responsible authorities; and in the event of the death of an internee his will shall be transmitted without delay to a person whom he has previously designated.

Deaths of internees shall be certified in every case by a doctor, and a death certificate shall be made out, showing the causes of death and the conditions under which it occurred.

An official record of the death, duly registered, shall be drawn up in accordance with the procedure relating thereto in force in the territory where the place of internment is situated, and a duly certified copy of such record shall be transmitted without delay to the Protecting Power as well as to the Central Agency referred to in Article 140.

Article 130

The detaining authorities shall ensure that internees who die while interned are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized.

Deceased internees shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his expressed wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. The ashes shall be retained for safe-keeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request.

As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the

Powers on whom the deceased internees depended, through the Information Bureaux provided for in Article 136. Such lists shall include all particulars necessary for the identification of the deceased internees, as well as the exact location of their graves.

Article 131

Every death or serious injury of an internee, caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Projecting Power. The evidence of any witnesses shall be taken, and a report including such evidence shall be prepared and forwarded to the said Protecting power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all necessary steps to ensure the prosecution of the person or persons responsible.

Chapter XII

RELEASE, REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES

Article 132

Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.

The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain

classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.

Article 133

Internment shall cease as soon as possible after the close of hostilities.

Internees, in the territory of a Party to the conflict, against whom penal proceedings are pending for offences not exclusively subject to disciplinary penalties, may be detained until the close of such proceedings and, if circumstances require, until the completion of the penalty. The same shall apply to internees who have been previously sentenced to a punishment depriving them of liberty.

By agreement between the Detaining Power and the Powers concerned, committees may be set up after the close of hostilities, or of the occupation of territories, to search for dispersed internees.

Article 134

The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation.

Article 135

The Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned, or, if it took them into custody while they were in transit or on the high seas, the cost of completing their journey or of their return to their point of departure.

Where a Detaining Power refuses permission to reside in its territory to a released internee who previously had his permanent domicile therein, such Detaining Power shall pay the cost of the said internee's repatriation. If, however, the internee elects to return to his country on his own responsibility or in obedience to the Government of the Power to which he owes allegiance, the Detaining Power need not pay the expenses of his journey beyond the point of his departure from its territory. The Detaining Power need not pay the costs of repatriation of an internee who was interned at his own request.

If internees are transferred in accordance with Article 45, the transferring and receiving Powers shall agree on the portion of the above costs to be borne by each.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

SECTION V

INFORMATION BUREAUX AND CENTRAL AGENCY

Article 136

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official Information Bureau responsible for receiving and transmitting information in respect of the protected persons who are in its power.

Each of the Parties to the conflict shall, within the shortest possible period, give its Bureau information of any measure taken by it concerning any protected persons who are kept in custody for more than two weeks, who are subjected to assigned residence or who are interned. It shall, furthermore, require its various departments concerned with such matters to provide the aforesaid Bureau promptly with information concerning all changes pertaining to these protected persons, as, for example, transfers, release, repatriations, escapes, admittances to hospitals, births and deaths.

Article 137

Each national Bureau shall immediately forward information concerning protected persons by the most rapid means to the Powers of whom the aforesaid persons are nationals, or to Powers in whose territory they resided, through the intermediary of the Protecting Powers and likewise through the Central Agency provided for in Article 140. The Bureaux shall also reply to all enquiries which may be received regarding protected persons.

Information Bureaux shall transmit information concerning a protected person unless its transmission might be detrimental to the person concerned or to his or her relatives. Even in such a case, the information may not be withheld from the Central Agency which, upon being notified of the circumstances, will take the necessary precautions indicated in Article 140.

All communications in writing made by any Bureau shall be authenticated by a signature or a seal.

Article 138

The information received by the national Bureau and transmitted by it shall be of such a character as to make it possible to identify the protected person exactly and to advise his next of kin quickly. The information in respect of each person shall include at least his surname, first names, place and date of birth, nationality, last residence and distinguishing characteristics, the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent to him and the name and address of the person to be informed.

Likewise, information regarding the state of health of internees who are seriously ill or seriously wounded shall be supplied regularly and if possible every week.

Article 139

Each national Information Bureau shall, furthermore, be responsible for collecting all personal valuables left by protected persons mentioned in Article 136, in particular those who have been repatriated or released, or who have escaped or died; it shall forward the said valuables to those concerned, either direct, or, if necessary, through the Central Agency. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full identity particulars of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Detailed records shall be maintained of the receipt and despatch of all such valuables.

Article 140

A Central Information Agency for protected persons, in particular for internees, shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency, which may be the same as that provided for in Article 123 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

The function of the Agency shall be to collect all information of the type set forth in Article 136 which it may obtain through official or private channels and to transmit it as rapidly as possible to the countries of origin or of residence of the persons concerned, except in cases where such transmissions might be detrimental to the persons whom the said information concerns, or to their

relatives. It shall receive from the Parties to the conflict all reasonable facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross and of the relief Societies described in Article 142.

Article 141

The national Information Bureaux and the Central Information Agency shall enjoy free postage for all mail, likewise the exemptions provided for in Article 110, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

PART IV

EXECUTION OF THE CONVENTION

SECTION I

GENERAL PROVISIONS

Article 142

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the protected persons, shall receive from these Powers, for themselves or their duly accredited agents, all facilities for visiting the protected persons, for distributing relief supplies and material from any source, intended for educational, recreational or religious purposes , or for assisting them in organizing their leisure time within the places of internment. Such societies or organizations may be constituted in the territory of the Detaining Power, or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the supply of effective and adequate relief to all protected persons.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

Article 143

Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting Power and when occasion arises the Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.

Article 144

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions.

Article 145

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Article 146

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another

High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Article 147

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Article 148

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Article 149

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

(...)

ANNEX II

DRAFT REGULATIONS CONCERNING COLLECTIVE RELIEF

Article I

The Internee Committees shall be allowed to distribute collective relief shipments for which they are responsible to all internees who are dependent for administration on the said Committee's place of internment, including those internees who are in hospitals, or in prisons or other penitentiary establishments.

Article 2

The distribution of collective relief shipments shall be effected in accordance with the instructions of the donors and with a plan drawn up by the Internee Committees. The issue of medical stores shall, however, be made for preference in agreement with the senior medical officers, and the latter may, in hospitals and infirmaries, waive the said instructions, if the needs of their patients so demand. Within the limits thus defined, the distribution shall always be carried out equitably.

Article 3

Members of Internee Committees shall be allowed to go to the railway stations or other points of arrival of relief supplies near their places of internment so as to enable them to verify the quantity as well as the quality of the goods received and to make out detailed reports thereon for the donors.

Article 4

Internee Committees shall be given the facilities necessary for verifying whether the distribution of collective relief in all subdivisions and annexes of their places of internment has been carried out in accordance with their instructions.

Article 5

Internee Committees shall be allowed to complete, and to cause to be completed by members of the Internee Committees in labour detachments or by the senior medical officers of infirmaries and hospitals, forms or questionnaires intended for the donors, relating to collective relief supplies (distribution, requirements, quantities, etc.). Such forms and questionnaires, duly completed, shall be forwarded to the donors without delay.

Article 6

In order to secure the regular distribution of collective relief supplies to the internees in their place of internment, and to meet any needs that may arise through the arrival of fresh parties of internees, the Internee Committees shall be allowed to create and maintain sufficient reserve stocks of collective relief. For this purpose, they shall have suitable warehouses at their disposal; each warehouse shall be provided with two locks, the Internee Committee holding the keys of one lock, and the commandant of the place of internment the keys of the other.

Article 7

The High Contracting Parties, and the Detaining Powers in particular, shall, so far as is in any way possible and subject to the regulations governing the food supply of the population, authorize purchases of goods to be made in their territories for the distribution of collective relief to the internees. They shall likewise facilitate the transfer of funds and other financial measures of a technical or administrative nature taken for the purpose of making such purchases.

Article 8

The foregoing provisions shall not constitute an obstacle to the right of internees to receive collective relief before their arrival in a place of internment or in the course of their transfer, nor to the possibility of representatives of the Protecting Power, or of the International Committee of the Red Cross or any other humanitarian organization giving assistance to internees and responsible for forwarding such supplies, ensuring the distribution thereof to the recipients by any other means they may deem suitable.

ANNEX III
I. INTERNMENT CARD

1. Front	<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="border-bottom: 1px solid black; padding-bottom: 2px;"><u>CIVILIAN INTERNEE MAIL</u></div> <div style="border: 1px solid black; padding: 2px 5px;">Postage free</div> </div> <div style="text-align: center; margin-top: 10px;">POST CARD</div>		
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; padding: 5px; vertical-align: top;"> <p style="text-align: center; margin-top: 0;">IMPORTANT</p> <p>This card must be completed by each internee immediately on being interned and each time his address is altered by reason of transfer to another place of internment or to a hospital.</p> <p>This card is not the same as the special card which each internee is allowed to send to his relatives.</p> </td> <td style="width: 60%; padding: 5px; vertical-align: top;"> <p style="text-align: center; margin-top: 0;">CENTRAL INFORMATION AGENCY FOR PROTECTED PERSONS</p> <p style="text-align: center; margin-top: 10px;">International Committee of the Red Cross</p> <p style="text-align: center; margin-top: 10px;">GENEVA (Switzerland)</p> </td> </tr> </table>	<p style="text-align: center; margin-top: 0;">IMPORTANT</p> <p>This card must be completed by each internee immediately on being interned and each time his address is altered by reason of transfer to another place of internment or to a hospital.</p> <p>This card is not the same as the special card which each internee is allowed to send to his relatives.</p>	<p style="text-align: center; margin-top: 0;">CENTRAL INFORMATION AGENCY FOR PROTECTED PERSONS</p> <p style="text-align: center; margin-top: 10px;">International Committee of the Red Cross</p> <p style="text-align: center; margin-top: 10px;">GENEVA (Switzerland)</p>
<p style="text-align: center; margin-top: 0;">IMPORTANT</p> <p>This card must be completed by each internee immediately on being interned and each time his address is altered by reason of transfer to another place of internment or to a hospital.</p> <p>This card is not the same as the special card which each internee is allowed to send to his relatives.</p>	<p style="text-align: center; margin-top: 0;">CENTRAL INFORMATION AGENCY FOR PROTECTED PERSONS</p> <p style="text-align: center; margin-top: 10px;">International Committee of the Red Cross</p> <p style="text-align: center; margin-top: 10px;">GENEVA (Switzerland)</p>		

2. Reverse side	<p>Write legibly and in block letters — 1. Nationality</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;">2. Surname</td> <td style="width: 33%; border: none;">3. First names (in full)</td> <td style="width: 33%; border: none;">4. First name of father</td> </tr> </table> <p>5. Date of birth..... 6. Place of birth</p> <p>7. Occupation.....</p> <p>8. Address before detention</p> <p>9. Address of next of kin.....</p> <p>.....</p> <p>10. Interned on: *</p> <p>(or)</p> <p>Coming from (hospital, etc.) on:</p> <p>11. State of health *</p> <p>12. Present address</p> <p>13. Date..... 14. Signature</p> <p style="margin-top: 10px;">* Strike out what is not applicable—Do not add any remarks— See explanations overleaf.</p>	2. Surname	3. First names (in full)	4. First name of father
2. Surname	3. First names (in full)	4. First name of father		

(Size of internment card — 10 x 15 cm)

ANNEX III
II. LETTER

CIVILIAN INTERNEE SERVICE

Postage free

To

Street and number

Place of destination *(in block capitals)*

Province or Department

Country *(in block capitals)*

Sender

Surname and first names

Date and place of birth

Internment address

(Size of letter — 29 x 15 cm)

ANNEX III
III. CORRESPONDENCE CARD

1. Front	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Sender:</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Surname and first names</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Date and place of birth</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Internment address</p>	<div style="display: flex; justify-content: space-between;"> CIVILIAN INTERNEE MAIL Postage free </div> <p style="text-align: center; margin-top: 20px;">POST CARD</p> <div style="margin-top: 20px;"> <p style="text-align: center;">To</p> <p style="text-align: center;">Street and number</p> <p style="text-align: center;">Place of destination <i>(in block capitals)</i></p> <p style="text-align: center;">Province or Department</p> <p style="text-align: center;">Country <i>(in block capitals)</i></p> </div>
2. Reverse side	<div style="border: 1px solid black; height: 200px; position: relative;"> <div style="position: absolute; top: 0; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> <div style="position: absolute; top: 15px; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> <div style="position: absolute; top: 30px; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> <div style="position: absolute; top: 45px; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> <div style="position: absolute; top: 60px; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> <div style="position: absolute; top: 75px; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> <div style="position: absolute; top: 90px; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> <div style="position: absolute; top: 105px; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> <div style="position: absolute; top: 120px; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> <div style="position: absolute; top: 135px; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> <div style="position: absolute; top: 150px; left: 0; right: 0; border-bottom: 1px dotted black; height: 15px;"></div> </div> <p style="margin-top: 10px;">Write on the dotted lines only and as legibly as possible</p>	

(Size of correspondence card — 10 x15 cm)

3. Protocol additional to the Geneva Conventions of 12 august 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 june 1977

(Extracts)

Preamble

The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary nevertheless to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict,

Have agreed on the following:

PART I

GENERAL PROVISIONS

Article 1 — General principles and scope of application

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.
2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the

principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

4. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

(...)

Article 11 — Protection of persons

1. The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1 shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.

2. It is, in particular, prohibited to carry out on such persons, even with their consent:

- a)* physical mutilations;
- b)* medical or scientific experiments;
- c)* removal of tissue or organs for transplantation, except where these acts are justified in conformity with the conditions provided for in paragraph 1.

3. Exceptions to the prohibition in paragraph 2 *c)* may be made only in the case of donations of blood for transfusion or of skin for grafting, provided that they are given voluntarily and without any coercion or inducement, and then only for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient.

4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.

5. The persons described in paragraph 1 have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.

6. Each Party to the conflict shall keep a medical record for every donation of blood for transfusion or skin for grafting by persons referred to in paragraph 1, if that donation is made under the responsibility of that Party. In addition, each Party to the conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1. These records shall be available at all times for inspection by the Protecting Power.

(...)

SECTION III

MISSING AND DEAD PERSONS

Article 32 — General principle

In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.

Article 33 — Missing persons

1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.
2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each Party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol:

- a) record the information specified in Article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;
 - b) to the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.
3. Information concerning persons reported missing pursuant to paragraph 1 and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International Committee of the Red Cross and its Central Tracing Agency, each Party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.
4. The Parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse Party while carrying out these missions in areas controlled by the adverse Party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties.

Article 34 — Remains of deceased

1. The remains of persons who have died for reasons related to occupation or in detention resulting from occupation or hostilities and those of persons not nationals of the country in which they have died as a result of hostilities shall be respected, and the gravesites of all such persons shall be respected, maintained and marked as provided for in Article 130 of the Fourth Convention, where their remains or gravesites would not receive more favourable consideration under the Conventions and this Protocol.
2. As soon as circumstances and the relations between the adverse Parties permit, the High Contracting Parties in whose territories graves and, as the case may be, other locations of the remains of persons who have died as a result of hostilities or during occupation or in detention are situated, shall conclude agreements in order:

- a) to facilitate access to the gravesites by relatives of the deceased and by representatives of official graves registration services and to regulate the practical arrangements for such access;
 - b) to protect and maintain such gravesites permanently;
 - c) to facilitate the return of the remains of the deceased and of personal effects to the home country upon its request or, unless that country objects, upon the request of the next of kin.
3. In the absence of the agreements provided for in paragraph 2 *b)* or *c)* and if the home country of such deceased is not willing to arrange at its expense for the maintenance of such gravesites, the High Contracting Party in whose territory the gravesites are situated may offer to facilitate the return of the remains of the deceased to the home country. Where such an offer has not been accepted the High Contracting Party may, after the expiry of five years from the date of the offer and upon due notice to the home country, adopt the arrangements laid down in its own laws relating to cemeteries and graves.
4. A High Contracting Party in whose territory the gravesites referred to in this Article are situated shall be permitted to exhume the remains only:
- a) in accordance with paragraphs 2 *c)* and 3, or
 - b) where exhumation is a matter of overriding public necessity, including cases of medical and investigative necessity, in which case the High Contracting Party shall at all times respect the remains, and shall give notice to the home country of its intention to exhume the remains together with details of the intended place of reinterment.

(...)

Article 44 — Combatants and prisoners of war

1. Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war.
2. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraphs 3 and 4.
3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military

operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly: *a)* during each military engagement, and

b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.

Acts which comply with the requirements of this paragraph shall not be considered as perfidious within the meaning of Article 37, paragraph 1 *c)*.

4. A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol. This protection includes protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offences he has committed.
5. Any combatant who falls into the power of an adverse Party while not engaged in an attack or in a military operation preparatory to an attack shall not forfeit his rights to be a combatant and a prisoner of war by virtue of his prior activities.
6. This Article is without prejudice to the right of any person to be a prisoner of war pursuant to Article 4 of the Third Convention.
7. This Article is not intended to change the generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict.
8. In addition to the categories of persons mentioned in Article 13 of the First and Second Conventions, all members of the armed forces of a Party to the conflict, as defined in Article 43 of this Protocol, shall be entitled to protection under those Conventions if they are wounded or sick or, in the case of the Second Convention, shipwrecked at sea or in other waters.

Article 45 — Protection of persons who have taken part in hostilities

1. A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war, and therefore shall be protected by the Third Convention, if he claims the status of prisoner of war, or if he appears to be entitled to such status, or if the Party on which he depends claims such status on his behalf by notification to the detaining Power or to the Protecting Power. Should any doubt arise as to whether any such person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal.
2. If a person who has fallen into the power of an adverse Party is not held as a prisoner of war and is to be tried by that Party for an offence arising out of the hostilities, he shall have the right to assert his entitlement to prisoner-of-war status before a judicial tribunal and to have that question adjudicated. Whenever possible under the applicable procedure, this adjudication shall occur before the trial for the offence. The representatives of the Protecting Power shall be entitled to attend the proceedings in which that question is adjudicated, unless, exceptionally, the proceedings are held *in camera* in the interest of State security. In such a case the detaining Power shall advise the Protecting Power accordingly.

Any person who has taken part in hostilities, who is not entitled to prisoner-of-war status and who does not benefit from more favourable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of this Protocol. In occupied territory, any such person, unless he is held as a spy, shall also be entitled, notwithstanding Article 5 of the Fourth Convention, to his rights of communication under that Convention.

(...)

Article 75 — Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on

any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:
 - a) violence to the life, health, or physical or mental well-being of persons, in particular:
 - i) murder;
 - ii) torture of all kinds, whether physical or mental;
 - iii) corporal punishment; and
 - iv) mutilation;
 - b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
 - c) the taking of hostages;
 - d) collective punishments; and
 - e) threats to commit any of the foregoing acts.
3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.
4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:
 - a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
 - b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
 - c) no one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the

national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

- d)* anyone charged with an offence is presumed innocent until proved guilty according to law;
 - e)* anyone charged with an offence shall have the right to be tried in his presence;
 - f)* no one shall be compelled to testify against himself or to confess guilt;
 - g)* anyone charged with an offence shall have the right 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;
 - h)* no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;
 - i)* anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and
 - j)* a convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.
5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.
6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until final release, repatriation or re-establishment, even after the end of the armed conflict.
7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

- a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and
- b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

(...)

SECTION II

REPRESSION OF BREACHES OF THE CONVENTIONS AND OF THIS PROTOCOL

Article 85 — Repression of breaches of this Protocol

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse Party protected by Articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse Party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by this Protocol.

(...)

4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:

(...)

(b) unjustifiable delay in the repatriation of prisoners of war or civilians;

(...)

(e) depriving a person protected by the Conventions or referred to in paragraph 2 of this Article of the rights of fair and regular trial.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

(...)

Article 87 — Duty of commanders

1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and report to competent authorities breaches of the Conventions and of this Protocol.
2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.
3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

Article 88 — Mutual assistance in criminal matters

1. The High Contracting Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of grave breaches of the Conventions or of this Protocol.
2. Subject to the rights and obligations established in the Conventions and in Article 85, paragraph 1, of this Protocol, and when circumstances permit, the High Contracting Parties shall co-operate in the matter of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred.
3. The law of the High Contracting Party requested shall apply in all cases.

The provisions of the preceding paragraphs shall not, however, affect the obligations arising from the provisions of any other treaty of a bilateral or

multilateral nature which governs or will govern the whole or part of the subject of mutual assistance in criminal matters.

(...)

4. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977

(Extracts)

Preamble

The High Contracting Parties,

Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character,

Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,

Emphasizing the need to ensure a better protection for the victims of those armed conflicts,

Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience,

Have agreed on the following:

PART I

SCOPE OF THIS PROTOCOL

Article 1 — Material field of application

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of applications, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Article 2 — Personal field of application

1. This Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as “adverse distinction”) to all persons affected by an armed conflict as defined in Article 1.

At the end of the armed conflict, all the persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to such conflict, as well as those deprived of their liberty or whose liberty is restricted after the conflict for the same reasons, shall enjoy the protection of Articles 5 and 6 until the end of such deprivation or restriction of liberty.

(...)

PART II

HUMANE TREATMENT

Article 4 — Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.
2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:
 - a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
 - b) collective punishments;
 - c) taking of hostages;
 - d) acts of terrorism;

- e)* outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- f)* slavery and the slave trade in all their forms;
- g)* pillage;
- h)* threats to commit any of the foregoing acts.

Children shall be provided with the care and aid they require, and in particular:

(...)

- d)* the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of sub-paragraph *c)* and are captured;

(...)

Article 5 — Persons whose liberty has been restricted

1. In addition to the provisions of Article 4, the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained:

- a)* the wounded and the sick shall be treated in accordance with Article 7;
- b)* the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;
- c)* they shall be allowed to receive individual or collective relief;
- d)* they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;
- e)* they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. Those who are responsible for the internment or detention of the persons referred to in paragraph 1 shall also, within the limits of their capabilities, respect the following provisions relating to such persons:

- a)* except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;

- b)* they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;
 - c)* places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;
 - d)* they shall have the benefit of medical examinations;
 - e)* their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.
3. Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1 *a)*, *c)* and *d)*, and 2 *b)* of this Article.
4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding.

Article 6 — Penal prosecutions

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.
2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:
- a)* the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
 - b)* no one shall be convicted of an offence except on the basis of individual penal responsibility;
 - c)* no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at

the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

d) anyone charged with an offence is presumed innocent until proved guilty according to law;

e) anyone charged with an offence shall have the right to be tried in his presence;

f) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

PART III

WOUNDED, SICK AND SHIPWRECKED

Article 7 — Protection and care

1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Article 8 — Search

Whenever circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-

treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them.

(...)

PART IV

CIVILIAN POPULATION

Article 13 — Protection of the civilian population

- 1.The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
- 2.The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
- 3.Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

(...)

III

INTERNATIONAL CRIMINAL LAW

1. Rome Statute of the International Criminal Court of 17 July 1998

(Extracts)

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

(...)

Article 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(...)

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(...)

(i) Enforced disappearance of persons;

(...)

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(...)

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control

of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(...)

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

(...)

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(...)

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(...)

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(...)

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(...)

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(...)

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(...)

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(...)

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(...)

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(...)

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

(...)

2. Elements of crime September 2002

(Extracts)

a- Crimes against humanity

Article 7 (1) (e)

Crime against humanity of imprisonment or other severe deprivation of physical liberty

Elements

1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.
2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (1) (f)

Crime against humanity of torture²⁷

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were in the custody or under the control of the perpetrator.
3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

²⁷ It is understood that no specific purpose need be proved for this crime.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

(...)

Article 7 (1) (i)

Crime against humanity of enforced disappearance of persons^{28 29}

Elements

1. The perpetrator:

- (a) Arrested, detained^{30 31}, or abducted one or more persons; or
- (b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.

2. (a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or

(b) Such refusal was preceded or accompanied by that deprivation of freedom.

3. The perpetrator was aware that³²:

(a) Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons¹¹⁴; or

(b) Such refusal was preceded or accompanied by that deprivation of freedom.

4. Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.

5. Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried

²⁸ Given the complex nature of this crime, it is recognized that its commission will normally involve more than one perpetrator as a part of a common criminal purpose.

²⁹ This crime falls under the jurisdiction of the Court only if the attack referred to in elements 7 and 8 occurs after the entry into force of the Statute.

³⁰ The word “detained” would include a perpetrator who maintained an existing detention.

³¹ It is understood that under certain circumstances an arrest or detention may have been lawful. ¹¹³ This element, inserted because of the complexity of this crime, is without prejudice to the General Introduction to the Elements of Crimes.

³² It is understood that, in the case of a perpetrator who maintained an existing detention, this element would be satisfied if the perpetrator was aware that such a refusal had already taken place.

out by, or with the authorization or support of, such State or political organization.

6. The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.

7. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

8. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

(...)

Article 7 (1) (k)

Crime against humanity of other inhumane acts

Elements

1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.

2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.³³

3. The perpetrator was aware of the factual circumstances that established the character of the act.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

(...)

³³ It is understood that “character” refers to the nature and gravity of the act.

Article 8 (2) (a) (ii)-1

War crime of torture

Elements³⁴

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.
3. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
4. The perpetrator was aware of the factual circumstances that established that protected status.
5. The conduct took place in the context of and was associated with an international armed conflict.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (ii)-2

War crime of inhuman treatment

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

³⁴ As element 3 requires that all victims must be “protected persons” under one or more of the Geneva Conventions of 1949, these elements do not include the custody or control requirement found in the elements of article 7 (1) (e).

Article 8 (2) (a) (ii)-3

War crime of biological experiments

Elements

1. The perpetrator subjected one or more persons to a particular biological experiment.
2. The experiment seriously endangered the physical or mental health or integrity of such person or persons.
3. The intent of the experiment was non-therapeutic and it was neither justified by medical reasons nor carried out in such person's or persons' interest.
4. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (iii)

War crime of wilfully causing great suffering

Elements

1. The perpetrator caused great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

(...)

Article 8 (2) (a) (vi)

War crime of denying a fair trial

Elements

1. The perpetrator deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vii)-1

War crime of unlawful deportation and transfer

Elements

1. The perpetrator deported or transferred one or more persons to another State or to another location.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vii)-2

War crime of unlawful confinement

Elements

1. The perpetrator confined or continued to confine one or more persons to a certain location.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

(...)

Article 8 (2) (b) (vi)

War crime of killing or wounding a person *hors de combat*

Elements

1. The perpetrator killed or injured one or more persons.
2. Such person or persons were *hors de combat*.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

(...)

Article 8 (2) (b) (x)-2

War crime of medical or scientific experiments

Elements

1. The perpetrator subjected one or more persons to a medical or scientific experiment.
2. The experiment caused death or seriously endangered the physical or mental health or integrity of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.
4. Such person or persons were in the power of an adverse party.

5. The conduct took place in the context of and was associated with an international armed conflict.

6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

(...)

Article 8 (2) (b) (xxi)

War crime of outrages upon personal dignity

Elements

1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.³⁵

2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

(...)

Article 8 (2) (c) (i)-3

War crime of cruel treatment

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.

3. The perpetrator was aware of the factual circumstances that established this status.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

³⁵ For this crime, “persons” can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (i)-4

War crime of torture

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
4. The perpetrator was aware of the factual circumstances that established this status.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (ii)

War crime of outrages upon personal dignity

Elements

1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.³⁶
2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
4. The perpetrator was aware of the factual circumstances that established this status.

³⁶ For this crime, “persons” can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim.

5. The conduct took place in the context of and was associated with an armed conflict not of an international character.

6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

(...)

Article 8 (2) (c) (iv)

War crime of sentencing or execution without due process

Elements

1. The perpetrator passed sentence or executed one or more persons.³⁷

2. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

3. The perpetrator was aware of the factual circumstances that established this status.

4. There was no previous judgement pronounced by a court, or the court that rendered judgement was not “regularly constituted”, that is, it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgement did not afford all other judicial guarantees generally recognized as indispensable under international law.³⁸

5. The perpetrator was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.

6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

(...)

³⁷ The elements laid down in these documents do not address the different forms of individual criminal responsibility, as enunciated in articles 25 and 28 of the Statute.

³⁸ With respect to elements 4 and 5, the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial.

Article 8 (2) (e) (xi)-2

War crime of medical or scientific experiments

Elements

1. The perpetrator subjected one or more persons to a medical or scientific experiment.
2. The experiment caused the death or seriously endangered the physical or mental health or integrity of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.
4. Such person or persons were in the power of another party to the conflict.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

(...)

PART TWO

AFRICAN INSTRUMENTS

I

TEXTS OF GENERAL APPLICATION

A. TEXTS ADOPTED BY THE AFRICAN UNION

1. African Charter on Human and Peoples' Rights

Adopted by the eighteenth assembly of Heads of State and Government (OAU), Nairobi, Kenya. Entry into force 21 October 1986.

(Extracts)

Preamble

The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights",

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a "preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights";

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples";

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations. and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone; Convinced that it is henceforth

essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex, language, religion or political opinions;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human and people' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

Have agreed as follows:

Part I: Rights and Duties

Chapter I: Human and Peoples' Rights

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law.

2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

(...)

Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 17

1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

(...)

Chapter II: Duties

Article 27

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29

The individual shall also have the duty:

(...)

7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;

(...)

Part II: Measures of Safeguard

Chapter I: Establishment and Organization of the African Commission on Human and Peoples' Rights

Article 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

(...)

Chapter II: Mandate of the Commission

Article 45

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:

(a) To collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.

(b) To formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

(c) Cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.

3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.

4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

(...)

Article 55

1. Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

Communications relating to human and peoples' rights referred to in 55 received by the Commission, shall be considered if they:

1. Indicate their authors even if the latter request anonymity,
2. Are compatible with the Charter of the Organization of African Unity or with the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news discriminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and
7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

(...)

Chapter IV : Applicable Principles

Article 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the

provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

Article 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and people's rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

Article 62

Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

(...)

2. Grand Bay (Mauritius) Declaration and Plan of action

Adopted by the First OAU Ministerial Conference on Human Rights, meeting from 12 to 16 April 1999 in Grand Bay, Mauritius;

(Extracts)

Considering that the promotion and protection of Human Rights is a matter of priority for Africa, and that the Conference provides a unique opportunity to carry out a comprehensive analysis and reflection on the mechanisms for the protection of Human Rights to guarantee Human Rights for accelerated development of the Continent;

Recalling the *Declaration on the Political and Socio Economic Situation in Africa and the Fundamental Changes Taking Place in the World* adopted by the Assembly of Heads of State and Government of the OAU in 1990, as well as the *Declaration establishing within the OAU, a Mechanism for Conflict Prevention, Management and Resolution* adopted by the Assembly of Heads of State and Government of the OAU in Cairo (Egypt) in June 1993;

Acknowledging that observance of human rights is a key tool for promoting collective security, durable peace and sustainable development as enunciated in the *Cairo Agenda for Action on relaunching Africa's socio economic formation* adopted by the extraordinary session of the Council of Ministers held in Cairo, Egypt, from 25 to 28 March, 1995;

Taking Note of the growing recognition that violations of human rights may constitute a burden for the international community;

Reaffirming its commitment to the purposes and principles contained in the OAU Charter, UN Charter, the Universal Declaration of Human Rights as well as, the African Charter on Human and Peoples' Rights;

Deeply Concerned by acts of genocide and other crimes against humanity perpetrated in certain parts of Africa;

Emphasizing that respect for Human Rights is indispensable for the maintenance of regional and international peace and security and elimination of conflicts, and that it constitutes one of the fundamental bedrocks on which development efforts should be realized.

Considering the democratization processes taking place on the Continent and the expressed desires of African peoples to live in a state of law which secures the full enjoyment of Human Rights and fundamental freedoms for all peoples,

regardless of their gender, race, place of origin, religion, social status, ethnic background, political opinions or language;

Further Considering the importance of the right to development, the right to international peace and security and the principles of solidarity and Friendly relations between States provided for in the African Charter on Human and Peoples' Rights;

Recalling the determination of the collective leadership in Africa to establish conditions which will ensure social justice and progress and thus enable African peoples to enjoy better standards of living in greater freedom and in the spirit of tolerance towards all;

Reiterating the need to constructively examine Human Rights issues in a spirit of justice, impartiality and non-selectivity, avoiding their use for political purposes;

Recognizing the progress ' achieved by African States in the domain of Human Rights and the significant contribution of the African Continent to the universalization of these rights;

Further Recognizing the contribution made by African NGOs to the promotion and protection of Human Rights in Africa;

Recalling the recommendations made by the *Second Conference of National Human Rights Institutions* held in Durban in 1998;

Determined to consolidate the gains made in Africa in the promotion and protection of Human and Peoples' Rights;

SOLEMNLY ADOPTS THE GRAND BAY (MAURITIUS) DECLARATION AND PLAN OF ACTION

1. The Ministerial Conference affirms the principle that Human Rights are universal, indivisible, interdependent and inter related and urges governments, in their policies, to give parity to economic, social and cultural rights as well as civil and political rights;

(...)

3. The Conference further affirms the interdependence of the principles of good governance, the Rule of Law, democracy and development.

4. The Conference recognizes that the development of the rule of law, democracy and Human Rights calls for an independent, open, accessible and impartial judiciary, which can deliver justice promptly and at an affordable

cost. To this end, such a system requires a body of professional and competent judges enjoying conducive conditions.

5. The Conference recognises that the core Values on which Human Rights are founded, particularly

- a. respect for the sanctity of life and human dignity
- b. tolerance of differences
- c. desire for liberty, order, fairness, prosperity and stability,

are shared across all cultures. In this connection, integrating positive traditional and cultural values of Africa into the Human Rights debate will be useful in ensuring their transmission to future generations

(...)

14. The Conference recognizes the necessity for States to give effect to the African Charter, International Humanitarian Law and other major international Human Rights instruments which they have ratified, in their national legislations for wider effect throughout Africa.

15. The Conference reiterates the fact that the primary responsibility for the promotion and protection of Human Rights lies with the State. It therefore urges States to establish national human rights institutions and to provide them with adequate financial resources and ensure their independence.

16. The Conference recognizes that the reporting obligation of States Parties under the African Charter on Human and Peoples' Rights provides an important mechanism and an opportunity for African governments to engage in a process of continuous dialogue with the African Commission. Accordingly, the Conference recommends that States Parties take appropriate measures to meet their reporting obligations under the Charter.

(...)

3. Kigali Declaration

(Extracts)

Adopted by the 1st African Union (AU) Ministerial Conference on Human Rights in Africa meeting on 8 May 2003 in Kigali, Rwanda;

SOLEMNLY ADOPTS THIS KIGALI DECLARATION

Reaffirming its commitment to the objectives and principles contained in the Constitutive Act of the African Union, Lome, Togo 2000, the African Charter on Human and Peoples' Rights, Nairobi, Kenya 1981, the Solemn Declaration of the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), Lome, Togo 2000, the New Partnership for Africa's Development (NEPAD) of the AU, Lusaka, 2001 Zambia, the Declaration on the Code of Conduct on relations between States adopted in Tunis, Tunisia in June 1994, all relevant AU Declarations and Decisions as well as the UN Charter 1948 and the Universal Declaration of Human Rights and the Vienna Declarations of 1989 and 1993.

Recalling the *Grand Bay Declaration and Plan of Action* adopted by the OAU Ministerial Conference on Human Rights in Africa held in Grand Bay, Mauritius, from 12 to 16 April 1999, and reaffirming its commitment to the purposes and principles therein;

Reaffirming that respect for human rights is indispensable for the maintenance of national, regional and international peace and security and that it constitutes the fundamental bedrock for sustainable development;

Reaffirming further the principles enshrined in the Constitutive Act of the African Union, in particular, the prohibition of genocide, war crimes and crimes against humanity; and determined to fight the ideology of genocide and all its manifestations;

(...)

Deeply concerned that in spite of the progress made in resolving conflicts on the Continent, the continuing armed and civil conflicts in some parts of Africa lead to gross violations of human rights and international humanitarian law, and create massive movements of refugee populations and internally displaced persons.

The Conference:

1. **Reaffirms** the principle that all human rights are universal, indivisible, inter-dependent and inter-related.

2. **Notes with satisfaction** the achievements made by Member States in the promotion and protection of human and peoples' rights, especially since the adoption of the Grand Bay Declaration and Plan of Action, and recognizes the need for Member States to build upon these achievements for the benefit and welfare of all African peoples;

(...)

5. **Calls upon** Member States to guarantee genuine independence, accessibility, affordability and due process of the Justice systems on the Continent, as a prerequisite to the entrenchment of the rule of law and democracy.

(...)

25. **Urges** Member States which have not yet done so to incorporate in their domestic legislation, provisions of the *African Charter on Human and Peoples' Rights*, its protocols, international humanitarian law in particular the Four (4) Geneva Convention (1949) and their Additional Protocols (1977) and other major international human rights instruments, which they have ratified, and to honour their obligations thereon, including reporting, where applicable.

(...)

27. **Reiterates** that the primary responsibility for the promotion and protection of human rights rests with Member States and, therefore, urges those Member States which have not yet done so, to establish independent national human rights institutions, provide them with adequate financial and other resources for their proper functioning, and guarantee their independence.

(...)

Adopted at Kigali, Rwanda on 8 May 2003

B. TEXTS ADOPTED BY THE ARABIC ISLAMIC ORGANIZATIONS

1. The Cairo Declaration on Human Rights in Islam

Adopted by the Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, from 9-14 Muharram 1411H (31 July to 5 August 1990),

(Extracts)

The Member States of the Organization of the Islamic Conference,

Reaffirming the civilizing and historical role of the Islamic Ummah which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith; and the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization.

Wishing to contribute to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization and of a self-motivating force to guard its rights;

Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person is individually responsible - and the Ummah collectively responsible - for their safeguard.

Proceeding from the above-mentioned principles,

Declare the following:

Article 1:

(a) All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic

human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, color, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection.

(b) All human beings are God's subjects, and the most loved by Him are those who are most useful to the rest of His subjects, and no one has superiority over another except on the basis of piety and good deeds.

Article 2:

(a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to protect this right from any violation, and it is prohibited to take away life except for a Shari'ah prescribed reason.

(b) It is forbidden to resort to such means as may result in the genocidal annihilation of mankind.

(c) The preservation of human life throughout the term of time willed by God is a duty prescribed by Shari'ah

(d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Sharia-prescribed reason.

Article 3:

(a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old man, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate dead bodies. It is a duty to exchange prisoners of war and to arrange visits or reunions of the families separated by the circumstances of war.

(...)

Article 4:

Every human being is entitled to inviolability and the protection of his good name and honor during his life and after his death. The state and society shall protect his remains and burial place.

(...)

Article 18:

(a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property.

(...)

Article 19:

(a) All individuals are equal before the law, without distinction between the ruler and the ruled.

(b) The right to resort to justice is guaranteed to everyone.

(c) Liability is in essence personal.

(d) There shall be no crime or punishment except as provided for in the Shari'ah

(e) A defendant is innocent until his guilt is proven in a fair trial in which he shall be given all the guarantees of defence.

Article 20:

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experimentation without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

(...)

2. Arab Charter on Human Rights

Adopted by the Arab League Council, 15 September 1994

(Extracts)

Preamble

Stemming from the Arab Nation's faith in the dignity of man; from when God favoured it by making the Arab nation the cradle of monotheistic religions and the birthplace of civilisation; which has reaffirmed [man's] right to a life of dignity based on freedom, justice and peace.

Having achieved the everlasting principles established by the Islamic Shari'a and the other divine religions enshrined in brotherhood and equality amongst human beings.

Cherishing the humanitarian values and principles which [the Arab Nation] has established throughout its long history, having had a major role in spreading centres of knowledge between East and West, and made it the destination of people from all over the world and of those seeking knowledge, culture and wisdom.

For the Arab World, from one end to the other, has continued to call for preserving its belief, having faith in its unity, struggling for its freedom, defending the right of nations to self determination and to preserve their wealth, and believing in the Rule of Law, and that mankind's enjoyment of freedom, justice and equal opportunity is the hallmark of the profound essence of any society.

Rejecting racism and Zionism, both of which constitute a violation of human rights and a threat to world peace.

Recognising the close link between human rights and world peace.

Reaffirming the principles of the United Nations Charter, the Universal Declaration of Human Rights, the provisions of the two United Nations International Covenants, on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Cairo Declaration on Human Rights in Islam.

Affirming all the above, [these governments] agree to the following:

(...)

Part two

Article 2

Each State party to the present Charter undertakes to ensure that every individual located within its territory and subject to its jurisdiction, shall have the right to enjoy all the rights and freedoms recognised in this [Charter], without distinction on the basis of race, colour sex, language, religion, political opinion, national or social origin, wealth, birth or other status, and without any discrimination between men and women.

Article 3

A. There will be no restriction of any basic human right which is recognised or existent in any State party to this Charter, by virtue of law, treaties or custom. Nor may [these rights] be derogated from under the pretext that they have not been recognised in this Charter, or recognised to a lesser degree.

B. No State party to this Charter shall derogate from the basic freedoms contained in [this Charter] and from which the citizens of another state benefit, which affords those freedoms to a lesser degree.

Article 4

A. It is prohibited to impose limitations on the rights and freedoms guaranteed by virtue of this Charter unless where prescribed by law and considered necessary to protect national and economic security, or public order, or public health, or morals, or the rights and freedoms of others.

B. State Parties may, in times of public emergencies which threaten the life of the nation, take measures that exonerate them from their obligations in accordance with this Charter to the extent strictly required by the circumstances.

C. The limitations or derogations shall not affect the prohibition from torture and degrading [treatment], the return to [one's] country, political asylum, trial, the prohibition against retrial of the same act, and the principle of the legality of the crime and punishment.

Article 5

Everyone has the right to life, liberty, and security of person; these rights are protected by law.

Article 6

There can be no crime, or punishment, except for what is stipulated in law. Nor can there be any punishment for any acts committed previous to the enactment of that law. The accused benefits from a subsequent law. if it is in his interest.

Article 7

The accused is presumed innocent until proven guilty in a lawful trial where defence rights are guaranteed.

Article 8

Every person has the right to liberty and security of person. No one shall be subjected to arrest or detention or stopped without legal basis and must be brought before the judiciary without delay.

Article 9

Everyone is equal before the judiciary, and the right to judicial recourse is guaranteed for every person, on the territory of a State.

Article 10

Sentence of death will be imposed only for the most serious crimes; every individual sentenced to death has the rights to seek pardon or commutation of the sentence.

Article 11

Under no circumstances may the death sentence be imposed for a political offence.

Article 12

Sentences of death shall not be carried-out on persons below eighteen years of age, or a pregnant woman, until she gives birth, or a nursing mother, until two years have passed from the date of [her child's] birth.

Article 13

A. The State parties shall protect every person in their territory from physical or psychological torture, or from cruel, inhuman, degrading treatment. [The State parties] shall take effective measures to prevent such acts; performing or participating in them shall be considered a crime punished by law.

B. No medical or scientific experimentation shall be carried-out on any person without his free consent.

Article 14

No one shall be imprisoned for proven inability to repay a debt or another civil obligation.

Article 15

Those punished with deprivation of liberty must be treated humanely.

Article 16

No person can be tried twice for the same crime. Anyone against whom such a measure is taken has the right to challenge its legality and request his release. Anyone who is the victim of an illegal arrest or detention has the right to compensation.

(...)

Article 18

The recognition of a person before the law is a character attached to every person.

(...)

3. Arab Charter on Human Rights

Adopted in May 23, Tunis, Tunisia,

(Extracts)

Given the Arab nation's belief in human dignity since God honoured it by making the Arab World the cradle of religions and the birthplace of civilizations which confirms its right to a life of dignity, based on freedom, justice and equality,

Pursuant to the eternal principles of brotherhood, equality and tolerance among all human beings which were firmly established by the Islamic Shari'a and other divinely-revealed religions,

Being proud of the humanitarian principles which it firmly established in the course of its long history and which played a major role in disseminating centres of learning between the East and the West, thereby making it an international focal point for seekers of knowledge, culture and wisdom,

Conscious of the fact that the entire Arab World has always worked together to preserve its faith, believed in its unity, struggled to protect its freedom, defended the right of nations to self-determination, to safeguard their resources and to development, believed in the rule of law and its contribution to the protection of universal and interrelated human rights, and believed that every individual's enjoyment of freedom, justice, and equality of opportunity is the yardstick by which the merits of any society are gauged,

Rejecting racism and zionism which constitute a violation of human rights and pose a threat to international peace and security, acknowledging the close interrelationship between human rights and world peace, reaffirming the principles of the Charter of the United Nations and the Universal Declaration of Human Rights, as well as the provisions of the United Nations International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights and the Cairo Declaration of Human Rights in Islam,

The State Parties to this Charter have agreed as follows:

Article 1

The present Charter shall undertake, in the context of the national identity of the Arab States, their sense of belonging to a common civilisation, to achieve the following goals:

1. To place human rights at the centre of national preoccupation in the Arab States, to create great (fundamental) ideals for guiding the individual's will in these Arab States, and to help him improve his situation (life) in accordance with the noblest human values.
2. To instill (teach) in the human being in the Arab States pride in his identity, to (be) be faithful to his nation and to have a bond with his land, his history and common interests with all human beings in the Arab States. To encourage humane brotherhood, tolerance and open-mindedness in accordance with universal principles and the principles set out in human rights international instruments.
3. To prepare future generations in the Arab States to live free and responsible lives in a civil society united by a balance between consciousness of rights and respect for obligations, and governed by principles of equality, tolerance and moderation.
4. To establish the principle that all human rights are universal, indivisible, interdependent and indissoluble.

Article 2

1. All peoples have the right of self-determination and control over their natural wealth and resources and, accordingly, have the right to freely determine the form of their political structure and to freely pursue their economic, social and cultural development.
2. All peoples have the right to live under national sovereignty and territorial unity.
3. All forms of racism, zionism, occupation and foreign domination pose a challenge to human dignity and constitute a fundamental obstacle to the realization of the basic rights of peoples. There is a need to condemn and endeavour to eliminate all such practices.
4. All peoples have the right to resist foreign occupation.

Article 3

1. Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its jurisdiction the right to

enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, color, sex, language, religion, opinion, thought, national or social origin, property, birth or physical or mental disability.

2. The States Party to the present Charter shall undertake necessary measures to guarantee effective equality in the enjoyment of all rights and liberties established in the present Charter, so as to protect against all forms of discrimination based on any reason mentioned in the previous paragraph.
3. Men and women are equal in human dignity, in rights and in duties, within the framework of the positive discrimination established in favor of women by Islamic Shari'a and other divine laws, legislation and international instruments. Consequently, each State Party to the present Charter shall undertake all necessary measures to guarantee the effective equality between men and women.

Article 4

1. In time of public emergency which threatens the life of the nation and which shall be officially proclaimed as such, the State Parties may take measures derogating from their obligations under the present Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 5, 8, 9, 10, 13, 14, 15, 18, 19, 20, 22, 27, 28, and 29 shall be made under this provision. The legal guarantees for the protection of those rights may not be suspended.
3. Any State Party to the present Charter availing itself of the right of derogation shall immediately inform the other States Parties, through the intermediary of the Secretary General of the League of Arab States, of the provisions from which it has derogated and of the reason for which the derogation was declared. A further communication shall be made, through the same intermediary, on the date on which it shall terminate such derogation.

Article 5

1. Every human being has an inherent right to life.
2. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 6

The death penalty shall be inflicted only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. Such a penalty can only be carried out pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

Article 7

1. The death penalty shall not be inflicted on a person under 18 years of age, unless otherwise provided by the law in force at the time of the commission of the crime.
2. The death penalty shall not be carried out on a pregnant woman prior to her delivery or on a nursing mother within two years from the date on which she gave birth. In any case, the interests of the infant shall prevail.

Article 8

1. No one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment.
2. The State Parties shall protect every person in their territory from being subjected to such practices and take effective measures to prevent such acts. The practice thereof, or participation therein, shall be regarded as a punishable offense. Each victim of an act of torture is entitled to a right to compensation and rehabilitation.

Article 9

No medical or scientific experimentation, or use of organs shall be carried out on any person without his free and informed consent about the consequences resulting from it. Ethical, humanitarian and professional rules shall be complied with. Medical procedures in conformity with the relevant laws of each State Party aiming to ensure the concerned person's security shall be respected. The market of human organs is prohibited under all circumstances.

Article 10

1. Slavery and slave trade in all their forms shall be prohibited and punishable by law. No one shall, under any circumstances, be held in slavery or in servitude.
2. Forced labor, human trafficking for prostitution or sexual exploitation, the exploitation of others for prostitution and any other form of exploitation, as well as exploiting children during armed conflicts, are prohibited.

Article 11

All persons are equal before the law and have a right to enjoy its protection without discrimination.

Article 12

All persons are equal before the courts. The State Parties ensure the independence of the courts and the protection of judges against interference, pressure or threat. All persons within the territory of the State Parties are ensured a right to legal remedy.

Article 13

1. Everybody has the right to a fair trial in which sufficient guarantees are ensured, conducted by a competent, independent and impartial tribunal established by law, in judging the grounds of criminal charges brought against him or in determining his rights and obligations. State Parties shall ensure financial aid to those without the necessary means to pay for legal assistance to enable them to defend their rights.
2. The hearing shall be public other than (except) in exceptional cases where the interests of justice so require in a democratic society which respects freedom and human rights.

Article 14

1. Every individual has the right to liberty and security of person and no one shall be arrested, searched or detained without a legal warrant.
2. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

3. Anyone who is arrested shall be informed at the time of arrest, in a language which he understands, of the reasons for his arrest, and shall be promptly informed of any charges against him. Anyone who is arrested has a right to contact his relatives.
4. Anyone who has been deprived of his liberty by arrest or detention is entitled to be subjected to a medical examination, and shall be informed of such right.
5. Anyone arrested or detained on a criminal charge shall be brought promptly before a Judge or other officer authorized by law to exercise judicial power, and shall be entitled to trial within a reasonable time, or to release. The release may be subject to guarantees to appear for trial. It shall not be a general rule that persons awaiting trial shall be held in custody.
6. Anyone who is deprived of his liberty by arrest or detention shall be entitled to proceedings before a court, in order that a court may decide without delay on the lawfulness of his arrest or detention, and order his release if the arrest or the detention is not lawful.
7. Anyone who is the victim of unlawful arrest or detention shall be entitled to compensation.

Article 15

There shall be no crime or punishment except as provided by a previously promulgated law. The accused shall benefit from subsequent legislation if it is in his favour.

Article 16

The accused shall be presumed innocent until proven guilty at a lawful trial. During the investigation and the trial, the accused shall be entitled to the following minimum guarantees:

1. To be informed promptly and in detail, in a language which he understands, of the nature and cause of the charge against him.
2. To have adequate time and facilities for the preparation of his defense and to contact his relatives.

3. To be tried in his presence in front of a judge, and to defend himself or through legal assistance of his own choosing or with the assistance of his lawyer, with whom he can freely and confidentially communicate.
4. To have free legal assistance of a lawyer to defend himself if he does not have sufficient means to pay for his defense, and if the interests of justice so require. To have the free assistance of an interpreter if he cannot understand or speak the language of the court.
5. 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.
6. Not to be compelled to testify against himself or to confess to guilt.
7. If convicted of a crime, to have his conviction and sentence reviewed by a higher tribunal according to law.
8. To have the security of his person and his private life respected in all circumstances.

Article 17

Each State Party shall ensure to all children deemed “at risk” and juvenile persons accused of an infraction the right to a special legal regime for minors during the length of the hearing, the trial, and application of judgment. Such special treatment shall be appropriate for their age, protect their dignity and promote their rehabilitation, and allow them to play a constructive role in society.

Article 18

No one shall be imprisoned on the ground of his proven inability to meet a debt or fulfil any civil obligation.

Article 19

1. No one shall be tried twice for the same offense. Anyone against whom such proceedings are brought shall have the right to challenge their legality and to demand his release.

2. Anyone whose innocence has been established by a final judgment shall be entitled to compensation for damages suffered.

(...)

II

SPECIFIC INSTRUMENTS

A. TREATMENT OF PRISONERS

1. Resolution on Prisons in Africa

Adopted by the African Commission on Human and Peoples' Rights meeting at its 17th Ordinary Session held from 13 to 22 March 1995, Lomé, Togo.

(Extracts)

Guided by the African Charter on Human and Peoples' Rights and, in particular, Article 45 of the Charter which defines the mandate of the Commission,

Considering that the rights established and guaranteed under the African Charter on Human and Peoples' Rights extend to all categories of persons including prisoners, detainees and other persons deprived of their liberty,

Considering also the leading role played by African States in the establishment of international norms and standards for the protection of human rights of prisoners including the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Standard Minimum Rules for the Treatment of Prisoners, among others, and that an overwhelming majority of the States Parties to the African Charter on Human and Peoples' Rights subscribe to the principles and rules contained in these international norms and standards,

Aware of Resolution 1984/87 of the United Nations Economic and Social Council which requests States to "inform the Secretary-General of the United Nations every five years of the progress made with the application of the Standard Minimum Rules for the Treatment of Prisoners and of the factors and difficulties, if any, affecting their implementation",

Concerned that the conditions of prisons and prisoners in many African countries are afflicted by severe inadequacies including high congestion, poor physical health and sanitary conditions; inadequate recreational, vocational and rehabilitation programmes, restricted contact with the outside world, large percentages of persons awaiting trial, among others,

Conscious that States assume responsibilities to look after the welfare of persons who have been deprived for their liberty including prisoners and detainees,

Mindful of the obligation of the States parties to the African Charter on Human and Peoples' Rights to improve prison conditions and protect the human rights of prisoners, detainees and the persons deprived of their liberty in Africa and efforts undertaken;

Hereby:

1. **Resolves that** prison conditions in many African countries do not conform with the articles of the African Charter on Human and Peoples' Rights and to the international norms and standards for the protection of the human rights of prisoners including the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners, among others;

2. **Urges** States parties of the African Charter on Human and Peoples' Rights to include in the reports submitted to the Commission under Article 62 of the Charter information on human rights affecting the human rights of prisoners;

3. **Calls upon** States parties to the African Charter on Human and Peoples' Rights to comply with Resolution 1984/877 of the United Nations Economic and Social Council to submit periodic reports to the Secretary-General of the United Nations in compliance with the Standard Minimum Rules for the Treatment of Prisoners.

(...)

2. The Kampala Declaration on Prison Conditions in Africa

Adopted at the Kampala Seminar on prison conditions in Africa, September 1996

Prison conditions

Considering that in many countries in Africa the level of overcrowding in prisons is inhuman, that there is a lack of hygiene, insufficient or poor food, difficult access to medical care, a lack of physical activities or education, as well as an inability to maintain family ties,

Bearing in mind that any person who is denied freedom has a right to human dignity,

Bearing in mind that the universal norms on human rights place an absolute prohibition on torture of any description,

Bearing in mind that some groups of prisoners, including juveniles, women, the old and the mentally and physically ill, are especially vulnerable and require particular attention,

Bearing in mind that juveniles must be separated from adult prisoners and that they must be treated in a manner appropriate to their age,

Remembering the importance of proper treatment for female detainees and the need to recognize their special needs,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1. That the human rights of prisoners should be safeguarded at all times and that non-governmental agencies should have a special role in this respect,
2. That prisoners should retain all rights which are not expressly taken away by the fact of their detention,
3. That prisoners should have living conditions which are compatible with human dignity,
4. That conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by the loss of liberty,
5. That the detrimental effects of imprisonment should be minimized so that prisoners do not lose their self-respect and sense of personal responsibility,
6. That prisoners should be given the opportunity to maintain and develop links with their families and the outside world,

7. That prisoners should be given access to education and skills training in order to make it easier for them to reintegrate into society after their release,
8. That special attention should be paid to vulnerable prisoners and that non-governmental organizations should be supported in their work with these prisoners,
9. That all the norms of the United Nations and the African Charter on Human and Peoples' Rights on the treatment of prisoners should be incorporated into national legislation in order to protect the human rights of prisoners,
10. That the Organization of African Unity and its member States should take steps to ensure that prisoners are detained in the minimum conditions of security necessary for public safety.

Remand prisoners

Considering that in most prisons in Africa a great proportion of prisoners are awaiting trial, sometimes for several years,

Considering that for this reason the procedures and policies adopted by the police, the prosecuting authorities and the judiciary can significantly influence prison overcrowding,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1. That the police, the prosecuting authorities and the judiciary should be aware of the problems caused by prison overcrowding and should join the prison administration in seeking solutions to reduce this,
2. That judicial investigations and proceedings should ensure that prisoners are kept in remand detention for the shortest possible period, avoiding, for example, continual remands in custody by the court,
3. That there should be a system for regular review of the time detainees spend on remand.

Prison staff

Considering that any improvement in conditions for prisoners will be dependent on staff having pride in their work and a proper level of competence, Bearing in mind that this will only happen if staff are properly trained,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1. That there should be a proper career structure for prison staff,

2. That all prison personnel should be linked to one government ministry and that there should be a clear line of command between central prison administration and the staff in prisons,
3. That the State should provide sufficient material and financial resources for staff to carry out their work properly,
4. That in each country there should be an appropriate training programme for prison staff to which the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI) should be invited to contribute,
5. That there should be a national or subregional institution to deliver this training programme,
6. That the penitentiary administration should be directly involved in the recruitment of prison staff.

Alternative sentencing

Noting that in an attempt to reduce prison overcrowding, some countries have been trying to find a solution through amnesties, pardons or by building new prisons,

Considering that overcrowding causes a variety of problems including difficulties for overworked staff,

Taking into account the limited effectiveness of imprisonment, especially for those serving short sentences, and the cost of imprisonment to the whole of society,

Considering the growing interest in African countries in measures which replace custodial sentences, especially in the light of human rights principles,

Considering that community service and other non-custodial measures are innovative alternatives to imprisonment and that there are promising developments in Africa in this regard,

Considering that compensation for damage done is an important element of non-custodial sentences,

Considering that legislation can be introduced to ensure that community service and other non-custodial measures will be imposed as an alternative to imprisonment,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1. That petty offences should be dealt with according to customary practice, provided this meets human rights requirements and that those involved so agree,
2. That whenever possible petty offences should be dealt with by mediation and should be resolved between the parties involved without recourse to the criminal justice system,
3. That the principle of civil reparation or financial recompense should be applied, taking into account the financial capability of the offender or of his or her parents,
4. That the work done by the offender should if possible recompense the victim,
5. That the community service and other non-custodial measures should if possible be preferred to imprisonment,
6. That there should be a study of the feasibility of adapting successful African models of non-custodial measures and applying them in countries where they are not yet being used,
7. That the public should be educated about the objectives of these alternatives and how they work.

African Commission on Human and Peoples' Rights

Considering that the African Commission on Human and Peoples' Rights has the mandate to ensure the promotion and the protection of human and peoples' rights in Africa,

Considering that the Commission has shown on many occasions its special concern on the subject of poor prison conditions in Africa and that it has adopted special resolutions and decisions on this question previously,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend that the African Commission on Human and Peoples' Rights:

1. Should continue to attach priority to the improvement of prison conditions throughout Africa,
2. Should nominate a Special Rapporteur on Prisons in Africa as soon as possible,
3. Should make the Member States aware of the recommendations contained in this Declaration and publicize United Nations and African norms and standards on imprisonment,

4. Should cooperate with non-governmental organizations and other qualified institutions in order to ensure that the recommendations of this Declaration are implemented in all the Member States.

3. Plan of Action for the Kampala Declaration on Prison Conditions in Africa

Considering that the All-Africa Seminar held in Kampala, Uganda, 19-21 September 1996, adopted a Declaration on prison conditions in Africa, hereafter the Kampala Declaration, which constitutes a historical document of crucial importance,

Considering the appointment of the Special Rapporteur on Prisons and Conditions of Detention in Africa, as was originally recommended in the Kampala Declaration,

Noting with appreciation that the Kampala Declaration's importance was recognised when it was noted in, and annexed to, a resolution on International co-operation for the improvement of prison conditions in developing countries by the United Nations Commission on Crime Prevention and Criminal Justice, at its sixth session (Vienna, May 1997),

The Plan of Action set out below is recommended as a means of implementing the Kampala Declaration. It is addressed to governments and institutions as well as to NGO and associations, and meant to be a source of inspiration for concrete actions.

KAMPALA PLAN OF ACTION

1/ Prisons in Africa are over-crowded and inadequately resourced. The conditions for prisoners are inhuman; the conditions for staff are intolerable. This over-use of imprisonment does not serve the interests of justice, nor does it protect the public, nor is it a good use of scarce public resources. Imprisonment should only be imposed by the court when there is no other appropriate sentence. People should be sent to prison only when they have committed very serious offences or when the protection of the public requires it. A concerted response from African nations and the international community is required to reduce the use of imprisonment throughout the continent and ensure that international standards and norms for the treatment of prisoners are adhered to.

2/ Prisons in Africa should be considered in the context of economic development, social and cultural values and social change. Emphasis should be placed on providing education, skillsbased training and a work programme that is in the interests of the rehabilitation of the offender while incorporating

elements of self-sufficiency and sustainability of both the prison institutions and the detainees as a community.

3/ In many developing countries, there is concern about an increased rate of crime. An understandable response is to send more people to prison, resulting in increased prison populations. This response has little effect on rates of crime. The majority of detainees are in pretrial detention for petty crimes or serving short terms of imprisonment. Alternative sentences to imprisonment need to be developed and promoted in suitable cases. Pre-trial detainees should have access to bail by right, and their numbers should be kept as low as possible. Courts need to speed up the trial process. Informal avenues that do not include the courts — such as diversion, mediation and reconciliation— should be explored.

4/ The prison exists to protect society from those who commit serious crimes. In order to achieve this aim, the prison needs to be provided with adequate resources, the important role of prison staff recognised and standards and norms respected. The success of a prison system is measured by the security it offers society and degree to which the treatment it provides rehabilitates offenders. It should only be used as a last resort, while alternatives and resocialisation should be, as much as possible, preferred to imprisonment.

5/ In light of these general considerations, the following recommendations are made as essential elements of an effective Plan of Action for consideration by governments and civil society groups in Africa.

- a) Governments should review penal policy in light of the Kampala Declaration and call on other national and international agencies (governmental and non-governmental) to assist them in this task;
- b) Interested bodies or agencies should co-operate to the fullest extent possible to assist the review process and provide technical assistance and material support;
- c) Research into non-custodial sentencing options, including community service, should be undertaken and broadly disseminated to assist governments in determining and implementing penal policy. Continued attention should be given to ways of reducing prison populations in conformity with international standards and norms;
- d) Urgent and concrete measures should be adopted that improve conditions for vulnerable groups in prisons and other places of detention; such as: juveniles, women, mothers and babies, the elderly, terminally ill and very sick,

the mentally ill, the disabled, foreign nationals. Procedures that take into account their special needs and adequate treatment during their arrest, trial and detention, must be applied to these groups;

e) Many prisoners require only minimal levels of security and should be accommodated in open institutions. Wherever possible, prisoners should be encouraged to involve themselves in educational and productive activities with the support of staff.

f) International standards and norms on the treatment of prisoners should be incorporated in national legislation. These instruments — including the Kampala Declaration — should be extensively taught to prison staff and made widely available to prisoners, the media and members of the public;

g) Prison staff should be recognised for the important work they carry out and their role as public servants, and properly trained. Members of the public should be sensitised to prisons and the conditions of staff and prisoners. Public debate on penal policy and reform should be encouraged through the media. Visits to prisons by interest groups should also be welcomed and encouraged;

h) The role that NGO have to play in prisons is important and should be recognised by all governments. They should have easy access to places of detention and their involvement should be encouraged;

i) Channels of communication should be set up with the Special Rapporteur (SR) on Prisons and Conditions of detention in Africa so that the SR can be assisted and supported in his important task;

j) The African Commission on Human and Peoples' Rights should be invited to give priority to prison conditions in Africa, in accordance with the African Charter and other international instruments, and to give full support and assistance to the work of the Special Rapporteur. The Commission should also be invited to promote the Kampala Declaration amongst member States;

k) Regional seminars should be convened to discuss regional initiatives and disseminate the findings and proceedings of these seminars throughout the continent, and enhance bilateral, multilateral and international co-operation, assistance and networking;

l) A second pan-African conference on Prison Conditions in Africa should be held in 1999/2000, with the aim of assessing progress made and setting up new objectives.

6/ African governments are urged to implement this Plan of Action as the collective endeavour of the African community to deal with the urgent crisis in the continent's prisons.

7/ The Special Rapporteur should be invited to incorporate this Plan of Action in his work program, and disseminate it to governments and NGO, as well as the media and the public at large.

4. The Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa

The function of Special Rapporteur on Prisons and Conditions of Detention was created during the 20th Ordinary Session of the Commission, following the Seminar on Prison Conditions in Africa (Kampala, 19 - 21 September 1996). It is therefore one of the oldest Special Mechanisms. The Special Rapporteur is empowered to examine the situation of persons deprived of their liberty within the territories of States Parties to the African Charter on Human and Peoples' Rights. Resolution 37 adopted by the African Commission on Human and Peoples' Rights at the 25th Ordinary Session held in Bujumbura, Burundi from 26 April to 5 May 1999, extended the mandate of the Special Rapporteur. The mandate was most recently renewed with the adoption of Resolution 156 at the 46th Ordinary Session held in Banjul, The Gambia, in November 2009.

The various Special Rapporteurs have been quite active, among others by holding missions to the various State Parties – since 1997, over 20 missions have taken place.

5. Arusha Declaration on good prison practice

27 February 1999, Arusha, Tanzania. Adopted by The Prison Services in Central, Eastern and Southern African (CESCA)

Preamble

- Aware of the fact that the management of prison is a social service, and that it is important to keep the public informed about the work of prison service;
- Further aware of the need to promote transparency and accountability in the management of prisons, and prisoners in Africa;
- Recalling the Kampala Declaration on Prison Conditions in Africa 1996 which sets out an agenda for penal reform in Africa;
- Noting the Kadoma Declaration on Community Service Orders in Africa 1997 which recommends greater use of non-custodial measures for offences committed at the lower end of the criminal scale;
- Further noting the provisions of the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture and other Forms of Inhuman or Degrading Treatment or Punishment safeguarding the right to life, prompt trial and dignity of person;
- Bearing in mind the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners, the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment and the Code of Conduct for Law Enforcement Officials;
- Further bearing in mind that prison officers, who comply with national and international standards for the protection of prisoners deserve the respect and the co-operation of the prison administration where they serve and the community as a whole;
- Noting that conditions in most African prisons fall short of these minimum standards;

The Prison Services in Central, Eastern and Southern African (CESCA) agree with the following principles:

1. To promote and implement good prison practice, in conformity with the international standards mentioned above, and to adjust domestic laws to these standards, if not yet done so;

2. To improve management practices in individual prisons, and in the penitentiary system as a whole to increase transparency and efficiency within the prison service;
3. To enhance the professionalism of prison staff and improve their working and living conditions;
4. To respect and protect the rights and dignity of prisoners as well as ensure compliance with national and international standards;
5. To provide training programmes to prison staff which will incorporate human rights standards in a way that is meaningful and relevant and improve the skills base of prison officers and, for this purpose, to establish a CESCA Training Board;
6. To establish a criminal justice mechanism comprising all components within the criminal justice system to co-ordinate activities and to cooperate in the solution of common problems;
7. To invite civil society groups into the prisons to work in partnership with the prison service to improve conditions of prisoners and the working environment of prisons;
8. To call upon governments and national and international organisations to give full support to this Declaration.

Arusha, Tanzania, 23-27 February 1999

6. Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa

PREAMBLE

The African Commission on Human and Peoples' Rights (the Commission), meeting at its 55th Ordinary Session, held from 28 April to 12 May 2014 in Luanda, Angola:

Recalling its mandate to promote and protect human and peoples' rights under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling Resolution 228 on the Need to Develop Guidelines on Conditions of Police Custody and Pre-trial Detention in Africa adopted at its 52nd Ordinary Session in October 2012;

Recognising the mandate provided to the Special Rapporteur on Prisons and Conditions of Detention in Resolution 228 on the Need to Develop Guidelines on Conditions of Police Custody and Pre-trial Detention in Africa adopted at its 52nd Ordinary Session in October 2012;

Recalling Resolution 100 on the Adoption of the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System adopted at its 40th Ordinary Session in November 2006;

Noting Articles 2, 3, 4, 5, 6, 7 and 26 of the African Charter on Human and Peoples' Rights on the rights to life, dignity, security, fair trial and the independence of the judiciary;

Noting further its mandate under Article 45(1)(b) of the African Charter on Human and Peoples' Rights *'to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation'*;

Concerned by arbitrary, excessive, and at times abusive recourse to police custody and pre-trial detention prevalent in several States Parties to the African Charter on Human and Peoples' Rights, characterised by weak criminal justice systems;

Acknowledging the vast differences between states in terms of legal systems, political and historic influences on the use and conditions of detention, socio-economic and geographical conditions;

Acknowledging that individuals in police custody and pre-trial detainees in many African countries experience arbitrary limitations on their rights, poor

health conditions, and are subject to torture, inhuman and degrading treatment or punishment;

PART 1

ARREST

1. General provisions

- a. For the purpose of these Guidelines, ‘arrest’ refers to the act of apprehending a person for the alleged commission of an offence, or to the action of a competent authority to arrest and detain a person as otherwise authorised by law.
- b. Everyone has the right to liberty and security of the person. Detention must always be an exceptional measure of last resort. No one shall be subjected to arbitrary or unlawful arrest or detention.
- c. Where appropriate, particularly for minor crimes, efforts should be made to divert cases away from the criminal justice system and utilise recognised and effective alternatives that respect applicable international law and standards. Alternatives to arrest and detention should be promoted under a framework that includes reasonable accommodation for persons with disabilities, and a framework that promotes the best interests of children in conflict with the law.

2. Grounds for arrest

- a. Persons shall only be deprived of their liberty on grounds and procedures established by law. Such laws and their implementation must be clear, accessible and precise, consistent with international standards and respect the rights of the individual.
- b. Arrests must not be carried out on the basis of discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status.

3. Procedural guarantees for arrest

- a. Arrests shall only be carried out by police or by other competent officials or authorities authorised by the state for this purpose, and shall only be carried out pursuant to a warrant or on reasonable grounds to suspect that a person has committed an offence or is about to commit an arrestable offence.
- b. Officials conducting an arrest must clearly identify themselves and the unit to which they belong by showing an official identity card which visibly

displays their name, rank and identity number. Any vehicles used shall have clearly visible number plates and any other required or legally prescribed identity markers or numbers.

c. The lawful use of force and firearms shall be a measure of last resort and limited to circumstances in which it is strictly necessary in order to carry out an arrest. If the use of force is absolutely necessary in the circumstances:

i. The level of force must be proportionate and always at the most minimal level necessary.

ii. Additional restrictions on the use of firearms shall be prescribed by law and require that their use be strictly limited to the arrest of a person presenting an imminent threat of death or serious injury; or to prevent the perpetration of a serious crime involving grave threat to life, and only when less extreme measures are insufficient to make the arrest.

iii. The use of force shall be strictly regulated under national law and in conformity with international standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

d. Searches must be carried out in accordance with the law, and in a manner consistent with the inherent dignity of the person and the right to privacy. Officials conducting a search shall:

i. For all types of searches, including pat-down searches, strip searches and internal body searches, be of the same gender as the suspect.

ii. Inform suspects of the reason for the search prior to the conduct of the search.

iii. Make a written record of the search, which is accessible by the person searched, his or her lawyer or other legal service provider, family members, and, if the person searched is in custody, any other authority or organisation with a mandate to visit places of detention or to provide oversight on the treatment of persons deprived of his or her liberty.

iv. Provide a receipt for any items confiscated during the search.

v. Ensure that strip searches and internal body searches are only conducted in private.

vi. Ensure that internal body searches are only conducted by a medical professional and only upon informed consent or by a court order.

e. Arresting authorities shall maintain, and provide access to, an official custody register in strict accordance with Part 4 of these Guidelines.

4. Rights of an arrested person

The following rights shall be afforded to all persons under arrest:

- a. The right to be free from torture and other cruel, inhuman and degrading treatment and punishment.
- b. The right to be informed of the reasons for their arrest and any charges against them.
- c. The right to silence and freedom from self-incrimination.
- d. The right of access, without delay, to a lawyer of his or her choice, or if the person cannot afford a lawyer, to a lawyer or other legal service provider, provided by state or non-state institutions.
- e. The right to humane and hygienic conditions during the arrest period, including adequate water, food, sanitation, accommodation and rest, as appropriate considering the time spent in police custody.
- f. The right to contact and access a family member or another person of their choice, and if relevant consular authorities or embassy.
- g. The right to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities.
- h. The right to information in accessible formats, and the right to an interpreter.
- i. The right to apply for release on bail or bond pending investigation or questioning by an investigating authority and/or appearance in court.
- j. The right to challenge promptly the lawfulness of their arrest before a competent judicial authority.
- k. The right to freely access complaints and oversight mechanisms.
- l. The right to reasonable accommodation which ensures equal access to substantive and procedural rights for persons with disabilities.

5. Notification of rights

At the time of their arrest, all persons shall be informed of the rights set out in section 4, orally and in writing, and in a language and format that is accessible and is understood by the arrested person. Authorities shall provide the arrested

person with the necessary facilities to exercise the rights set out in section 4, above.

PART 2

POLICE CUSTODY

6. General provisions

- a. Detention in police custody shall be an exceptional measure. Legislation, policy, training and standard operating procedures shall promote the use of alternatives to police custody, including court summons or police bail or bond.
- b. States should establish measures to promote transparency with regard to police custody, including inspections by judicial authorities or an independent body and lay visiting schemes involving local community representatives and legal and health personnel.

7. Safeguards for police custody

- a. All persons detained in police custody shall have a presumptive right to police bail or bond. States shall ensure that competent authorities and officials within the state's criminal justice system authorised to grant police bail or bond make decisions based on the criteria set out in Part 3 of these Guidelines.
- b. If detention in police custody is determined by the competent authority to be absolutely necessary:
 - i. All persons arrested and detained have the right to prompt access to a judicial authority to review, renew and appeal decisions to deny police bail or bond.
 - ii. The maximum duration of police custody, prior to the obligation to bring the arrested person before a judge, shall be set out in national law that prescribes time limits of no more than 48 hours extendable in certain circumstances by a competent judicial authority, consistent with international law and standards.
- c. Persons in police custody shall have access to confidential and independent complaints mechanisms while in custody.

8. Access to legal services

- a. States should establish a legal aid service framework through which legal services for persons in police custody and pre-trial detention are guaranteed.

b. Legal services may be provided by a number of service providers including lawyers, paralegals and legal clinics, depending on the nature of the work and the requisite skills and qualifications. States should take steps to ensure sufficient access to quality legal services and, in particular, that sufficient lawyers are trained and available.

c. Reference in these Guidelines to services provided by persons other than lawyers shall not in any way be a substitute for the right to access to and assistance by a qualified lawyer. Where the services of a lawyer are not available, States shall make every effort to ensure that services available from suitably qualified legal service providers can be accessed by detainees under conditions that guarantee the full respect of the rights of the detainees as set out in international law and standards.

d. All persons detained in police custody enjoy the following rights in relation to legal assistance:

i. Access without delay to lawyers and other legal service providers, at the latest prior to and during

any questioning by an authority, and thereafter throughout the criminal justice process.

ii. Confidentiality of communication, including meetings, correspondence, telephone calls and other forms of communications with lawyers and other legal service providers shall be respected. Such communications may take place within the sight of officials, providing that they are conducted out of the hearing of officials. If this confidentiality is broken, any information obtained shall be inadmissible as evidence.

iii. Detainees shall be provided with the means to contact a lawyer or other legal service provider of their choice or one appointed by the state. State legal assistance should be provided if the detainee does not have sufficient means or if the interests of justice require, for example given the gravity, urgency or complexity of the case, the severity of the potential penalty, and/or the status of the detainee as vulnerable or otherwise protected under Part 7 of these Guidelines.

iv. The right to access case files and have adequate time and facilities to prepare a defence.

v. Access to lawyers or other legal service providers should not be unlawfully or unreasonably restricted. If access to legal services is

delayed or denied, or detained persons are not adequately informed of their right to access providers of legal services in a timely manner, then States shall ensure that a range of remedies are available, in accordance with the principles set out in Part 8 of these Guidelines.

vi. Legal service providers should possess the requisite skills and training as required under national law for the provision of legal assistance and services. Depending on the system in place, this includes lawyers, and where appropriate also other legal advisors, legal assistants, paralegals and those running legal clinics.

9. Questioning and confessions

a. Prior to the commencement of each questioning session, all persons detained in police custody, and other persons subject to police questioning, shall be afforded the following rights:

i. The right to be informed of the right to the presence and assistance of a lawyer or other legal service provider (such as a suitably qualified paralegal) during questioning where a lawyer or other legal service provider is not present.

ii. The presence and assistance of a lawyer or, where relevant, other legal service providers, during questioning.

iii. The right to a medical examination, with the results of each examination recorded in a separate medical file, access to which is governed by the normal rules on medical confidentiality.

iv. The presence and the services of an interpreter, and access to accessible formats, if the arrested person does not understand and speak the language in which the questioning will take place or has a disability.

b. The right of persons undergoing questioning to remain silent shall be respected at all times. It shall be prohibited to take undue advantage of the situation of a detained person for the purpose of compelling or inducing him or her to confess, to incriminate himself or herself, or to testify against another person.

c. No detained person while being questioned shall be subject to torture or other ill-treatment, such as violence, threats, intimidation or methods of questioning which impair his or her capacity of decision or his or her judgment.

d. Confessions should only be taken in the presence of a judicial officer or other officer of the court who is independent of the investigating authority. The

burden of proof lies with the prosecution to prove that confessions were obtained without duress, intimidation or inducements. Confessions by children are to be recorded in the presence of a judicial officer, and their parent, guardian or independent advocate, lawyer or other legal services provider.

e. The following information about every questioning session shall be recorded by the authority carrying out the questioning:

- i. The duration of any questioning session.
 - ii. The intervals between questioning sessions.
 - iii. The identity of any officials who conducted the questioning and of any other persons present.
 - iv. Confirmation that the detained person was availed the opportunity to seek legal services prior to the questioning, was provided with a medical examination, and had access to an interpreter during questioning (including sign language for the hearing impaired) and any accommodations necessary to ensure the detainee's understanding of and participation in the process were made.
 - v. Details of any statements provided by the detained person, with verification from the detained person that the record accurately recounts the statement he or she provided.
- f. Detaining authorities shall maintain, and provide access to, an official custody register, in strict accordance with Part 4 of these Guidelines.
- g. States shall make provision for the audio and audiovisual recording of questioning sessions and the provision of confessions.

PART 3

PRE-TRIAL DETENTION

10. General provisions

- a. For the purpose of these Guidelines, 'pre-trial detention' refers to the period of detention ordered by a judicial authority pending trial.
- b. Pre-trial detention is a measure of last resort and should only be used where necessary and where no other alternatives are available.
- c. Persons charged with a criminal offence that does not carry a custodial penalty shall not be subject to a pre-trial detention order.

- d. All persons shall have the right to a fair trial, within a reasonable time, in accordance with international law and standards, including the principles set out in the African Commission on Human and Peoples' Rights' Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.
- e. Pre-trial detainees shall be provided with information on court sessions and any adjournments of court sessions.
- f. Pre-trial detainees shall only be held in a formally recognised and gazetted place of detention. Information on the gazetted places of police custody and pre-trial detention should be readily accessible.
- g. Pre-trial detainees should be held in detention facilities as close to their home or community as possible, taking into account any caretaking or other responsibilities.

11. Safeguards on pre-trial detention orders

- a. Judicial authorities shall only order pre-trial detention:
 - i. On grounds that are clearly established by law and which are consistent with international standards, and not motivated by discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status; and
 - ii. If there are reasonable grounds to believe that the accused has been involved in the commission of a criminal offence that carries a custodial sentence, and there is a danger that he or she will abscond, commit further serious offences or if there is a danger that the release of the accused will not be in the interests of justice.
- b. If pre-trial detention is ordered, judicial authorities shall ensure that the least restrictive conditions are imposed that will reasonably ensure the appearance of the accused in all court proceedings and protect victims, witnesses, the community and any other person.
- c. Judicial authorities shall clearly demonstrate in the reasons for their decisions that they have considered alternatives before making a pre-trial detention order.
- d. Judicial authorities shall provide written reasons for decisions to order pre-trial detention. This should include clear demonstration that alternatives to pre-trial detention were considered.

e. Persons subject to pre-trial detention orders shall have the right to challenge the lawfulness of their detention at any time and to seek immediate release in the case of unlawful or arbitrary detention, and compensation and/or other remedies as set out in Part 8 of these Guidelines.

f. At all hearings to determine the legality of an initial detention order, or of an order extending or renewing pre-trial detention, detainees have the right to be present, the right to the assistance of a lawyer or other legal service provider, the right to access all relevant documents, the right to be heard, and the right to reasonable accommodation to ensure equal enjoyment of rights by persons with disabilities.

g. The burden of proof on the lawfulness of initial detention orders, and the lawfulness and necessity of extended or continued pre-trial detention, lies with the State.

12. Reviews of pre-trial detention orders

- a. Regular review of pre-trial detention orders shall be provided for in national law. Judicial authorities and detaining authorities shall ensure that all pre-trial detention orders are subject to regular review.
- b. In making a pre-trial detention order, or in extending or renewing pre-trial detention, judicial authorities shall ensure that they have thoroughly considered the need for continued pre-trial detention and shall give consideration to the following issues:
 - i. Assess whether sufficient legal reasons exist for the arrest or detention and order release if they do not exist.
 - ii. Assess whether the investigating authorities are exercising due diligence in bringing the case to trial.
 - iii. If the individual is suspected of a criminal offence, assess whether in the circumstances of the case of the individual, the detention pending trial is necessary and proportionate. In such assessment, among other things, responsibilities as primary caretakers should be taken into consideration.
 - iv. Enquire about and take means necessary to safeguard the well-being of the detainee.
- c. Judicial authorities shall provide written reasons for orders to extend or renew pre-trial detention.

13. Provision for delays in investigations and judicial proceedings

- a. Anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time.
- b. Judicial authorities shall investigate any delay in the completion of proceedings which could substantially prejudice the prosecution, the pre-trial detainee or his or her lawyer or other legal service provider, the State or a witness. In considering the question of whether any delay is reasonable, the judicial authority shall consider the following factors:
 - i. The duration of the delay.
 - ii. The reasons advanced for the delay.
 - iii. Whether any person or authority is responsible for the delay.
 - iv. The effect of the delay on the personal circumstances of the detained person and witnesses.
 - v. The actual or potential prejudice caused to the State or the defence by the delay.
 - vi. The effect of the delay on the administration of justice.
 - vii. The adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued.
 - viii. Any other factor which in the opinion of the judicial authority ought to be taken into account.
- c. If the judicial authority finds that the completion of the proceedings is being delayed unreasonably by the State or its agents, the judicial authority may issue any such order as it deems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order to release the accused if the length of his or her detention is inconsistent with the right of detained persons to trial within a reasonable time. In such cases, however, release may be accompanied by any proportionate and necessary safeguards.

14. Safeguards for persons subject to pre-trial detention orders

- a. Pre-trial detention orders shall be carried out in strict accordance with the law and shall not be motivated by discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status.
- b. Pre-trial detainees shall only be held in an officially recognised place of detention.

- c. Pre-trial detainees shall have regular and confidential access to lawyers or other legal service providers. Detainees must be provided with information about the availability of lawyers and, where appropriate, other legal service providers, the means to access them, and the facilities to prepare their defence.
- d. Detaining authorities shall maintain, and provide access to, an official custody register in strict accordance with Part 4 of these Guidelines.

PART 4

REGISTERS

15. General provisions

- a. All arrests and detentions shall be recorded at the earliest possible time following arrest or detention in an official register with sequentially numbered pages.
- b. Access to the register shall be provided to the arrested or detained person, his or her lawyer or other legal service provider, family members, and any other authority or organisation with a mandate to visit places of detention or to provide oversight on the treatment of persons deprived of their liberty.

16. Information to be recorded in arrest, custody and pre-trial detention registers

All registers shall contain the following information, as a minimum:

- a. The identity, age and address of the person, and the contact information of another person responsible for the care or custody of the person, if applicable.
- b. The date, time and place that:
 - i. the person was arrested or detained;
 - ii. the person was notified of the reasons for arrest or detention;
 - iii. a record of the arrest or detention was made in the register; and
 - iv. notification of the arrest or detention to a third person of the arrested person's choice took place.
- c. The identity of the officers involved in the arrest or detention.
- d. Observations on the state of the mental and physical health of the arrested or detained person (including any visible physical injuries), and

whether they requested or required medical assistance or reasonable accommodation, with due respect for medical confidentiality.

- e. An itemised account of any personal items belonging to the detained person taken by the arresting or detaining authority.
- f. The date, time and place of any transfers, and the identity of the official(s) responsible for, and involved in, that transfer.
- g. Any complaints raised by the arrested or detained person.

17. Additional information to be recorded in arrest registers

In addition to the requirements set out in sections 15 and 16 of these Guidelines, official arrest registers shall also set out:

- a. The reason for the arrest.
- b. The date and time that the arrested person was notified of the reasons for his or her arrest, in terms of sections 4 and 5 of these Guidelines, and the identity of the official who performed the notification.
- c. The date and time that the arrested person or an official notified a third person of the arrested person's choice about the arrest.

18. Additional information to be recorded in police cell custody registers

In addition to the requirements set out in sections 15 and 16 of these Guidelines, official custody registers for police cells shall also set out:

- a. The time and date the detained person was granted or refused unconditional release or release on summons, and the reasons for the refusal.
- b. The date and time that the detained person was notified of the charges brought against him or her, the right to seek release, the reason for the refusal to grant release, and the identity of the official who performed the notification.

19. Additional information to be recorded in pre-trial detention registers

In addition to the requirements set out in sections 15 and 16 of these Guidelines, official pre-trial detention registers shall also set out:

- a. The name of the authority supervising the pre-trial detention.
- b. The time and date of the pre-trial detention order, and the name of the judicial authority who ordered the initial, extended and continuing pre-trial detention.

- c. The next date of review of the pre-trial detention orders by the relevant judicial authority.

PART 5

PROCEDURES FOR SERIOUS VIOLATIONS OF HUMAN RIGHTS IN POLICE CUSTODY AND PRE-TRIAL DETENTION

20. State responsibility to account for death and serious injury in police custody and pre-trial detention

Given the control that the State exercises over persons held in police custody or pre-trial detention, States shall provide a satisfactory explanation, and make available information on the circumstances surrounding custody or detention, in every case of death or serious injury of persons who are deprived of their liberty.

21. Deaths in police custody and pre-trial detention

- a. If a person under arrest, in police custody, pre-trial detention, or in the process of transfer, dies, a prompt, impartial and independent inquiry into the cause of death shall be undertaken by a judicial authority. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. The investigating authority shall have access to all necessary information and persons to conduct a thorough, impartial and independent inquiry.
- b. The detainee's next of kin shall be promptly informed of the death, be provided with regular updates by the authority investigating the death, and have access to information about the detainee and the investigative process in accordance with the principles set out in the African Commission on Human and Peoples' Rights' Model Law on Access to Information.
- c. On completion of all examinations essential to the investigation, the body of the deceased shall be returned to the family, in a manner that is fully respectful of the dignity of the deceased, so that funeral rites or other customary procedures can be conducted with the least possible delay. The investigating authorities should hand over to the next of kin a complete death certificate as soon as possible after the death. The personal belongings of the deceased should be returned to the next of kin as soon as possible.

22. Torture and other cruel, inhuman or degrading treatment or punishment and other serious human rights violations in police custody and pre-trial detention

- a. All persons deprived of their liberty shall have the right to lodge a complaint with a competent, independent and impartial authority with a mandate to conduct prompt and thorough investigations in a manner consistent with the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa.
- b. If there are reasonable grounds to believe that an act of torture and other cruel, inhuman or degrading treatment or punishment, or another serious human rights violation has taken place, States shall ensure prompt investigation by independent and impartial authorities.

PART 6

CONDITIONS OF DETENTION IN POLICE CUSTODY AND PRE-TRIAL DETENTION

23. General provisions

Persons deprived of their liberty shall enjoy all fundamental rights and freedoms, except those limitations which are demonstrably necessary by the fact of detention itself.

24. Physical conditions

Conditions of detention in police custody and pre-trial detention shall conform with all applicable international law and standards. They shall guarantee the right of detainees in police custody and pre-trial detention to be treated with respect for their inherent dignity, and to be protected from torture and other cruel, inhumane or degrading treatment or punishment.

25. Procedural and other safeguards

States should have in place, and make known, laws, policies and standard operating procedures, which accord with Member States' obligations under the African Charter on Human and Peoples' Rights and other international law and standards, to:

- a. Reduce overcrowding in police custody and pre-trial detention facilities, including through the use of a variety of alternatives to detention, including the use of measures that do not require resort to judicial

proceedings, providing that these measures are consistent with international law and standards.

- b. Limit the use of force against persons in police custody or pre-trial detention to circumstances in which force is strictly necessary for, and proportionate to, the need for maintenance of security and order within the detention facility, or when personal safety is threatened.
- c. Limit the use of firearms for reasons of self-defence or the defence of others against the imminent threat of death or serious injury.
- d. Limit the permissible use of restraints, and the type of restraints, to ensure consistency with the presumption of innocence, treatment of detained persons that accords with respect for the inherent dignity of the person.
- e. Set out the use of disciplinary measures against persons in police custody or pre-trial detention in law, policy and standard operating procedures, consistent with the inherent dignity of the person, humane treatment, and limitations on the use of force.
- f. Ensure that the use of solitary confinement is restricted, and that methods to anticipate crisis situations and de-escalate them without the need to resort to seclusion, restraint or forced treatment are developed and ingrained among law enforcement personnel.
- g. Provide legislative, budgetary and other measures for the provision of adequate standards of accommodation, nutrition, hygiene, clothing, bedding, exercise, physical and mental healthcare, contact with the community, religious observance, reading and other educational facilities, support services, and reasonable accommodation, in accordance with international law and standards.
- h. Have in place measures, including health assessment screenings, to reduce suicide and self-harm, such as alternatives to custody, diversion to mental healthcare, promotion of family support, drug treatment and detoxification, and training for officials to identify and address persons who are at risk of suicide and self-harm.
- i. Ensure that any transfer of detainees is authorised by law, that detainees are only moved to and from official gazetted places of detention, that movements are recorded in a register in accordance with Part 4 of these Guidelines, and that detainees' next of kin and/all legal representatives are informed about the transfer prior to the transfer taking effect.

j. Ensure that there is adequate and efficient staffing in places of detention, and that staff are trained in terms of these Guidelines, including special training on the provisions for vulnerable persons, and subject to effective oversight and accountability mechanisms.

26. Separation of categories of detainees

The State shall ensure that detaining authorities hold pre-trial detainees separately from the convicted prison population. They shall also ensure that detaining authorities take the necessary measures to provide for the special needs of vulnerable groups/persons, in accordance with Part 7 of these Guidelines.

27. Communication

Detainees in police custody and pre-trial detention shall be provided with appropriate facilities to communicate with, and receive visits from, their families at regular intervals, subject to reasonable restrictions and supervision as are necessary in the interests of security. Such contact shall not be denied for more than a few days.

28. Recreational, vocational and rehabilitation services

States shall ensure that persons in police custody and pre-trial detainees have access to adequate recreational, vocational, rehabilitation and treatment services.

PART 7

VULNERABLE GROUPS

29. General provisions

- a. Legislative, administrative and other measures that apply to persons under arrest, in police custody and in pre-trial detention shall be consistent with international law and standards.
- b. In addition to the principles set out in these Guidelines, and the rights afforded to persons with special needs under the African Charter on Human and Peoples' Rights and relevant international law, States shall take measures to ensure that the special protections set out in Part 7 of these Guidelines are provided in relation to persons with special needs.
- c. States should provide for access to intermediaries to assist with capacity and communication, and should be provided for on the grounds of age or

incapacity. Intermediaries should be subject to a state registration process and be neutral and independent.

30. Special measures are not discriminatory

- a. Measures designed to protect the rights of persons with special needs, such as children, women (especially pregnant and breastfeeding women), persons with albinism, the elderly, persons with HIV/ AIDS, refugees, sex workers, on the basis of gender identity, refugees and asylum seekers, non-citizens, stateless persons, racial or religious minorities, or other categories of persons with special needs shall not be considered discriminatory or applied in a manner that is discriminatory.
- b. Special measures shall be applied in accordance with the law, and shall be subject to periodic review by a competent, independent and impartial authority.

31. Children

a. General principles

- i. The principle of the best interests of the child shall be paramount in any decision-making and action taken in relation to child suspects and detainees.
- ii. For the purposes of these Guidelines, a ‘child’ means every person below the age of 18 years.
- iii. If there is uncertainty regarding the age of an arrested or detained person, but reason to believe that the person may be under the age of 18, the State must ensure that the person is to be treated as a child if and until such time as his or her age is determined to be 18 years or older. States shall have in place a process of age assessment for children.
- iv. A child may only be detained in police custody or pre-trial detention as a measure of last resort and for the shortest possible period of time.
- v. Every child deprived of his or her liberty shall be treated with humanity and respect, and in a manner that takes into account the needs of persons of his or her age.

b. Diversion and alternatives to pre-trial detention

- i. States shall enact laws and establish policies that prioritise non-custodial alternatives and diversion programmes for children in conflict with the law. Where possible, pre-trial detention shall be replaced by alternative measures.

- ii. States shall have in place a process of preliminary inquiry to establish whether the case can be diverted from the criminal justice system and, if it can, what diversion option (for example, care, guidance and supervision orders, counselling, foster care, education and vocational training, or other alternatives to institutional care) is suitable for the child, taking into account the best interests of the child.
- iii. The preliminary inquiry process shall consider factors such as the estimated age of the child, any previous convictions or diversions, whether the child is in need of care and protection and whether the child was used by an adult to commit the offences. The preliminary inquiry process shall take place within the first 48 hours of the child's arrest, and shall take account of the right of children and their parent(s) or guardian(s) to full participation in proceedings.

c. Safeguards for arrest

If the arrest of a child is absolutely necessary, then upon arrest:

- i. The child's parent(s) or guardian(s) and the authority charged with the welfare of the child shall be immediately notified where such notification is in the best interests of the child.
- ii. The child and, unless it is not in his or her best interests, the child's parent(s) or legal guardian(s), must be informed promptly and directly of the charges against him or her, his or her rights as a criminal accused and his or her rights to an interpreter (including language and sign interpreters where necessary), a lawyer or other legal services provider.
- iii. The child must be given access to a lawyer or other legal services provider and the opportunity to consult freely and confidentially with him or her.

d. Safeguards for police custody and pre-trial detention

If police custody or pre-trial detention of a child is absolutely necessary:

- i. Detention shall be for the shortest possible period of time.
- ii. Children shall be detained separately from adults, unless it is in their best interest to be kept with family members also detained. Female children shall be held separately from male children

unless it is in their best interest to be kept with family members also detained.

iii. Children shall be guaranteed the right to the presence of a parent or guardian at all stages of the proceedings, unless it is considered not to be in the best interests of the child.

iv. While in custody, children shall receive care, protection and the necessary social, educational, vocational, psychological, medical and physical assistance they may require.

e. Right to be heard

In all judicial proceedings affecting a child, the child shall have an opportunity to be heard either directly or through a representative of his or her choice. The child's views shall be taken into account by the relevant authority.

f. Alternatives to pre-trial detention

Where possible, pre-trial detention shall be replaced by alternative measures such as close supervision, intensive care or placement with a family, in an education setting or home, or other place of safety.

g. Legal assistance

Children shall be guaranteed the right to the presence of lawyer, or other legal services provider, of their choice and, where required, access to free legal services, from the moment of arrest and at all subsequent stages of the criminal justice process. Legal assistance shall be accessible, age appropriate and responsive to the specific needs of the child.

h. Conduct of officials

Contact between law enforcement agencies and child suspects shall be managed in such a way as to respect the legal status of the child and promote his or her well-being, ensure the child's privacy, and avoid harm to him or her.

i. Specialised units

The State shall ensure that, where possible, specialised units be established in law enforcement agencies that frequently or exclusively deal with children who are in conflict with the law.

j. Access to third parties

The State shall ensure that children have reasonable access to parents, guardians or statutory authorities responsible for the care and protection of children.

32. Women

a. General principles

States shall develop legislation, procedures, policies and practices that are designed to protect the rights and special status and distinct needs of women and girls who are subject to arrest, police custody or pre-trial detention.

b. Safeguards for arrest and detention

If arrest, custody and pre-trial detention is absolutely necessary, women and girls shall:

- i. Only be searched by female law enforcement officials, and in a manner that accords with women's or girls' dignity.
- ii. Be held separately from male detainees.
- iii. If they have caretaking responsibilities for children, be permitted prior to or on admission to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.
- iv. Be provided with the facilities necessary to contact their families, including their children, their children's guardians and legal representatives.
- v. Be provided with the facilities and materials required to meet their specific hygiene needs, and offered gender-specific health screening and care which accords with the rights to dignity and privacy, and the right to be seen by a female medical practitioner.
- vi. Not be subject to close confinement or disciplinary segregation if pregnant, breastfeeding or accompanied by infants.
- vii. Have access to obstetric and pediatric care before, during and after birth, which should take place at hospitals or other appropriate facilities, and never be subject to physical restraints before, during and after childbirth.

c. Accompanying children

States shall establish laws and policies to provide for the needs and physical, emotional, social and psychological development of babies and children who are allowed to remain in the place of detention, in a manner consistent with the rights of the child, and the best interests of the child, and in accordance with the recommendations of the African Committee of Experts on the Rights and Welfare of the Child, General Comment No. 1 on Children Imprisoned with their Mothers.

33. Persons with disabilities

a. General principles

- i. For the purpose of these Guidelines, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.
- ii. The arrest or detention of a person with a physical, mental, intellectual or sensory disability shall be in conformity with the law and consistent with the right to humane treatment and the inherent dignity of the person. The existence of a disability can in no case justify a deprivation of liberty. No person with a disability shall be deprived of his or her liberty unlawfully or arbitrarily.
- iii. Every person with a physical, mental, intellectual or sensory disability deprived of his or her liberty shall be treated with humanity and respect, and in a manner that takes into account the needs of persons with physical, mental, intellectual or sensory disabilities, including by provision of reasonable accommodation. The State shall uphold the right of individuals to informed consent with regard to treatment.
- iv. States shall ensure the entitlement of persons with disabilities in custody or detention to be eligible for all programmes and other services available to others, including voluntary engagement in activities and community release programmes. Considerations of alternatives to detention should be given with a framework that includes reasonable accommodation.
- v. States shall ensure that disciplinary actions take account of a person's disability.

b. Legal capacity

Persons with disabilities shall enjoy full legal capacity, access to justice on an equal basis with others, equal treatment before the law, and recognition as a person before the law.

c. Access to justice

States shall ensure that persons with disabilities are informed about, and provided access to, promptly and as required, appropriate support to exercise their legal capacity, including through the provision of interpreters, information in accessible formats and/or independent third parties who are not employed by the law enforcement authority and who are appropriately qualified.

d. Accessibility and reasonable accommodation

States shall take measures to ensure that:

- i. Persons with disabilities can access, on an equal basis with other persons subject to police custody and pre-trial detention, the physical environment, information and communications, and other facilities provided by the detaining authority. Accessibility should also take into account the gender and age of persons with disability, and equal access should be provided regardless of the type of impairment, legal status, social condition, gender and age of the detainee.
- ii. The physical conditions of police custody and pre-trial detention are adapted to take into account the needs of persons with physical, mental, intellectual or sensory disabilities, and that the detention of persons with disability does not amount to inhuman or degrading treatment.
- iii. Communication with and by persons with disabilities in custody or detention on an equal basis with others.
- iv. The provision of reasonable accommodation, procedural and substantive due process.
- v. The right of persons to informed consent to treatment is upheld.
- vi. Persons with disabilities are permitted to keep in their possession any form of aid relevant to their disability. If a genuine security reason requires the removal of any form of aid, suitable alternatives shall be provided.

34. Non-nationals

a. Refugees

- i. Refugees shall be informed of their right to contact consular officials and relevant international organisations, such as the United Nations High Commissioner for Refugees, and be provided with the means of contacting those authorities without delay. Detaining authorities must provide unhindered access to the consular official or staff and the staff of the relevant international organisations, and provide the detainee with facilities to meet with such persons. However, detaining authorities shall only contact or provide access to the consular authority or relevant international organisations about the arrest and detention of a person who is a refugee if the person so requests.
- ii. All decisions and actions in relation to refugees below the age of 18, whether accompanied or unaccompanied, shall be consistent with the principle of the best interests of the child, and shall accord with the special protections afforded to children in section 31 of these Guidelines.

b. Non-citizens

Non-citizens shall be informed of their right to contact consular officials and relevant international organisations, and be provided with the means to contact the relevant authority without delay. Detaining authorities must provide unhindered access to the consular official or staff and the staff of the relevant international organisations, and provide the detainee with facilities to meet with such persons.

c. Stateless persons

Stateless persons shall be informed of their right to contact a lawyer or other legal service provider who can address their needs, and relevant international organisations, and be provided with the means to contact them without delay. Detaining authorities must provide the detainee with facilities to meet with such persons. However, detaining authorities shall only contact relevant international organisations about the arrest and detention of a person who is stateless if the person so requests.

PART 8

ACCOUNTABILITY AND REMEDIES

35. Judicial oversight of detention and habeas corpus

All persons in police custody and pre-trial detention shall have the right, either personally or through their representative, to take proceedings before a judicial authority, without delay, in order to have the legality of their detention reviewed. If the judicial authority decides that the detention is unlawful, individuals have the right to release without delay.

36. Standards of individual conduct for officials

a. States should have in place, and make known, laws, policies and standard operating procedures to set enforceable standards of conduct for police officers, prison officials and other law enforcement or judicial officers that are consistent with internationally recognised standards of conduct for law enforcement personnel and other law enforcement officials responsible for the care or supervision of persons who are in conflict with the law and deprived of their liberty.

b. Non-compliance with the rules on arrest and custody should be a disciplinary offence, subject to disciplinary and, where appropriate, criminal procedures, that accord with international law and standards on procedural fairness.

37. Complaints mechanisms

a. States shall establish, and make known, internal and independent complaints mechanisms for persons in police custody and pre-trial detention.

b. Access to complaints mechanisms shall be guaranteed for all persons in police custody and pre-trial detention, without fear of reprisals or punishment.

c. Detainees shall have the right, and be provided with the facilities, to consult freely and in full confidentiality with complaints mechanisms, subject to reasonable conditions to ensure security and good order in the place of detention.

d. There shall be thorough, prompt and impartial investigations of all complaints and, where they are well-founded, appropriate remedial action shall be taken without delay.

38. Remedies

All persons who are victims of illegal or arbitrary arrest and detention, or torture and ill-treatment during police custody or pre-trial detention have the right to seek and obtain effective remedies for the violation of their rights. This

right extends to immediate family or dependents of the direct victim. Remedies include, but are not limited to:

- a. Restitution to restore the victim to the situation that would have existed had the violation of their right not happened.
- b. Compensation, including any quantifiable damages resulting from the right violation and any physical or mental harm (such as physical or mental harm, pain, suffering and emotional distress, lost opportunities including education, material damage and loss of actual or potential earnings, harm to reputation or dignity, and costs required for legal services or expert assistance, medicines, medical services, and psychological and social services).
- c. Rehabilitation, including medical and psychological care as well as legal and social services.
- d. Satisfaction and guarantees of non-repetition.

39. Data collection

States shall establish processes for the systematic collection of disaggregated data on the use of arrest, police custody and pre-trial detention to identify and address the over-use or inadequate conditions of police custody and pre-trial detention.

40. Access to information

States shall establish, and make known, systems and processes to guarantee the right of access to information for persons in police custody and pre-trial detention, their families, lawyers and other legal service providers, in accordance with the principles set out in the African Commission on Human and Peoples' Rights' Model Law on Access to Information.

41. Oversight mechanisms

States shall establish, and make known, oversight mechanisms for authorities responsible for arrest and detention. These mechanisms shall be provided with the necessary legal mandate, independence, resources and safeguards to ensure transparency and reporting, to ensure the thorough, prompt, impartial and fair exercise of their mandate.

42. Monitoring mechanisms

- a. States shall ensure access to detainees and places of detention for independent monitoring bodies or other neutral independent humanitarian organisations authorised to visit them.

- b. A detained 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 the above principle, subject to reasonable conditions to ensure security and good order.
- c. Access to places of detention shall also be provided to lawyers and other legal service providers, and other authorities such as judicial authorities and National Human Rights Institutions, subject to reasonable conditions to ensure security and good order.

43. Inquiries

States shall establish mechanisms, including within existing independent oversight and monitoring mechanisms, for the prompt, impartial and independent inquiry of disappearances, extra-judicial executions, deaths in custody, torture and other cruel, inhuman or degrading treatment or punishment, and other serious violations of the human rights.

PART 9

IMPLEMENTATION

44. Implementation measures

- a. In accordance with Article 1 of the African Charter on Human and Peoples' Rights, States shall adopt legislative, administrative, judicial and other measures to give effect to these Guidelines and ensure that the rights and obligations contained herein are always guaranteed in law and practice, including during conflict and states of emergency. This shall include a review of existing legislative, administrative and other provisions to assess compatibility with the Guidelines.
- b. States shall ensure that these Guidelines are widely disseminated, including to justice sector actors, the community, and to national human rights institutions, national preventative mechanisms, statutory oversight authorities and other institutions or organisations with a mandate to provide accountability, oversight or inspections to police stations, remand facilities and other relevant places of detention.

45. Application

States shall remain responsible for ensuring that the provisions of these Guidelines and other relevant guidelines developed by the African Commission on Human and Peoples' Rights pursuant to the African Charter

on Human and Peoples' Rights, and other relevant international law and standards, are applied in places of detention, including those under the management of, or staffed by, private security organisations.

46. Training

a. States shall ensure that all officials who are involved in the arrest, custody, interrogation and treatment of individuals subject to arrest, police custody and pre-trial detention are properly trained in relation to the provisions of these Guidelines. The provisions of these Guidelines and other relevant guidelines developed by the African Commission pursuant to the African Charter shall be fully incorporated into the curricula of all basic and in-service training.

b. States shall ensure that where places of detention are under the management of, or staffed by, private security organisations, all personnel are properly trained in relation to the provisions and implementation of these Guidelines, the African Charter on Human and Peoples' Rights, and all other relevant guidelines developed by the African Commission and the United Nations.

47. Reporting

State parties to the African Charter, in their periodic reports to the African Commission on Human and Peoples' Rights, shall provide information on the extent to which national legislation, policy and administration pertaining to the use and conditions of arrest, police custody and pre-trial detention are consistent with these Guidelines.

B. TORTURE, AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines)

Preamble

Recalling the universal condemnation and prohibition of torture, cruel, inhuman and degrading treatment and punishment;

Deeply concerned about the continued prevalence of such acts;

Convinced of the urgency of addressing the problem in all its dimensions;

Recognising the need to take positive steps to further the implementation of existing provisions on the prohibition of torture, cruel, inhuman and degrading treatment and punishment;

Recognising the importance of preventive measures in the furtherance of these aims;

Recognising the special needs of victims of such acts;

Recalling the provisions of:

- Art. 5 of the African Charter on Human and Peoples' Rights which prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;
- Art. 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations;
- Arts. 3 and 4 of the Constitutive Act of the African Union by which States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

Recalling further the international obligations of States under:

- Art. 55 of the United Nations Charter, calling upon States to promote universal respect for and observance of human rights and fundamental freedoms;
- Art. 5 of the UDHR, Art. 7 of the ICCPR stipulating that no one shall be subjected to torture, inhuman or degrading treatment or punishment;

- Art. 2 (1) and 16 (1) of the UNCAT calling upon each State to take effective measures to prevent acts of torture and other acts of cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction;

Noting the commitment of African States as reaffirmed in the Grand Bay Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa to ensure better promotion and respect of human rights on the continent;

Desiring the implementation of principles and concrete measures in order to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment in Africa and to assist African States to meet their international obligations in this regard;

The “*Robben Island Workshop on the Prevention of Torture*”, held from 12 to 14 February 2002, has adopted the following guidelines and measures for the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment and recommends that they are adopted, promoted and implemented within Africa.

PART I: PROHIBITION OF TORTURE

A. Ratification of Regional and International Instruments

1. States should ensure that they are a party to relevant international and regional human rights instruments and ensure that these instruments are fully implemented in domestic legislation and accord individuals the maximum scope for accessing the human rights machinery that they establish. This would include:

- a) Ratification of the Protocol to the African Charter of Human and Peoples’ Rights establishing an African Court of Human and Peoples’ Rights;
- b) Ratification of or accession to the UN Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment without reservations, to make declarations accepting the jurisdiction of the Committee against Torture under Articles 21 and 22 and recognising the competency of the Committee to conduct inquiries pursuant to Article 20;
- c) Ratification of or accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the First Optional Protocol thereto without reservations;

d) Ratification of or accession to the Rome Statute establishing the International Criminal Court;

B. Promote and Support Co-operation with International Mechanisms

2. States should co-operate with the African Commission on Human and Peoples' Rights and promote and support the work of the Special Rapporteur on prisons and conditions of detention in Africa, the Special Rapporteur on arbitrary, summary and extra-judicial executions in Africa and the Special Rapporteur on the rights of women in Africa.

3. States should co-operate with the United Nations Human Rights Treaty Bodies, with the UN Commission on Human Rights' thematic and country specific special procedures, in particular, the UN Special Rapporteur on Torture, including the issuance of standing invitations for these and other relevant mechanisms.

C. Criminalization of Torture

4. States should ensure that acts, which fall within the definition of torture, based on Article 1 of the UN Convention against Torture, are offences within their national legal systems.

5. States should pay particular attention to the prohibition and prevention of gender-related forms of torture and ill-treatment and the torture and ill-treatment of young persons.

6. National courts should have jurisdictional competence to hear cases of allegations of torture in accordance with Article 5 (2) of the UN Convention against Torture.

7. Torture should be made an extraditable offence.

8. The trial or extradition of those suspected of torture should take place expeditiously in conformity with relevant international standards.

9. Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

10. Notions such as "necessity", "national emergency", "public order", and "ordre public" shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

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

12. Those found guilty of having committed acts of torture shall be subject to appropriate sanctions that reflect the gravity of the offence, applied in accordance with relevant international standards.

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

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

D. Non-Refoulement

15. States should ensure no one is expelled or extradited to a country where he or she is at risk of being subjected to torture.

E. Combating Impunity

16. In order to combat impunity States should:

a) Ensure that those responsible for acts of torture or ill-treatment are subject to legal process.

b) Ensure that there is no immunity from prosecution for nationals suspected of torture, and that the scope of immunities for foreign nationals who are entitled to such immunities be as restrictive as is possible under international law.

c) Ensure expeditious consideration of extradition requests to third states, in accordance with international standards.

d) Ensure that rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody.

e) Ensure that where criminal charges cannot be sustained because of the high standard of proof required, other forms of civil, disciplinary or administrative action are taken if it is appropriate to do so.

F. Complaints and Investigation Procedures

17. Ensure the establishment of readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment.

18. Ensure that whenever persons who claimed to have been or who appear to have been tortured or ill-treated are brought before competent authorities an investigation shall be initiated.

19. Investigations into all allegations of torture or ill-treatment, shall be conducted promptly, impartially and effectively, guided by the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol).¹

PART II: PREVENTION OF TORTURE

A. Basic Procedural Safeguards for those Deprived of their Liberty

20. All persons who are deprived of their liberty by public order or authorities should have that detention controlled by properly and legally constructed regulations. Such regulations should provide a number of basic safeguards, all of which shall apply from the moment when they are first deprived of their liberty. These include:

- a) The right that a relative or other appropriate third person is notified of the detention;
- b) The right to an independent medical examination;
- c) The right of access to a lawyer;
- d) Notification of the above rights in a language, which the person deprived of their liberty understands;

B. Safeguards during the Pre-trial Process

States should:

21. Establish regulations for the treatment of all persons deprived of their liberty guided by the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.²

22. Ensure that those subject to the relevant codes of criminal procedure conduct criminal investigations.

23. Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.

24. Prohibit the use of *incommunicado* detention.

25. Ensure that all detained persons are informed immediately of the reasons for their detention.

¹ Annexed to UN GA Res. A /55/89, 4 Dec. 2000, UN Publication No.8, HR/P/PT/8.

² UN GA /Res. 43/173, 9 Dec.1988

26. Ensure that all persons arrested are promptly informed of any charges against them.
27. Ensure that all persons deprived of their liberty are brought promptly before a judicial authority, having the right to defend themselves or to be assisted by legal counsel, preferably of their own choice.
28. Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.
29. Ensure that any statement obtained through the use of torture, cruel, inhuman or degrading treatment or punishment shall not be admissible as evidence in any proceedings except against persons accused of torture as evidence that the statement was made.
30. Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.
31. Ensure that all persons deprived of their liberty have access to legal and medical services and assistance and have the right to be visited by and correspond with family members.
32. Ensure that all persons deprived of their liberty can challenge the lawfulness of their detention.

C. Conditions of Detention

States should:

33. Take steps to ensure that the treatment of all persons deprived of their liberty are in conformity with international standards guided by the UN Standard Minimum Rules for the Treatment of Prisoners.³
34. Take steps to improve conditions in places of detention, which do not conform to international standards.
35. Take steps to ensure that pre-trial detainees are held separately from convicted persons.
36. Take steps to ensure that juveniles, women, and other vulnerable groups are held in appropriate and separate detention facilities.

³ UN ECOSOC Res. 663 C (XXIV), 31 July 1957, amended by UN ECOSOC Res. 2076 (LXII), 13 May 1977.

37. Take steps to reduce overcrowding in places of detention by, *inter alia*, encouraging the use of non-custodial sentences for minor crimes.

D. Mechanisms of Oversight

States should:

38. Ensure and support the independence and impartiality of the judiciary including by ensuring that there is no interference in the judiciary and judicial proceedings, guided by the UN Basic Principles on the Independence of the Judiciary.⁴

39. Encourage professional legal and medical bodies to concern themselves with issues of the prohibition and prevention of torture, cruel, inhuman and degrading treatment or punishment.

40. Establish and support effective and accessible complaint mechanisms which are independent from detention and enforcement authorities and which are empowered to receive, investigate and take appropriate action on allegations of torture, cruel, inhuman or degrading treatment or punishment.

41. Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights.⁵

42. Encourage and facilitate visits by NGOs to places of detention.

43. Support the adoption of an Optional Protocol to the UNCAT to create an international visiting mechanism with the mandate to visit all places where people are deprived of their liberty by a State Party.

44. Examine the feasibility of developing regional mechanisms for the prevention of torture and ill-treatment.

⁴UN Doc. E/CN.4/1995/3

⁵ UN A /Res/48/134, 20 Dec. 1993

D. Training and Empowerment

45. Establish and support training and awareness-raising programmes which reflect human rights standards and emphasise the concerns of vulnerable groups.

46. Devise, promote and support codes of conduct and ethics and develop training tools for law enforcement and security personnel, and other relevant officials in contact with persons deprived of their liberty such as lawyers and medical personnel.

E. Civil Society Education and Empowerment

47. Public education initiatives, awareness-raising campaigns regarding the prohibition and prevention of torture and the rights of detained persons shall be encouraged and supported.

48. The work of NGOs and of the media in public education, the dissemination of information and awareness-raising concerning the prohibition and prevention of torture and other forms of ill-treatment shall be encouraged and supported.

PART III: RESPONDING TO THE NEEDS OF VICTIMS

49. Ensure that alleged victims of torture, cruel, inhuman and degrading treatment or punishment, witnesses, those conducting the investigation, other human rights defenders and families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.

50. The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. Thus all States should ensure that all victims of torture and their dependents are:

- a) Offered appropriate medical care;
- b) Have access to appropriate social and medical rehabilitation;
- c) Provided with appropriate levels of compensation and support;

In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims.

2. Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa

The African Commission on Human and Peoples' Rights, meeting at its 32nd ordinary session, held in Banjul, The Gambia, from 17th to 23rd October 2002

Recalling the provisions of:

- Article 5 of the African Charter on Human and Peoples' Rights that prohibits all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment;
- Article 45 (1) of the African Charter which mandates the African Commission to, inter alia, formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations;
- Articles 3 and 4 of the Constitutive Act of the African Union wherein States Parties undertake to promote and respect the sanctity of human life, rule of law, good governance and democratic principles;

Recalling further its Resolution on the Right to Recourse Procedure and Fair Trial adopted during its 11th ordinary session, held in Tunis, Tunisia, from 2nd to 9th March 1992;

Noting the commitment of African States to ensure better promotion and respect of human rights on the continent as reaffirmed in the Grand Bay Declaration and Plan of Action adopted by the 1st Ministerial Conference on Human Rights in Africa;

Recognising the need to take concrete measures to further the implementation of existing provisions on the prohibition of torture and cruel, inhuman or degrading treatment or punishment;

Mindful of the need to assist African States to meet their international obligations in this regard;

Recalling the recommendations of the Workshop on the Prohibition and the Prevention of Torture and Ill-treatment, organised jointly by the African Commission and the Association for the Prevention of Torture, on Robben Island, South Africa, from 12th to 14th February 2002;

1. Adopts the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).
2. Establishes a Follow-up Committee comprising of the African Commission, the Association for the Prevention of Torture and any prominent African Experts as the Commission may determine.
3. Assigns the following mandate to the Follow-up Committee -:
 - To organise, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders.
 - To develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels.
 - To promote and facilitate the implementation of the Robben Island Guidelines within Member States.
 - To make a progress report to the African Commission at each ordinary session.
4. Urges Special Rapporteurs and Members of the African Commission to widely disseminate the Robben Island Guidelines as part of their promotional mandate.
5. Encourages States parties to the African Charter, in their periodic reports to the African Commission, to bear in mind the Robben Island Guidelines.
6. Invites NGOs and other relevant actors to widely disseminate and utilise the Robben Island Guidelines in the course of their work.

3. Resolution on the Change of Name of the Robben Island Guidelines Follow-Up Committee" to the "Committee for the Prevention of Torture in Africa" and the Reappointment of the Chairperson and Members of the Committee"

The African Commission on Human and Peoples' Rights (THE African Commission) , meeting at its 46th Ordinary Session, held in Banjul, The Gambia, from 11 to 25 November 2009:

Recalling the mandate to promote and protect human and peoples' rights in Africa entrusted to the African Commission on Human and Peoples' Rights in Article 45 of the African Charter on Human and Peoples' Rights;

Considering the recognition by African States of the absolute and irrevocable nature of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in Article 5 of the African Charter on Human and Peoples' Rights;

Further recalling its Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) adopted during its 32nd Ordinary Session, held in Banjul, The Gambia, from 17th to 23rd October 2002;

Recalling the establishment of the Robben Island Guidelines Follow-Up Committee in 2004 with the mandate to give effect to the promotion of Article 5 of the Charter;

Mindful of the difficulty of national, regional and international stakeholders and partners in associating the name "Robben Island Guidelines Follow-Up Committee" with its torture prevention mandate;

Recognising the need for all stakeholders to easily identify with the name of the Committee as a torture prevention mechanism;

Decides:

1. To change the name of the "Robben Island Guidelines Follow-Up Committee" to the "Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Committee for the Prevention of Torture in Africa)";
2. Assigns to the Committee for the Prevention of Torture in Africa the same mandate as the one assigned to the Robben Island Guidelines Follow-Up Committee.

Noting with appreciation the work and the accomplishment of the Chairperson of the Committee for the Prevention of Torture in Africa, Commissioner Catherine Dupe Atoki, since her appointment in 28 November 2007;

Considering the necessity to allow the Committee for the Prevention of Torture in Africa to continue carrying out its mandate and address urgent issues falling within its mandate;

Bearing in mind Resolution ACHPR/Res.120(XXXII)07 on the Appointment of the Chairperson and Members of the Committee for the Prevention of Torture in Africa adopted at its 42nd Ordinary Session held from 15 - 28 November 2007, in Brazzaville, Republic of Congo;

Considering that the mandate of the Chair of the Committee for the Prevention of Torture in Africa, Commissioner Catherine Dupe Atoki, comes to an end on 28 November 2009;

Decides to re-appoint Commissioner Catherine Dupe Atoki as Chairperson and to appoint Commissioner Musa Ngary Bitaye as member of the Committee for the Prevention of Torture in Africa for a period of two years, effective 28 November 2009;

Further reappoints the following Experts as Members for the same period:

- Mr Jean-Baptiste Niyizurugero – Vice Chairperson
- Mrs. Hannah Forster - Member
- Mr Malick Sow - Member

Done in Banjul, The Gambia 25 November 2009.

C. PRISON AND PENAL REFORM

1. The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa

Adopted by the African Commission on Human and Peoples' Rights, November 2003 (Res.64(XXXIV) 03).

Recognising that there has been progress in raising general prison standards in Africa as recommended by the Kampala Declaration on Prison Conditions 1996;

Recognising also the specific standards on alternatives to imprisonment contained in the Kadoma Declaration on Community Service Orders in Africa 1997; and on good prison administration set out in the Arusha Declaration on Good Prison Practice 1999;

Noting the recognition given to these African standards by the United Nations as complementary to the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Basic Rights of Prisoners and the United Nations Standard Minimum Rules for non-custodial measures (the 'Tokyo Rules');

Mindful of the key role played by Africans in formulating an agenda for penal reform through the 1999 Egham Conference on 'A New Approach for Penal Reform in a New Century';

Noting with satisfaction the important practical steps that have been taken to implement these standards at an African level through the activities of the African Commission on Human and Peoples' Rights and its Special Rapporteur on Prisons and Conditions of Detention;

Commending the practical measures that have been taken by prison authorities in African countries to apply these standards in their national jurisdictions;

Recognising that notwithstanding these measures there are still considerable shortcomings in the treatment of prisoners, which are aggravated by shortages of facilities and resources;

Welcoming the growing partnerships between Governments, non-governmental organizations and civil society in the process of implementing these standards;

Emphasising the importance of a criminal justice policy that controls the growth of the prison population and encourages the use of alternatives to imprisonment;

The participants at the second pan-African Conference on Prison and Penal Reform in Africa, held in Ouagadougou, Burkina Faso between 18-20 September 2002, recommend:

1. Reducing the prison population

Criminal justice agencies should work together more closely to make less use of imprisonment. The prison population can only be reduced by a concerted strategy. It should be based on accurate and widely publicized information on the numbers and kinds of people in prison and on the social and financial impact of imprisonment. Reduction strategies should be ongoing and target both sentenced and unsentenced prisoners.

2. Making African prisons more self-sufficient.

Further recognition should be given to the reality that resources for imprisonment are severely limited and that therefore African prisons have to be as self sufficient as possible. Governments should recognize, however, that they are ultimately responsible for ensuring that standards are maintained so that prisoners can live in dignity and health.

3. Promoting the reintegration of offenders into society

Greater effort should be made to make positive use of the period of imprisonment or other sanction to develop the potential of offenders and to empower them to lead a crime-free life in the future. This should include rehabilitative programmes focusing on the reintegration of offenders and contributing to their individual and social development.

4. Applying the rule of law to prison administration

There should be a comprehensive law governing prisons and the implementation of punishment. Such law should be clear and unambiguous about the rights and duties of prisoners and prison officials. Officials should be trained to follow proper administrative procedures and to apply this law fairly. Administrative decisions that impact on the rights of prisoners should be subject to review by an independent and impartial judicial body.

5. Encouraging best practice

Further exchange of examples of best penal practice is to be encouraged at national, regional and international levels. This can be enhanced by the establishment of an all-African association of those involved in penal matters. The rich experience available across the continent can best be utilized if proven and effective programmes are progressively implemented in more countries.

The Plan of Action to be developed from the proceedings of the Ouagadougou Conference will serve to further such exchange.

6. Promoting an African Charter on Prisoners' Rights

Action should be taken to promote the draft African Charter on Prisoners' Rights as an instrument that is appropriate to the needs of developing countries of the continent and to refer it to the African Commission on Human and Peoples' Rights and the African Union.

7. Looking towards the United Nations Charter on the Basic Rights of Prisoners

The international criminal justice community should look towards developing a United Nations Charter of Basic Rights for Prisoners with a view to strengthening the rule of law in the treatment of offenders. African experience and concerns should be reflected in this Charter, which should be presented to the 11th United Nations Congress on the Prevention of Crime and Criminal Justice in Bangkok, Thailand, 2005.

2. Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa

Recognising that there has been progress in raising general prison standards in Africa as recommended by the Kampala Declaration on Prison Conditions 1996

Recognising also the specific standards on alternatives to imprisonment contained in the Kadoma Declaration on Community Service Orders in Africa 1997; and on good prison administration set out in the Arusha Declaration on Good Prison Practice 1999

Noting the recognition given to these African standards by the United Nations as complementary to the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Basic Rights of Prisoners and the United Nations Standard Minimum Rules for non-custodial measures (the 'Tokyo Rules')

Mindful of the key role played by Africans in formulating an agenda for penal reform through the 1999 Egham Conference on 'A New Approach for Penal Reform in a New Century'

Noting with satisfaction the important practical steps that have been taken to implement these standards at an African level through the activities of the African Commission on Human and Peoples' Rights and its Special Rapporteur on Prisons and Conditions of Detention

Commending the practical measures that have been taken by prison authorities in African countries to apply these standards in their national jurisdictions

Recognising that notwithstanding these measures there are still considerable shortcomings in the treatment of prisoners, which are aggravated by shortages of facilities and resources

Welcoming the growing partnerships between Governments, non-governmental organizations and civil society in the process of implementing these standards

Emphasising the importance of a criminal justice policy that controls the growth of the prison population and encourages the use of alternatives to imprisonment

The participants at the second pan-African Conference on Prison and Penal Reform in Africa, held in Ouagadougou, Burkina Faso between 18-20 September 2002, recommend:

1. Reducing the prison population

Criminal justice agencies should work together more closely to make less use of imprisonment. The prison population can only be reduced by a concerted strategy. It should be based on accurate and widely publicized information on the numbers and kinds of people in prison and on the social and financial impact of imprisonment. Reduction strategies should be ongoing and target both sentenced and unsentenced prisoners

2. Making African prisons more self-sufficient

Further recognition should be given to the reality that resources for imprisonment are severely limited and that therefore African prisons have to be as self sufficient as possible. Governments should recognize, however, that they are ultimately responsible for ensuring that standards are maintained so that prisoners can live in dignity and health.

3. Promoting the reintegration of offenders into society

Greater effort should be made to make positive use of the period of imprisonment or other sanction to develop the potential of offenders and to empower them to lead a crime-free life in the future. This should include rehabilitative programmes focusing on the reintegration of offenders and contributing to their individual and social development.

4. Applying the rule of law to prison administration

There should be a comprehensive law governing prisons and the implementation of punishment. Such law should be clear and unambiguous about the rights and duties of prisoners and prison officials. Officials should be trained to follow proper administrative procedures and to apply this law fairly. Administrative decisions that impact on the rights of prisoners should be subject to review by an independent and impartial judicial body.

5. Encouraging best practice

Further exchange of examples of best penal practice is to be encouraged at national, regional and international levels. This can be enhanced by the establishment of an all-African association of those involved in penal matters. The rich experience available across the continent can best be utilized if proven and effective programmes are progressively implemented in more countries. The Plan of Action to be developed from the proceedings of the Ouagadougou Conference will serve to further such exchange.

6. Promoting an African Charter on Prisoners' Rights

Action should be taken to promote the draft African Charter on Prisoners' Rights as an instrument that is appropriate to the needs of developing countries of the continent and to refer it to the African Commission on Human and Peoples' Rights and the African Union.

7. Looking towards the United Nations Charter on the Basic Rights of Prisoners

The international criminal justice community should look towards developing a United Nations Charter of Basic Rights for Prisoners with a view to strengthening the rule of law in the treatment of offenders. African experience and concerns should be reflected in this Charter, which should be presented to the *11th United Nations Congress on the Prevention of Crime and Criminal Justice* in Bangkok, Thailand, 2005.

Plan of Action

The participants recommend the following measures as forming part of a plan of action to implement the *Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa*.

The document is addressed to governments and criminal justice institutions as well as to non-governmental organisations and associations working in this field. It is meant to be a source of inspiration for concrete actions.

1. Reducing the prison population

Strategies for preventing people from coming into the prison system include:

- a. Use of alternatives to penal prosecution such as diversion in cases of minor offences with particular attention to young offenders and people with mental health or addiction problems.
- b. Recognition of restorative justice approaches to restore harmony within the community as opposed to punishment by the formal justice system - including wider use of family group conferencing, victim offender mediation and sentencing circles.
- c. Use of traditional justice as a way of dealing with crime in line with constitutional guarantees and human rights standards.
- d. Improving referral mechanisms between the formal (State) justice system and the informal (non State) justice system.
- e. Decriminalisation of some offences such as being a rogue and vagabond, loitering, prostitution, failure to pay debts and disobedience to parents.

Strategies for reducing the numbers of unsentenced prisoners include:

- a. Co-operation between the police, the prison services and the courts to ensure trials are speedily processed and reduce the delays of remand detention through: regular meetings of caseload management committees including all criminal justice agents at the district, regional and national levels; making of costs orders against lawyers for unnecessary adjournments; targeting cases of vulnerable groups.
- b. Detention of persons awaiting trial only as a last resort and for the shortest time possible, including: increased use of cautioning; improved access to bail through widening police powers of bail and involving community representatives in the bail process; restricting the time in police custody to 48 hours; setting time limits for people on remand in prison.
- c. Good management of case files and regular review of the status of remand prisoners.
- d. Greater use of paralegals in the criminal process to provide legal literacy, assistance and advice at a first aid level.

Strategies for reducing the numbers of sentenced prisoners include:

- a. Setting a target for reducing the prison population.
- b. Increased use of proven effective alternatives, such as community service and exploring other sanctions such as partially or fully suspended sentence, probation and correctional supervision.
- c. Imposition of sentences of imprisonment only for the most serious offences and when no other sentence is appropriate, i.e. as a last resort and for the shortest time possible.
- d. Consideration of prison capacity when determining decisions to imprison and the length and terms of imprisonment.
- e. Review and monitoring of sentencing practice to ensure consistency.
- f. Powers to courts to review decisions to imprison, with a view to substituting community disposals in place of prison.
- g. Early and conditional release schemes, furloughs and home leave - criteria for early release should include compassionate grounds based on health and age.

2. Making African prisons more self-sufficient

- a. Foster prison agriculture, workshops and other enterprises for the good of prisoners and staff.
- b. Develop appropriate technology to reduce costs (e.g.: use of biogas for cooking, more effective wood burning stoves).
- c. Promote transparent management of prisons.
- d. Encourage training courses and study visits for staff on best practices in prison management.
- e. Involvement of staff and prisoners in agricultural production and prison industries through the establishment of management committees.

3. Promoting the reintegration into society of alleged and convicted offenders

- a. Promote rehabilitation and development programmes during the period of imprisonment or non-custodial sentence schemes.
- b. Ensure that unsentenced prisoners have access to these programmes.
- c. Emphasise literacy and skills training linked to employment opportunities.
- d. Promote vocational training programmes certificated to national standards.
- e. Emphasise development of existing skills.
- f. Provide civic and social education.
- g. Provide social and psychological support with adequate professionals.
- h. Promote contact with the family and community by:
 - encouraging civil society groups to visit the prison and work with offenders;
 - improve the environment for visitors so that physical contact is permissible;
 - provide facilities for conjugal visits;
 - setting up a privilege system including day, week-end and holiday leave subject to satisfying appropriate criteria.
- i. Sensitize families and community in preparation for the reintegration of the person back into society and involve them in rehabilitation and development programmes.

- j. Develop half way houses and other pre-release schemes in partnership with civil society groups.
- k. Extend the use of open prisons in appropriate circumstances.

4. Applying the rule of law to prison administration

- a. Ensure that prisons are governed by prison rules that are publicised and made known to prisoners and staff.
- b. Review prison legislation in line with national constitutional guarantees and international human rights law.
- c. Encourage independent inspection mechanisms, including the national media and civil society groups.
- d. Ensure staff are trained in the application of the relevant laws and international principles and rules governing the management of prisons and the prisoners' rights.

5. Encouraging best practice

- a. Publicise
 - the Kampala Declaration on Prison Conditions in Africa 1996,
 - the Kadoma Declaration on Community Service Orders in Africa 1997,
 - the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002;
 - the reports of the Special Rapporteur on Prisons and Conditions of Detention in Africa;
 - the reports and statements of the heads of Correctional Services Conference of Central, Eastern and Southern Africa (CESCA).
- b. Develop and promote models for replication throughout the continent, such as the Community Service scheme developed in Zimbabwe, the diversion scheme in Namibia and South Africa, the sector-wide approach in Uganda, the prison farm and paralegal models developed in Malawi or the use of biogas technique developed in Rwanda.
- c. Emphasise primary health care, hygiene education, nutrition and sanitation promotion in the prisons and link health care of prisoners with the Ministry of Health.
- d. Develop approaches to HIV/AIDS based on international standards, including sensitization and prevention campaigns for staff, prisoners and families, as well as provision of condoms inside the prisons. Include the

issue of AIDS/HIV in prison in campaigns of sensitization for the community.

- e. Apply UN safeguards guaranteeing protection of the rights of those facing the death penalty where not yet abolished.
- f. Promote specific juvenile justice laws and systematic use of alternatives to imprisonment to deal with young offenders.
- g. Encourage the establishment of a pan-African penal reform network.

6. Promoting regional and international Charters on Prisoners' Rights

- a. Publicise the draft African Charter on Prisoners' Rights to be finalised and further adopted by the African Commission on Human and Peoples' Rights (ACHPR).
- b. Contribute to finalising and promoting the United Nations Charter on the Rights of Prisoners.

D. LEGAL ASSISTANCE

1. Resolution on the Right to Recourse and Fair Trial

The African Commission on Human and Peoples' Rights, meeting in its Eleventh Ordinary Session, in Tunis Tunisia, from 2 to 9 March 1992;

Conscious of the fact that the African Charter on Human and Peoples' Rights is designed to promote and protect human rights in accordance with the provisions contained in the Charter and recognised international human rights standards;

Recognising that the right to a fair trial is essential for the protection of fundamental human rights and freedoms;

Bearing in mind that article 7 of the African Charter on Human and Peoples' Rights:

1. **Considers** that every person whose rights or freedoms are violated is entitled to have an effective remedy;

2. **Considers** further that the right to fair trial includes, among other things, the following:

a. All persons shall have the right to have their cause heard and shall be equal before the courts and tribunals in the determination 9. ACHPR /Res.4(XI)92: of their rights and obligations;

b. Persons who are arrested shall be informed at the time of arrest, in a language which they understand of the reason for their arrest and shall be informed promptly of any charges against them;

c. Persons arrested or detained 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 be released;

d. Persons charged with a criminal offence shall be presumed innocent until proven guilty by a competent court;

e. In the determination of charges against individuals, the individual shall be entitled in particular to:

i). Have adequate time and facilities for the preparation of their defence and to communicate in confidence with counsel of their choice;

ii) Be tried within a reasonable time;

iii) Examine or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;

iv) Have the free assistance of an interpreter if they cannot speak the language used in court;

3. Persons convicted of an offence shall have the right of appeal to a higher court;

4. **Recommends** to States Parties to the African Charter on human and peoples' rights to create awareness of the accessibility of the recourse procedure and to provide the needy with legal aid;

5. **Decides** to continue to be seized with the right to recourse procedures and fair trial with the view of elaborating further principles concerning this right.

2. Principles And Guidelines On The Right To A Fair Trial And Legal Assistance In Africa – May 2003

The African Commission on Human and Peoples' Rights;

Recalling its mandate under **Article 45(c)** of the African Charter on Human and Peoples' Rights (the Charter) “to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African states may base their legislation”;

Recalling Articles 5, 6, 7 and 26 of the Charter, which contain provisions relevant to the right to a fair trial;

Recognising that it is necessary to formulate and lay down principles and rules to further strengthen and supplement the provisions relating to fair trial in the Charter and to reflect international standards;

Recalling the resolution on the Right to Recourse and Fair Trial adopted at its 11th ordinary session in March 1992, the resolution on the Respect and the Strengthening of the Independence of the Judiciary adopted at its 19th ordinary session in March 1996 and the resolution Urging States to Envisage a Moratorium on the Death Penalty adopted at its 26th ordinary session in November 1999;

Recalling also the resolution on the Right to a Fair Trial and Legal Assistance, adopted at its 26th session held in November 1999, in which it decided to prepare general principles and guidelines on the right to a fair trial and legal assistance under the African Charter;

Solemnly proclaims these Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa and urges that every effort is made so that they become generally known to everyone in Africa; are promoted and protected by civil society organisations, judges, lawyers, prosecutors, academics and their professional associations; are incorporated into their domestic legislation by State parties to the Charter and respected by them:

A. GENERAL PRINCIPLES APPLICABLE TO ALL LEGAL PROCEEDINGS:

1. Fair and Public Hearing

In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.

2. Fair Hearing

The essential elements of a fair hearing include:

- (a) equality of arms between the parties to a proceedings, whether they be administrative, civil, criminal, or military;
- (b) equality of all persons before any judicial body without any distinction whatsoever as regards race, colour, ethnic origin, sex, gender, age, religion, creed, language, political or other convictions, national or social origin, means, disability, birth, status or other circumstances;
- (c) equality of access by women and men to judicial bodies and equality before the law in any legal proceedings;
- (d) respect for the inherent dignity of the human persons, especially of women who participate in legal proceedings as complainants, witnesses, victims or accused;
- (e) adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;
- (f) an entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings;
- (g) an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the judicial body;
- (h) an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the judicial body;
- (i) an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions; and
- (j) an entitlement to an appeal to a higher judicial body.

3. Public hearing:

- (a) All the necessary information about the sittings of judicial bodies shall be made available to the public by the judicial body;
- (b) A permanent venue for proceedings by judicial bodies shall be established by the State and widely publicised. In the case of ad-hoc judicial bodies, the venue designated for the duration of their proceedings should be made public.
- (c) Adequate facilities shall be provided for attendance by interested members of the public;
- (d) No limitations shall be placed by the judicial body on the category of people allowed to attend its hearings where the merits of a case are being examined;

(e) Representatives of the media shall be entitled to be present at and report on judicial proceedings except that a judge may restrict or limit the use of cameras during the hearings;

(f) The public and the media may not be excluded from hearings before judicial bodies except if it is determined to be

1. in the interest of justice for the protection of children, witnesses or the identity of victims of sexual violence

2. for reasons of public order or national security in an open and democratic society that respects human rights and the rule of law.

(a) Judicial bodies may take steps or order measures to be taken to protect the identity and dignity of victims of sexual violence, and the identity of witnesses and complainants who may be put at risk by reason of their participation in judicial proceedings.

(b) Judicial bodies may take steps to protect the identity of accused persons, witnesses or complainants where it is in the best interest of a child.

(c) Nothing in these Guidelines shall permit the use of anonymous witnesses, where the judge and the defence is unaware of the witness' identity at trial.

Any judgement rendered in legal proceedings, whether civil or criminal, shall be pronounced in public.

4. Independent tribunal

(a) The independence of judicial bodies and judicial officers shall be guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities;

(b) Judicial bodies shall be established by law to have adjudicative functions to determine matters within their competence on the basis of the rule of law and in accordance with proceedings conducted in the prescribed manner;

(c) The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for decision is within the competence of a judicial body as defined by law;

(d) A judicial body's jurisdiction may be determined, inter alia, by considering where the events involved in the dispute or offence took place, where the property in dispute is located, the place of residence or domicile of the parties and the consent of the parties;

(e) Military or other special tribunals that do not use the duly established procedure of the legal process shall not be created to displace the jurisdiction belonging to the ordinary judicial bodies;

(f) There shall not be any inappropriate or unwarranted interference with the judicial process nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentence by competent authorities, in accordance with the law;

(g) All judicial bodies shall be independent from the executive branch.

(h) The process for appointments to judicial bodies shall be transparent and accountable and the establishment of an independent body for this purpose is encouraged. Any method of judicial selection shall safeguard the independence and impartiality of the judiciary.

(i) The sole criteria for appointment to judicial office shall be the suitability of a candidate for such office by reason of integrity, appropriate training or learning and ability.

(j) Any person who meets the criteria shall be entitled to be considered for judicial office without discrimination on any grounds such as race, colour, ethnic origin, language, sex, gender, political or other opinion, religion, creed, disability, national or social origin, birth, economic or other status. However, it shall not be discriminatory for states to:

1. prescribe a minimum age or experience for candidates for judicial office;
2. prescribe a maximum or retirement age or duration of service for judicial officers;
3. prescribe that such maximum or retirement age or duration of service may vary with different level of judges, magistrates or other officers in the judiciary;
4. require that only nationals of the state concerned shall be eligible for appointment to judicial office.

(k) No person shall be appointed to judicial office unless they have the appropriate training or learning that enables them to adequately fulfil their functions.

(l) Judges or members of judicial bodies shall have security of tenure until a mandatory retirement age or the expiry of their term of office.

(m) The tenure, adequate remuneration, pension, housing, transport, conditions of physical and social security, age of retirement, disciplinary and recourse

mechanisms and other conditions of service of judicial officers shall be prescribed and guaranteed by law.

(n) Judicial officers shall not be:

1. liable in civil or criminal proceedings for improper acts or omissions in the exercise of their judicial functions;
2. removed from office or subject to other disciplinary or administrative procedures by reason only that their decision has been overturned on appeal or review by a higher judicial body;
3. appointed under a contract for a fixed term.

(o) Promotion of judicial officials shall be based on objective factors, in particular ability, integrity and experience.

(p) Judicial officials may only be removed or suspended from office for gross misconduct incompatible with judicial office, or for physical or mental incapacity that prevents them from undertaking their judicial duties.

(q) Judicial officials facing disciplinary, suspension or removal proceedings shall be entitled to guarantees of a fair hearing including the right to be represented by a legal representative of their choice and to an independent review of decisions of disciplinary, suspension or removal proceedings.

(r) The procedures for complaints against and discipline of judicial officials shall be prescribed by law. Complaints against judicial officers shall be processed promptly, expeditiously and fairly.

(s) Judicial officers are entitled to freedom of expression, belief, association and assembly. In exercising these rights, they shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

(t) Judicial officers shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

(u) States may establish independent or administrative mechanisms for monitoring the performance of judicial officers and public reaction to the justice delivery processes of judicial bodies. Such mechanisms, which shall be constituted in equal part of members the judiciary and representatives of the Ministry responsible for judicial affairs, may include processes for judicial bodies receiving and processing complaints against its officers.

(v) States shall endow judicial bodies with adequate resources for the performance of its their functions. The judiciary shall be consulted regarding the preparation of budget and its implementation.

5. Impartial Tribunal

(a) A judicial body shall base its decision only on objective evidence, arguments and facts presented before it. Judicial officers shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.

(b) Any party to proceedings before a judicial body shall be entitled to challenge its impartiality on the basis of ascertainable facts that the fairness of the judge or judicial body appears to be in doubt.

(c) The impartiality of a judicial body could be determined on the basis of three relevant facts:

1. that the position of the judicial officer allows him or her to play a crucial role in the proceedings;
2. the judicial officer may have expressed an opinion which would influence the decision-making ;
3. the judicial official would have to rule on an action taken in a prior capacity.

(d) The impartiality of a judicial body would be undermined when:

1. a former public prosecutor or legal representative sits as a judicial officer in a case in which he or she prosecuted or represented a party;
2. a judicial official secretly participated in the investigation of a case;
3. a judicial official has some connection with the case or a party to the case;
4. a judicial official sits as member of an appeal tribunal in a case which he or she decided or participated in a lower judicial body.

In any of these circumstances, a judicial official would be under an obligation to step down.

(e) A judicial official may not consult a higher official authority before rendering a decision in order to ensure that his or her decision will be upheld.

B. JUDICIAL TRAINING:

(a) States shall ensure that judicial officials have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of accused persons, victims and other litigants and of human rights and fundamental freedoms recognized by national and international law.

(b) States shall establish, where they do not exist, specialised institutions for the education and training of judicial officials and encourage collaboration amongst such institutions in countries in the region and throughout Africa.

(c) States shall ensure that judicial officials receive continuous training and education throughout their career including, where appropriate, in racial, cultural and gender sensitisation.

C. RIGHT TO AN EFFECTIVE REMEDY:

(a) Everyone has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity.

(b) The right to an effective remedy includes:

1. access to justice;
2. reparation for the harm suffered;
3. access to the factual information concerning the violations.

(c) Every State has an obligation to ensure that:

1. any person whose rights have been violated, including by persons acting in an official capacity, has an effective remedy by a competent judicial body;
2. any person claiming a right to remedy shall have such a right determined by competent judicial, administrative or legislative authorities;
3. any remedy granted shall be enforced by competent authorities;
4. any state body against which a judicial order or other remedy has been granted shall comply fully with such an order or remedy.

(d) The granting of amnesty to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy.

D. COURT RECORDS AND PUBLIC ACCESS:

(a) All information regarding judicial proceedings shall be accessible to the public, except information or documents that have been specifically determined by judicial officials not to be made public.

(b) States must ensure that proper systems exist for recording all proceedings before judicial bodies, storing such information and making it accessible to the public.

(c) All decisions of judicial bodies must be published and available to everyone throughout the country.

(d) The cost to the public of obtaining records of judicial proceedings or decisions should be kept to a minimum and should not be so high as to amount to a denial of access.

E. LOCUS STANDI:

States must ensure, through adoption of national legislation, that in regard to human rights violations, which are matters of public concern, any individual, group of individuals or non-governmental organization is entitled to bring an issue before judicial bodies for determination.

F. ROLE OF PROSECUTORS:

(a) States shall ensure that:

1. Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law, including the Charter.

2. Prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

(b) Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, housing, transport, conditions of physical and social security, pension and age of retirement and other conditions of service shall be set out by law or published rules or regulations.

(c) Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

(d) Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

(e) Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

(f) The office of prosecutors shall be strictly separated from judicial functions.

(g) Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of decisions of judicial bodies and the exercise of other functions as representatives of the public interest.

(h) Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

(i) In the performance of their duties, prosecutors shall:

1. carry out their functions impartially and avoid all political, social, racial, ethnic, religious, cultural, sexual, gender or any other kind of discrimination;
2. protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
3. keep matters in their possession confidential, unless the performance of duty or needs of justice require otherwise;
4. consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the provisions below relating to victims.

(j) Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

(k) Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where

authorized by law or consistent with local practice, the investigation of such offences.

(l) When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the judicial body accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

(m) In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, judicial bodies, the legal profession, paralegals, non-governmental organisations and other government agencies or institutions.

(n) Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors, which allege that they acted in a manner that is inconsistent with professional standards, shall be processed expeditiously and fairly under appropriate procedures prescribed by law. Prosecutors shall have the right to a fair hearing including the right to be represented by a legal representative of their choice. The decision shall be subject to independent review.

(o) Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics.

G. ACCESS TO LAWYERS AND LEGAL SERVICES:

(a) States shall ensure that efficient procedures and mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, gender, language, religion, political, or other opinion, national or social origin, property, disability, birth, economic or other status.

(b) States shall ensure that an accused person or a party to a civil case is permitted representation by a lawyer of his or her choice, including a foreign lawyer duly accredited to the national bar.

(c) States and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental rights and freedoms.

H. LEGAL AID AND LEGAL ASSISTANCE:

(a) The accused or a party to a civil case has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused or party to a civil case if he or she does not have sufficient means to pay for it.

(b) The interests of justice should be determined by considering:

1. in criminal matters:

- i) the seriousness of the offence;
- ii) the severity of the sentence.

2. in civil cases:

- i) the complexity of the case and the ability of the party to adequately represent himself or herself;
- ii) the rights that are affected;
- iii) the likely impact of the outcome of the case on the wider community.

(c) The interests of justice always require legal assistance for an accused in any capital case, including for appeal, executive clemency, commutation of sentence, amnesty or pardon.

(d) An accused person or a party to a civil case has the right to an effective defence or representation and has a right to choose his or her own legal representative at all stages of the case. They may contest the choice of his or her court-appointed lawyer.

(e) When legal assistance is provided by a judicial body, the lawyer appointed shall:

- 1. be qualified to represent and defend the accused or a party to a civil case;
- 2. have the necessary training and experience corresponding to the nature and seriousness of the matter;
- 3. be free to exercise his or her professional judgement in a professional manner free of influence of the State or the judicial body;
- 4. advocate in favour of the accused or party to a civil case;

5. be sufficiently compensated to provide an incentive to accord the accused or party to a civil case adequate and effective representation.

(f) Professional associations of lawyers shall co-operate in the organisation and provision of services, facilities and other resources, and shall ensure that:

1. when legal assistance is provided by the judicial body, lawyers with the experience and competence commensurate with the nature of the case make themselves available to represent an accused person or party to a civil case;

2. where legal assistance is not provided by the judicial body in important or serious human rights cases, they provide legal representation to the accused or party in a civil case, without any payment by him or her.

(g) Given the fact that in many States the number of qualified lawyers is low, States should recognize the role that para-legals could play in the provision of legal assistance and establish the legal framework to enable them to provide basic legal assistance.

(h) States should, in conjunction with the legal profession and non-governmental organizations, establish training, the qualification procedures and rules governing the activities and conduct of para-legals. States shall adopt legislation to grant appropriate recognition to para-legals.

(i) Para-legals could provide essential legal assistance to indigent persons, especially in rural communities and would be the link with the legal profession.

(j) Non-governmental organizations should be encouraged to establish legal assistance programmes and to train para-legals.

(k) States that recognize the role of para-legals should ensure that they are granted similar rights and facilities afforded to lawyers, to the extent necessary to enable them to carry out their functions with independence.

I. INDEPENDENCE OF LAWYERS:

(a) States, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

(b) States shall ensure that lawyers:

1. are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;

2. are able to travel and to consult with their clients freely both within their own country and abroad;

3. shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

(c) States shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

(d) 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.

(e) Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a judicial body or other legal or administrative authority.

(f) Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

(g) Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

(h) Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

(i) Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

(j) Lawyers shall always loyally respect the interests of their clients.

(k) Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and the protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

(l) Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional association shall be elected by its members and shall exercise its functions without external interference.

(m) Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

(n) Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

(o) Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or even before a judicial body, and shall be subject to an independent judicial review.

(p) All disciplinary proceedings shall be determined in accordance with the code of professional conduct, other recognized standards and ethics of the legal profession and international standards.

J. CROSS BORDER COLLABORATION AMONGST LEGAL PROFESSIONALS:

(a) States shall ensure that national legislation does not prevent collaboration amongst legal professionals in countries in their region and throughout Africa.

(b) States shall encourage the establishment of agreements amongst states and professional legal associations in their region that permit cross-border collaboration amongst lawyers including legal representation, training and education, and exchange of information and expertise.

K. ACCESS TO JUDICIAL SERVICES:

(a) States shall ensure that judicial bodies are accessible to everyone within their territory and jurisdiction, without distinction of any kind, such as discrimination based on race, colour, disability, ethnic origin, sex, gender, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

(b) States must take special measures to ensure that rural communities and women have access to judicial services. States must ensure that law

enforcement and judicial officials are adequately trained to deal sensitively and professionally with the special needs and requirements of women.

(c) In countries where there exist groups, communities or regions whose needs for judicial services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, States shall take special measures to ensure that adequate judicial services are accessible to them.

(d) States shall ensure that access to judicial services is not impeded including by the distance to the location of judicial institutions, the lack of information about the judicial system, the imposition of unaffordable or excessive court fees and the lack of assistance to understand the procedures and to complete formalities.

L. RIGHT OF CIVILIANS NOT TO BE TRIED BY MILITARY COURTS:

a) The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel.

b) While exercising this function, Military Courts are required to respect fair trial standards enunciated in the African Charter and in these guidelines.

c) Military courts should not in any circumstances whatsoever have jurisdiction over civilians. Similarly, Special Tribunals should not try offences which fall within the jurisdiction of regular courts.

M. PROVISIONS APPLICABLE TO ARREST AND DETENTION:

1. Right to liberty and security

(a) States shall ensure that the right of everyone on its territory and under its jurisdiction to liberty and security of person is respected.

(b) States must ensure that no one shall be subject to arbitrary arrest or detention, and that arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose, pursuant to a warrant, on reasonable suspicion or for probable cause.

(c) Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

(d) Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

(e) Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail.

(f) Expectant mothers and mothers of infants shall not be kept in custody pending their trial, but their release may be subject to certain conditions or guarantees, including the payment of bail.

(g) States shall ensure, including by the enactment of legal provisions, that officials or other persons who arbitrarily arrest or detain any person are brought to justice.

(h) States shall ensure, including by the enactment of legal provisions and adoption of procedures, that anyone who has been the victim of unlawful arrest or detention is enabled to claim compensation.

2. Rights upon arrest:

a) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed, in a language he or she understands, of any charges against him or her.

b) Anyone who is arrested or detained shall be informed upon arrest, in a language he or she understands, of the right to legal representation and to be examined by a doctor of his or her choice and the facilities available to exercise this right.

c) Anyone who is arrested or detained has the right to inform, or have the authorities notify, their family or friends. The information must include the fact of their arrest or detention and the place the person is kept in custody.

d) If the arrested or detained person is a foreign national, he or she must be promptly informed of the right to communicate with his or her embassy or consular post. In addition, if the person is a refugee or stateless person or under the protection of an inter-governmental organization, he or she must be notified without delay of the right to communicate with the appropriate international organization.

e) States must ensure that any person arrested or detained is provided with the necessary facilities to communicate, as appropriate, with his or her lawyer, doctor, family and friends, and in the case of a foreign national, his or her embassy or consular post or an international organization.

f) Any person arrested or detained shall have prompt access to a lawyer and, unless the person has waived this right in writing, shall not be obliged to answer any questions or participate in any interrogation without his or her lawyer being present.

g) Anyone who is arrested or detained shall be given reasonable facilities to receive visits from family and friends, subject to restriction and supervision only as are necessary in the interests of the administration of justice and of security of the institution.

h) Any form of detention and all measures affecting the human rights of a person arrested or detained shall be subject to the effective control of a judicial or other authority. In order to prevent arbitrary arrest and detention or disappearances, states should establish procedures that require police or other officials with the authority to arrest and detain to inform the appropriate judicial official or other authority of the arrest and detention. The judicial official or other authority shall exercise control over the official detaining the person.

3. Right to be brought promptly before a judicial officer:

a) Anyone who is arrested or detained on a criminal charge shall be brought before a judicial officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

b) The purpose of the review before a judicial or other authority includes to:

1. assess whether sufficient legal reason exists for the arrest;
2. assess whether detention before trial is necessary;
3. determine whether the detainee should be released from custody, and the conditions, if any, for such release;
4. safeguard the well-being of the detainee;
5. prevent violations of the detainee's fundamental rights;
6. give the detainee the opportunity to challenge the lawfulness of his or her detention and to secure release if the arrest or detention violates his or her rights.

4. Right of arrested or detained person to take proceedings before a judicial body:

Anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a judicial body, in order that that judicial body may decide without delay on the lawfulness of his or her detention and order release if the detention is not lawful.

5. Right to habeas corpus:

a) States shall enact legislation, where it does not exist, to ensure the right to habeas corpus, amparo or similar procedures.

b) Anyone concerned or interested in the well-being, safety or security of a person deprived of his or her liberty has the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of such a person and/or identifying the authority ordering or carrying out the deprivation of liberty.

c) In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

d) Any other competent authority entitled under law of the State or by any international legal instrument to which the State is a party may also have access to such places.

e) Judicial bodies shall at all times hear and act upon petitions for habeas corpus, amparo or similar procedures. No circumstances whatever must be invoked as a justification for denying the right to habeas corpus, amparo or similar procedures.

6. Right to be detained in a place recognised by law:

a) Any person deprived of liberty shall be held in an officially recognised place of detention.

b) Accurate information shall be recorded regarding any person deprived of liberty including:

1. his or her identity;
2. the reasons for arrest;
3. the time of arrest and the taking of the arrested person to a place of custody;
4. the time of his first appearance before a judicial or other authority;

5. the identity of the law enforcement officials concerned;
6. precise information concerning the place of custody;
7. details of the judicial official or other authority informed of the arrest and detention.

c) Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be promptly available to their family members, their legal representative or to any other persons having a legitimate interest in the information.

d) An official up-to-date register of all persons deprived of liberty shall be maintained in every place of detention and shall be made available to any judicial or other competent and independent national authority seeking to trace the whereabouts of the a detained person.

7. Right to humane treatment:

(a) States shall ensure that all persons under any form of detention or imprisonment are treated in a humane manner and with respect for the inherent dignity of the human person.

(b) In particular States must ensure that no person, lawfully deprived of his or her liberty is subjected to torture or to cruel, inhuman or degrading treatment or punishment. States shall ensure that special measures are taken to protect women detainees from ill-treatment, including making certain that their interrogation is conducted by women police or judicial officials.

(c) Women shall at all times be detained separately from men and while in custody they shall receive care, protection and all necessary individual assistance – psychological, medical and physical – that they may require in view of their sex and gender.

(d) It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him or her to confess, to incriminate himself or herself or to testify against any other person.

(e) No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his or her capacity of decision or his or her judgement.

(f) No detained person shall, even with his or her consent, be subjected to any medical or scientific experimentation which could be detrimental to his or her health.

(g) A detained person or his or her legal representative or family shall have the right to lodge a complaint to the relevant authorities regarding his or her treatment, in particular in case of torture or other cruel, inhuman or degrading treatment.

(h) States shall ensure that effective mechanisms exist for the receipt and investigation of such complaints. The right to lodge complaints and the existence of such mechanisms should be promptly made known to all arrested or detained persons.

(i) States shall ensure, including by the enactment of legal provisions, that officials or other persons who subject arrested or detained persons to torture or to cruel, inhuman or degrading treatment are brought to justice.

(j) States shall ensure, including by the enactment of legal provisions and adoption of procedures, that anyone who has been the victim of torture or cruel, inhuman or degrading treatment or punishment is enabled to claim compensation.

8. Supervision of places of detention:

(a) In order to supervise strict observance of relevant laws and regulations and international standards applicable to detainees, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention.

(b) A detained 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 the above principle, subject to reasonable conditions to ensure security and good order in such places.

N. PROVISIONS APPLICABLE TO PROCEEDINGS RELATING TO CRIMINAL CHARGES:

1. Notification of charge:

(a) Any person charged with a criminal offence shall be informed promptly, as soon as a charge is first made by a competent authority, in detail, and in a language, which he or she understands, of the nature and cause of the charge against him or her.

(b) The information shall include details of the charge or applicable law and the alleged facts on which the charge is based sufficient to indicate the substance of the complaint against the accused.

(c) The accused must be informed in a manner that would allow him or her to prepare a defence and to take immediate steps to secure his or her release.

2. Right to counsel:

(a) The accused has the right to defend him or herself in person or through legal assistance of his or her own choosing. Legal representation is regarded as the best means of legal defence against infringements of human rights and fundamental freedoms.

(b) The accused has the right to be informed, if he or she does not have legal assistance, of the right to defend him or herself through legal assistance of his or her own choosing.

(c) This right applies during all stages of any criminal prosecution, including preliminary investigations in which evidence is taken, periods of administrative detention, trial and appeal proceedings.

(d) The accused has the right to choose his or her own counsel freely. This right begins when the accused is first detained or charged. A judicial body may not assign counsel for the accused if a qualified lawyer of the accused's own choosing is available.

3. Right to adequate time and facilities for the preparation of a defence:

(a) The accused has the right to communicate with counsel and have adequate time and facilities for the preparation of his or her defence.

(b) The accused may not be tried without his or her counsel being notified of the trial date and of the charges in time to allow adequate preparation of a defence.

(c) The accused has a right to adequate time for the preparation of a defence appropriate to the nature of the proceedings and the factual circumstances of the case. Factors which may affect the adequacy of time for preparation of a defence include the complexity of the case, the defendant's access to evidence, the length of time provided by rules of procedure prior to particular proceedings, and prejudice to the defence.

(d) The accused has a right to facilities which assist or may assist the accused in the preparation of his or her defence, including the right to communicate with defence counsel and the right to materials necessary to the preparation of a defence.

(e) All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate

with a lawyer, without delay, interception or censorship and in full confidentiality.

1. The right to confer privately with one's lawyer and exchange confidential information or instructions is a fundamental part of the preparation of a defence. Adequate facilities shall be provided that preserve the confidentiality of communications with counsel.

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

3. The accused or the accused's defence counsel has a right to all relevant information held by the prosecution that could help the accused exonerate him or herself.

4. 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.

5. The accused has a right to consult legal materials reasonably necessary for the preparation of his or her defence.

6. Before judgement or sentence is rendered, the accused and his or her defence counsel shall have the right to know and challenge all the evidence which may be used to support the decision. All evidence submitted must be considered by the judicial body.

7. Following a trial and before any appellate proceeding, the accused or the defence counsel has a right of access to (or to consult) the evidence which the judicial body considered in making a decision and the judicial body's reasoning in arriving at the judgement.

4. The right to an interpreter:

(a) The accused has the right to the free assistance of an interpreter if he or she cannot understand or speak the language used before the judicial body.

(b) The right to an interpreter does not extend to the right to express oneself in the language of one's choice if the accused or the defence witness is sufficiently proficient in the language of the judicial body.

(c) The right to an interpreter applies at all stages of the proceedings, including pre-trial proceedings.

(d) The right to an interpreter applies to written as well as oral proceedings. The right extends to translation or interpretation of all documents or statements necessary for the defendant to understand the proceedings or assist in the preparation of a defence.

(e) The interpretation or translation provided shall be adequate to permit the accused to understand the proceedings and for the judicial body to understand the testimony of the accused or defence witnesses.

(f) The right to interpretation or translation cannot be qualified by a requirement that the accused pay for the costs of an interpreter or translator. Even if the accused is convicted, he or she cannot be required to pay for the costs of interpretation or translation.

5. Right to trial without undue delay:

(a) Every person charged with a criminal offence has the right to a trial without undue delay.

(b) The right to a trial without undue delay means the right to a trial which produces a final judgement and, if appropriate a sentence without undue delay.

(c) Factors relevant to what constitutes undue delay include the complexity of the case, the conduct of the parties, the conduct of other relevant authorities, whether an accused is detained pending proceedings, and the interest of the person at stake in the proceedings.

6. Rights during a trial:

(a) In criminal proceedings, the principle of equality of arms imposes procedural equality between the accused and the public prosecutor.

1. The prosecution and defence shall be allowed equal time to present evidence.
2. Prosecution and defence witnesses shall be given equal treatment in all procedural matters.

(b) The accused is entitled to a hearing in which his or her individual culpability is determined. Group trials in which many persons are involved may violate the person's right to a fair hearing.

(c) In criminal proceedings, the accused has the right to be tried in his or her presence.

1. The accused has the right to appear in person before the judicial body.
2. The accused may not be tried in absentia. If an accused is tried in absentia, the accused shall have the right to petition for a reopening of the proceedings

upon a showing that inadequate notice was given, that the notice was not personally served on the accused, or that his or her failure to appear was for exigent reasons beyond his or her control. If the petition is granted, the accused is entitled to a fresh determination of the merits of the charge.

3. The accused may voluntarily waive the right to appear at a hearing, but such a waiver shall be established in an unequivocal manner and preferably in writing.

(d) The accused has the right not to be compelled to testify against him or herself or to confess guilt.

1. Any confession or other evidence obtained by any form of coercion or force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing. Any confession or admission obtained during *incommunicado detention* shall be considered to have been obtained by coercion.

2. Silence by the accused may not be used as evidence to prove guilt and no adverse consequences may be drawn from the exercise of the right to remain silent.

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

1. The presumption of innocence places the burden of proof during trial in any criminal case on the prosecution.

2. Public officials shall maintain a presumption of innocence. Public officials, including prosecutors, may inform the public about criminal investigations or charges, but shall not express a view as to the guilt of any suspect.

3. Legal presumptions of fact or law are permissible in a criminal case only if they are rebuttable, allowing a defendant to prove his or her innocence.

(f) The accused has a right to examine, or have examined, witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.

1. The prosecution shall provide the defence with the names of the witnesses it intends to call at trial within a reasonable time prior to trial which allows the defendant sufficient time to prepare his or her defence.

2. The accused's right to examine witnesses may be limited to those witnesses whose testimony is relevant and likely to assist in ascertaining the truth.

3. The accused has the right to be present during the testimony of a witness. This right may be limited only in exceptional circumstances such as when a

witness reasonably fears reprisal by the defendant, when the accused engages in a course of conduct seriously disruptive of the proceedings, or when the accused repeatedly fails to appear for trivial reasons and after having been duly notified.

4. If the defendant is excluded or if the presence of the defendant cannot be ensured, the defendant's counsel shall always have the right to be present to preserve the defendant's right to examine the witness.

5. If national law does not permit the accused to examine witnesses during pre-trial investigations, the defendant shall have the opportunity, personally or through defence counsel, to cross-examine the witness at trial. However, the right of a defendant to cross-examine witnesses personally may be limited in respect of victims of sexual violence and child witnesses, taking into consideration the defendant's right to a fair trial.

6. The testimony of anonymous witnesses during a trial will be allowed only in exceptional circumstances, taking into consideration the nature and the circumstances of the offence and the protection of the security of the witness and if it is determined to be in the interests of justice.

(g) Evidence obtained by illegal means constituting a serious violation of internationally protected human rights shall not be used as evidence against the accused or against any other person in any proceeding, except in the prosecution of the perpetrators of the violations.

7. Right to benefit from a lighter sentence or administrative sanction

(a) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit there from by.

(b) A lighter penalty created any time before an accused's sentence has been fully served should be applied to any offender serving a sentence under the previous penalty.

(c) Administrative tribunals conducting disciplinary proceedings shall not impose a heavier penalty than the one that was applicable at the time when the offending conduct occurred. If, subsequent to the conduct, provision is made

by law for the imposition of a lighter penalty, the person disciplined shall benefit thereby.

8. Second trial for same offence prohibited

No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

9. Sentencing and punishment

(a) Punishments constituting a deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.

(b) In countries that have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime.

(c) Sentence of death shall not be imposed or carried out on expectant mothers and mothers of infants and young children.

(d) States that maintain the death penalty are urged to establish a moratorium on executions, and to reflect on the possibility of abolishing capital punishment.

(e) States shall provide special treatment to expectant mothers and to mothers of infants and young children who have been found guilty of infringing the penal law and shall in particular:

1. ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
2. establish and promote measures alternative to institutional confinement for the treatment of such mothers;
3. establish special alternative institutions for holding such mothers;
4. ensure that a mother shall not be imprisoned with her child;
5. the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

10. Appeal

(a) Everyone convicted in a criminal proceeding shall have the right to review of his or her conviction and sentence by a higher tribunal.

1. The right to appeal shall provide a genuine and timely review of the case, including the facts and the law. If exculpatory evidence is discovered after a person is tried and convicted, the right to appeal or some other post-conviction

procedure shall permit the possibility of correcting the verdict if the new evidence would have been likely to change the verdict, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to the accused.

2. A judicial body shall stay execution of any sentence while the case is on appeal to a higher tribunal.

(b) Anyone sentenced to death shall have the right to appeal to a judicial body of higher jurisdiction, and States should take steps to ensure that such appeals become mandatory.

(c) When a person has by a final decision been convicted of a criminal offence and when subsequently his or her conviction has been reversed or he or she has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law.

(d) Every person convicted of a crime has a right to seek pardon or commutation of sentence. Clemency, commutation of sentence, amnesty or pardon may be granted in all cases of capital punishment.

O. CHILDREN AND THE RIGHT TO A FAIR TRIAL

(a) In accordance with the African Charter on the Rights and Welfare of the Child, a child is any person under the age of 18. States must ensure that domestic legislation recognises any person under the age of 18 as a child.

(b) Children are entitled to all the fair trial guarantees applicable to adults and to some additional special protection.

(c) States must ensure that law enforcement and judicial officials are adequately trained to deal sensitively and professionally with children who interact with the criminal justice system whether as suspects, accused, complainants or witnesses.

(d) States shall establish laws and procedures which set a minimum age below which children will be presumed not to have the capacity to infringe the criminal law. The age of criminal responsibility should not be fixed below 15 years of age. No child below the age of 15 shall be arrested or detained on allegations of having committed a crime.

(e) No child shall be subjected to arbitrary arrest or detention.

(f) Law enforcement officials must ensure that all contacts with children are conducted in a manner that respects their legal status, avoids harm and promotes the well-being of the child.

(g) When a child suspected of having infringed the penal law is arrested or apprehended, his or her parent, guardians or family relatives should be notified immediately.

(h) The child's right to privacy shall be respected at all times in order to avoid harm being caused to him or her by undue publicity and no information that could identify a child suspected or accused of having committed a criminal offence shall be published.

(i) States shall consider, wherever appropriate, with the consent of the child and his or parents or guardians, dealing with a child offender without resorting to a formal trial, provided the rights of the child and legal safeguards are fully respected. Alternatives to criminal prosecution, with proper safeguards for the protection of the well-being of the child, may include:

1. The use of community, customary or traditional mediation;
2. Issuing of warnings, cautions and admonitions accompanied by measures to help the child at home with education and with problems and difficulties.
3. Arranging a conference between the child, the victim and members of the community;
4. Making use of community programmes such as temporary supervision and guidance, restitution and compensation to victims.

(j) Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Any child who has been arrested for having committed a crime shall be released into the care of his or her parents, legal guardians or family relatives unless there are exceptional reasons for his or her detention. The competent authorities shall ensure that children are not held in detention for any period beyond 48 hours.

(k) Children who are detained pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

(l) Every child arrested or detained for having committed a criminal offence shall have the following guarantees:

1. to be treated in a manner consistent with the promotion of the child's dignity and worth;

2. to have the assistance of his or her parents, a family relative or legal guardians from the moment of arrest;
3. to be provided by the State with legal assistance from the moment of arrest;
4. to be informed promptly and directly, in a language he or she understands, of the reasons for his or her arrest and of any charges against his or her, and if appropriate, through his or her parents, other family relative, legal guardians or legal representative;
5. to be informed of his or her rights in a language he or she understands;
6. not to be questioned without the presence of his or her parents, a family relative or legal guardians, and a legal representative;
7. not to be subjected to torture or any other cruel, inhuman or degrading treatment or punishment or any duress or undue pressure;
8. not to be detained in a cell or with adults detainees.

(m) States shall establish separate or specialized procedures and institutions for dealing with cases in which children are accused of or found responsible for having committed criminal offences. The establishment of such procedures and institutions shall be based on respect for the rights of the child, shall take into account the vulnerability of children and shall promote the child's rehabilitation.

(n) Every child accused of having committed a criminal offence shall have the following additional guarantees:

1. to be presumed innocent until proven guilty according to the law;
2. to be informed promptly and directly, and in a language that he or she understands, of the charges, and if appropriate, through his or her parents or legal guardians;
3. to be provided by the State with legal or other appropriate assistance in the preparation and presentation of his or her defence;
4. to have the case determined expeditiously by a competent, independent and impartial authority or judicial body established by law in a fair hearing;
5. to have the assistance of a legal representative and, if appropriate and in the best interests of the child, his or her parents, a family relative or legal guardians, during the proceedings;

6. not to be compelled to give testimony or confess guilt; to examine or have examine adverse witnesses and to obtain the participation of witnesses on his or her behalf under conditions of equality;

7. if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

8. to have the free assistance of an interpreter if he or she cannot understand or speak the language used;

9. to have his or her privacy fully respected at all stages of the proceedings.

(o) In disposing of a case involving a child who has been found to be in conflict with the law, the competent authority shall be guided by the following principles:

1. The action taken against the child shall always be in proportion not only to the circumstances and gravity of the offence but also the best interest of the child and the interests of society;

2. Non-custodial options which emphasise the value of restorative justice should be given primary consideration and restrictions on the personal liberty of a child shall only be imposed after careful consideration and shall be limited to the possible minimum. Non-custodial measures could include:

i) Care, guidance and supervision orders;

ii) Probation;

iii) Financial penalties, compensation and restitution;

iv) Intermediate treatment and other treatment orders

v) Orders to participate in group counselling and similar activities;

vi) Orders concerning foster care, living communities or other educational settings

3. A child shall not be sentenced to imprisonment unless the child is adjudicated of having committed a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

4. Capital punishment shall not be imposed for any crime committed by children and children shall not be subjected to corporal punishment.

(p) States shall ensure that child witnesses are able to give their best evidence with the minimum distress. Investigation and practices of judicial bodies

should be adapted to afford greater protection to children without undermining the defendant's right to a fair trial. States are required, as appropriate, to adopt the following measures in regard to child witnesses:

1. Child witnesses shall not be questioned by the police or any investigating official without the presence of his or her parents, a family relative or legal guardians, or where the latter are not traceable in the presence of a social worker;
2. Police and investigating officials shall conduct their questioning of child witnesses in a manner that avoids any harm and promotes the well-being of the child;
3. Police and investigating officials shall ensure that child witnesses, especially those who are victims of sexual abuse, do not come into contact with or made to confront the alleged perpetrator of the crime;
4. The child's right to privacy shall be respected at all times and no information that could identify a child witness shall be published;
5. Where necessary, a child witness shall be questioned by law enforcement officials through an intermediary;
6. A child witness should be permitted to testify before a judicial body through an intermediary, if necessary;
7. Where resources and facilities permit, video-recorded pre-trial interviews with child witnesses should be presented;
8. Screens should be set up around the witness box to shield the child witness from viewing the defendant;
9. The public gallery should be cleared, especially in sexual offence cases and cases involving intimidation, to enable evidence to be given in private;
10. Judicial officers, prosecutors and lawyers should wear ordinary dress during the testimony of a child witness;
11. Defendants should be prevented from personally cross-examination child witnesses;
12. The circumstances in which information about the previous sexual history of alleged child victims may be sought or presented as evidence in trials for sexual offences must be restricted.

P. VICTIMS OF CRIME AND ABUSE OF POWER

- a) Victims should be treated with compassion and respect for their dignity. They are entitled to have access to the mechanisms of justice and to prompt redress, as provided for by national legislation and international law, for the harm that they have suffered.
- b) States must ensure that women who are victims of crime, especially of a sexual nature, are interviewed by women police or judicial officials.
- c) States shall take steps to ensure that women who are complainants, victims or witnesses are not subjected to any cruel, inhumane or degrading treatment.
- d) Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
- e) States are required to investigate and punish all complaints of violence against women, including domestic violence, whether those acts are perpetrated by the state, its officials or agents or by private persons. Fair and effective procedures and mechanisms must be established and be accessible to women who have been subjected to violence to enable them to file criminal complaints and to obtain other redress for the proper investigation of the violence suffered, to obtain restitution or reparation and to prevent further violence.
- f) Judicial officers, prosecutors and lawyers, as appropriate, should facilitate the needs of victims by:
 - 1. Informing them of their role and the scope, timing and progress of the proceedings and the final outcome of their cases;
 - 2. Allowing their views and concerns to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - 3. Providing them with proper assistance throughout the legal process;
 - 4. Taking measures to minimize inconvenience to them, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

5. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

g) Informal mechanisms for the resolution of disputes, including mediation, arbitration and traditional or customary practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

h) Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses, the provision of services and the restoration of rights.

i) States should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

j) Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws or international law, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted.

k) When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

1. Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
2. The family, in particular dependants of persons who have died or become physically or mentally incapacitated.

l) States are encouraged to establish, strengthen and expand national funds for compensation to victims.

m) States must ensure that :

1. Victims receive the necessary material, medical, psychological and social assistance through state, voluntary, non-governmental and community-based means.
2. Victims are informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
3. Police, justice, health, social service and other personnel concerned receive training to sensitize them to the needs of victims, and guidelines are adopted to ensure proper and prompt aid.

Q. TRADITIONAL COURTS

a) Traditional courts, where they exist, are required to respect international standards on the right to a fair trial.

b) The following provisions shall apply, as a minimum, to all proceedings before traditional courts:

1. equality of persons without any distinction whatsoever as regards race, colour, sex, gender, religion, creed, language, political or other opinion, national or social origin, means, disability, birth, status or other circumstances;
2. respect for the inherent dignity of human persons, including the right not to be subject to torture, or other cruel, inhuman or degrading punishment or treatment;
3. respect for the right to liberty and security of every person, in particular the right of every individual not to be subject to arbitrary arrest or detention;
4. respect for the equality of women and men in all proceedings;
5. respect for the inherent dignity of women, and their right not to be subjected to cruel, inhuman or degrading treatment or punishment;
6. adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;
7. an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the traditional court;
8. an entitlement to seek the assistance of and be represented by a representative of the party's choosing in all proceedings before the traditional court;
9. an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the traditional court;
10. an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions;
11. an entitlement to an appeal to a higher traditional court, administrative authority or a judicial tribunal;
12. all hearings before traditional courts shall be held in public and its decisions shall be rendered in public, except where the interests of children require or where the proceedings concern matrimonial disputes or the guardianship of children;

c) The independence of traditional courts shall be guaranteed by the laws of the country and respected by the government, its agencies and authorities:

1. they shall be independent from the executive branch;
2. there shall not be any inappropriate or unwarranted interference with proceedings before traditional courts.

d) States shall ensure the impartiality of traditional courts. In particular, members of traditional courts shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter.

1. The impartiality of a traditional court would be undermined when one of its members has:

- 1.1 expressed an opinion which would influence the decision-making;
- 1.2 some connection or involvement with the case or a party to the case;
- 1.3 a pecuniary or other interest linked to the outcome of the case.

2. Any party to proceedings before a traditional court shall be entitled to challenge its impartiality on the basis of ascertainable facts that the fairness any of its members or the traditional court appears to be in doubt.

e) The procedures for complaints against and discipline of members of traditional courts shall be prescribed by law. Complaints against members of traditional courts shall be processed promptly and expeditiously, and with all the guarantees of a fair hearing, including the right to be represented by a legal representative of choice and to an independent review of decisions of disciplinary, suspension or removal proceedings.

R. NON-DEGRABILITY CLAUSE

No circumstances whatsoever, whether a threat of war, a state of international or internal armed conflict, internal political instability or any other public emergency, may be invoked to justify derogations from the right to a fair trial.

S. USE OF TERMS

For the purpose of these Principles and Guidelines:

- a) “Arrest” means the act of apprehending a person for the alleged commission of an offence or by the action of an authority.
- b) “Criminal charge” is defined by the nature of the offence and the nature and degree of severity of the penalty incurred. An accusation may constitute a

criminal charge although the offence is not classified as criminal under national law.

c) “Detained person” or “detainee” means any individual deprived of personal liberty except as a result of conviction for an offence.

d) “Detention” means the condition of a detained person.

e) “Imprisoned person” or “prisoner” means any individual deprived of personal liberty as a result of conviction for an offence.

f) “Imprisonment” means the condition of imprisoned persons.

g) “Suspect” means a person who has been arrested but not arraigned or charged before a judicial body.

h) “Judicial body” means a dispute resolution or adjudication mechanism established and regulated by law and includes courts and other tribunals.

i) “Judicial office” means a position on a judicial body.

j) “Judicial officer” means a person who sits in adjudication as part of a judicial body.

k) “Legal proceeding” means any proceeding before a judicial body brought in regard to a criminal charge or for the determination of rights or obligations of any person, natural or legal.

l) “Traditional court” means a body which, in a particular locality, is recognised as having the power to resolve disputes in accordance with local customs, cultural or ethnic values, religious norms or tradition.

m) “Habeas corpus”, “amparo” is a legal procedure brought before a judicial body to compel the detaining authorities to provide accurate and detailed information regarding the whereabouts and conditions of detention of a person or to produce a detainee before the judicial body.

n) “Victim” means persons who individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws or that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights. The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress.

3. The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa

Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa Lilongwe, Malawi, November 22-24, 2004

Preamble

Bearing in mind that access to justice depends on the enforcement of rights to due process, to a fair hearing, and to legal representation;

Recognising that the vast majority of people affected by the criminal justice system are poor and have no resources with which to protect their rights;

Further recognising that the vast majority of ordinary people in Africa, especially in post-conflict societies where there is no functioning criminal justice system, do not have access to legal aid or to the courts and that the principle of equal legal representation and access to the resources and protections of the criminal justice system simply does not exist as it applies to the vast majority of persons affected by the criminal justice system;

Noting that legal advice and assistance in police stations and prisons are absent. Noting also that many thousands of suspects and prisoners are detained for lengthy periods of time in overcrowded police cells and in inhumane conditions in over-crowded prisons;

Further noting that prolonged incarceration of suspects and prisoners without providing access to legal aid or to the courts violates basic principles of international law and human rights, and that legal aid to suspects and prisoners has the potential to reduce the length of time suspects are held in police stations, congestion in the courts, and prison populations, thereby improving conditions of confinement and reducing the costs of criminal justice administration and incarceration;

Recalling the Resolution of the African Charter of Fundamental Rights of Prisoners adopted by the African Regional Preparatory Meeting for the Eleventh United Nations Congress on Crime Prevention and Criminal Justice held at Addis Ababa, Ethiopia in March, 2004 and its recommendations for its adoption by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice to be held in Bangkok, Thailand in April, 2005;

Mindful that the challenge of providing legal aid and assistance to ordinary people will require the participation of a variety of legal services providers and

partnerships with a range of stakeholders and require the creation of innovative legal aid mechanisms;

Noting the Kampala Declaration on Prison Conditions 1996, the Kadoma Declaration on Community Service Orders in Africa 1997, the Abuja Declaration on Alternatives to Imprisonment 2002 and the Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002; and mindful that similar measures are needed with respect to the provision of legal aid to prisoners;

Noting with satisfaction the resolutions passed by the African Commission on Human and Peoples' Rights (notably: the Resolution on the Right of Recourse and Fair Trial 1992, the Resolution on the Right to a Fair Trial and Legal Assistance in Africa 1999) and, in particular, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2001;

Commending the practical steps that have been taken to implement these standards through the activities of the African Commission on Human and Peoples' Rights and its Special Rapporteur on Prisons and Conditions of Detention;

Commending also the Recommendation of the African Regional Preparatory Meeting held at Addis Ababa in March 2004 that the African Region should prepare and present an African Common Position to the Eleventh United Nations Congress on Crime Prevention and Criminal Justice to be held in Bangkok, Thailand in April, 2005, and that the African Union Commission has agreed to prepare and present that Common Position to the Congress;

Welcoming the practical measures that have been taken by the governments and legal aid establishments in African countries to apply these standards in their national jurisdictions; while emphasizing that notwithstanding these measures, there are still considerable shortcomings in the provision of legal aid to ordinary people, which are aggravated by shortages of personnel and resources;

Noting with satisfaction the growing openness of governments to forging partnerships with non-governmental organizations, civil society, and the international community in developing legal aid programs for ordinary people that will enable increasing numbers of people in Africa, especially in rural areas, to have access to justice;

Commending also the recommendations of the African Regional Preparatory Meeting for the Eleventh United Nations Conference for the introduction and strengthening of restorative justice in the criminal justice system;

The participants of the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa, held in Lilongwe, Malawi, between 22 and 24 November 2004, hereby declare the importance of:

1. Recognising and supporting the right to legal aid in criminal justice

All governments have the primary responsibility to recognise and support basic human rights, including the provision of and access to legal aid for persons in the criminal justice system. As part of this responsibility, governments are encouraged to adopt measures and allocate funding sufficient to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable, especially women and children, and in so doing empower them to access justice. Legal aid should be defined as broadly as possible to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution; and to include a wide range of stakeholders, such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academic institutions.

2. Sensitizing all criminal justice stakeholders

Government officials, including police and prison administrators, judges, lawyers, and prosecutors, should be made aware of the crucial role that legal aid plays in the development and maintenance of a just and fair criminal justice system. Since those in control of government criminal justice agencies control access to detainees and to prisoners, they should ensure that the right to legal aid is fully implemented. Government officials are encouraged to allow legal aid to be provided at police stations, in pre-trial detention facilities, in courts, and in prisons. Governments should also sensitize criminal justice system administrators to the societal benefits of providing effective legal aid and the use of alternatives to imprisonment. These benefits include elimination of unnecessary detention, speedy processing of cases, fair and impartial trials, and the reduction of prison populations.

3. Providing legal aid at all stages of the criminal justice process

A legal aid program should include legal assistance at all stages of the criminal process including investigation, arrest, pre-trial detention, bail hearings, trials,

appeals, and other proceedings brought to ensure that human rights are protected. Suspects, accused persons, and detainees should have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs. A person subject to criminal proceedings should never be prevented from securing legal aid and should always be granted the right to see and consult with a lawyer, accredited para-legal, or legal assistant. Governments should ensure that legal aid programs provide special attention to persons who are detained without charge, or beyond the expiration of their sentences, or who have been held in detention or in prison without access to the courts. Special attention should be given to women and other vulnerable groups, such as children, young people, the elderly, persons with disabilities, persons living with HIV/AIDS, the mentally and seriously ill, refugees, internally displaced persons, and foreign nationals.

4. Recognising the right to redress for violations of human rights

Human rights are enforced when government officials know that they will be held accountable for violations of the law and of basic human rights. Persons who are abused or injured by law enforcement officials, or who are not afforded proper recognition of their human rights, should have access to the courts and legal representation to redress their injuries and grievances. Governments should provide legal aid to persons who seek compensation for injuries suffered as the result of misconduct by officials and employees of criminal justice systems. This does not exclude other stakeholders from providing legal aid in such cases.

5. Recognising the role of non-formal means of conflict resolution

Traditional and community-based alternatives to formal criminal processes have the potential to resolve disputes without acrimony and to restore social cohesion within the community. These mechanisms also have the potential to reduce reliance upon the police to enforce the law, to reduce congestion in the courts, and to reduce the reliance upon incarceration as a means of resolving conflict based upon alleged criminal activity. All stakeholders should recognise the significance of such diversionary measures to the administration of a community-based, victim-oriented criminal justice system and should provide support for such mechanisms provided that they conform to human rights norms.

6. Diversifying legal aid delivery systems

Each country has different capabilities and needs when consideration is given to what kind of legal aid systems to employ. In carrying out its responsibility

to provide equitable access to justice for poor and vulnerable people, there are a variety of service delivery options that can be considered. These include government funded public defender offices, judicare programmes, justice centres, law clinics - as well as partnerships with civil society and faith-based organizations. Whatever options are chosen, they should be structured and funded in a way that preserves their independence and commitment to those populations most in need. Appropriate coordinating mechanisms should be established.

7. Diversifying legal aid service providers

It has all too often been observed that there are not enough lawyers in African countries to provide the legal aid services required by the hundreds of thousands of persons who are affected by criminal justice systems. It is also widely recognised that the only feasible way of delivering effective legal aid to the maximum number of persons is to rely on non-lawyers, including law students, para-legals, and legal assistants. These para-legals and legal assistants can provide access to the justice system for persons subjected to it, assist criminal defendants, and provide knowledge and training to those affected by the system that will enable rights to be effectively asserted. An effective legal aid system should employ complementary legal and law-related services by para-legals and legal assistants.

8. Encouraging pro-bono provision of legal aid by lawyers

It is universally recognised that lawyers are officers of the court and have a duty to see that justice systems operate fairly and equitably. By involving a broad spectrum of the private bar in the provision of legal aid, such services will be recognised as an important duty of the legal profession. The organized bar should provide substantial moral, professional and logistical support to those providing legal aid. Where a bar association, licensing agency, or government has the option of making pro-bono provision of legal aid mandatory, this step should be taken. In countries in which a mandatory pro-bono requirement cannot be imposed, members of the legal profession should be strongly encouraged to provide pro-bono legal aid services.

9. Guaranteeing sustainability of legal aid

Legal aid services in many African countries are donor funded and may be terminated at any time. For this reason, there is need for sustainability. Sustainability includes: funding, the provision of professional services, establishment of infrastructure, and the ability to satisfy the needs of the relevant community in the long term. Appropriate government, private sector

and other funding, and community ownership arrangements should be established in order to ensure sustainability of legal aid in every country.

10. Encouraging legal literacy

Ignorance about the law, human rights, and the criminal justice system is a major problem in many African countries. People who do not know their legal rights are unable to enforce them and are subject to abuse in the criminal justice system. Governments should ensure that human rights education and legal literacy programmes are conducted in educational institutions and in non-formal sectors of society, particularly for vulnerable groups such as children, young people, women, and the urban and rural poor.

4. Lilongwe Plan of Action for Accessing Legal Aid in the Criminal Justice System in Africa

The participants recommend the following measures as forming part of a Plan of Action to implement the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice system in Africa.

The document is addressed to governments and criminal justice practitioners, criminologists, academics, development partners as well as non-governmental organizations, community based organizations and faith based groups active in this area. It is meant to be a source of inspiration for concrete actions.

LEGAL AID FRAMEWORK

Institution building

Governments should introduce measures to:

- Establish a legal aid institution that is independent of government justice departments eg: legal aid board/commission that is accountable to parliament.
- Diversify legal aid service providers, adopting an inclusive approach, and enter into agreements with the Law Society as well as with university law clinics, non-governmental organizations (NGOs), community-based organizations (CBOs) and faith-based groups to provide legal aid services.
- Encourage lawyers to provide pro bono legal aid services as an ethical duty.
- Establish a legal aid fund to administer public defender schemes, to support university law clinics; and to sponsor clusters of NGOs/CBOs and others to provide legal aid services throughout the country, especially in the rural areas.
- Agree minimum quality standards for legal aid services and clarify the role of paralegals and other service providers by:
 - o developing standardized training programmes
 - o monitoring and evaluating the work of paralegals and other service providers
 - o requiring all paralegals operating in the criminal justice system to submit to a code of conduct
 - o establishing effective referral mechanisms to lawyers for all these service providers.

Public awareness

Governments should introduce measures to:

- Incorporate human rights and ‘Rule of Law’ topics in national educational curricula in accordance with the requirements of the United Nations Decade of Human Rights Education.
- Develop a national media campaign focusing on legal literacy in consultation with civil society organizations and media groups.
- Sensitise the public and justice agencies on the broadened definition of legal aid and the role all service providers have to play (through TV, radio, the printed media, seminars and workshops).
- Institute one day a year as ‘Legal Aid Day’

Legislation

Governments should:

- Enact legislation to promote the right of everyone to basic legal advice, assistance and education, especially for victims of crime and vulnerable groups.
- Enact legislation to establish an independent national legal aid institution accountable to Parliament and protected from executive interference.
- Enact legislation to ensure the provision of legal aid at all stages of the criminal justice process.
- Enact legislation to recognize the role of non-lawyers and paralegals and to clarify their duties.
- Enact legislation to recognize customary law and the role non State justice fora can play in appropriate cases (ie where cases are diverted from the formal criminal justice process)

Sustainability

Governments should introduce measures to:

- Diversify the funding-base of legal aid institutions that should be primarily funded by governments, to include endowment funds by donors, companies and communities.
- Identify fiscal mechanisms for channeling funds to the legal aid fund, such as:

- o recovering costs in civil legal aid cases where the legal aid litigant has been awarded costs in a matter and channeling such recovered costs into the legal aid fund

- o taxing any award made in civil legal aid cases and channeling the moneys paid into the legal aid fund

- o fixing a percentage of the State's criminal justice budget to be allocated to legal aid services.

- Identify incentives for lawyers to work in rural areas (eg tax exemptions / reductions).

- Require all law students to participate in a legal aid clinic or other legal aid community service scheme as part of their professional or national service requirement.

- Request the Law Society to organize regular circuits of lawyers around the country to provide free legal advice and assistance.

- Promote partnerships with NGOs, CBOs, faith-based groups and, where appropriate, local councils.

LEGAL AID IN ACTION

In the police station

Governments should introduce measures to:

- Provide legal and/or paralegal services in police stations in consultation with the Police Service, the Law Society, university law clinics and NGOs. These services might include:

- o providing general advice and assistance at the police station to victims of crime as well as accused persons

- o visiting police cells or lock-ups (cachots)

- o monitoring custody time limits in the police station after which a person must be produced before the court

- o attending at police interview

- o screening juveniles for possible diversion programmes

- o contacting / tracing parents / guardians / sureties

- o assisting with bail from the police station.

- Require the police to co-operate with service providers and advertise these services and how to access them in each police station.

At court

Governments should introduce measures to:

- Draw up rosters for lawyers to attend court on fixed days in consultation with the Law Society and provide services free of charge.
- Encourage the judiciary to take a more pro-active role in ensuring the defendant is provided with legal aid and able to put his/her case where the person is unrepresented because of indigency.
- Promote the wider use of alternative dispute resolution and diversion of criminal cases and encourage the judiciary to consider such options as a first step in all matters.
- Encourage non-lawyers, paralegals and victim support agencies to provide basic advice and assistance and to conduct regular observations of trial proceedings.
- Conduct regular case reviews to clear case backlogs, petty cases and refer/divert appropriate cases for mediation; and convene regular meetings of all criminal justice agencies to find local solutions to local problems.

In prison

Governments should introduce measures to ensure that:

- Magistrates/judges screen the remand caseload on a regular basis to make sure that people are remanded lawfully, their cases are being expedited, and that they are held appropriately.
- Prison officers, judicial officers, lawyers, paralegals and non-lawyers conduct periodic census to determine who is in prison and whether they are there as a first rather than a last resort.
- Custody time limits are enacted.
- Paralegal services are established in prisons. Services should include:
 - o legal education of prisoners so as to allow them to understand the law, process and apply this learning in their own case
 - o assistance with bail and the identification of potential sureties
 - o assistance with appeals
 - o special assistance to vulnerable groups, especially to women, women with babies, young persons, refugees and foreign nationals, the aged, terminally and mentally ill etc.

- Access to prisons for responsible NGOs, CBOs and faith-based groups is not subject to unnecessary bureaucratic obstacles.

In the village

Governments should introduce measures to:

- Encourage NGOs, CBOs and faith-based groups to train local leaders on the law and constitution and in particular the rights of women and children; and in mediation and other alternative dispute resolution (ADR) procedures.
- Establish referral mechanisms between the court and village hearings. Such mechanisms might include:
 - o diversion from the court to the village for the offender to make an apology or engage in a victim-offender mediation;
 - o referral from the court to the village to make restitution and/or offer compensation
 - o appeals from the village to the court.
- Establish a Chief's Council, or similar body of traditional leaders, in order to provide greater consistency in traditional approaches to justice.
- Record traditional proceedings and provide village hearings ('courts') with the tools for documenting proceedings.
- Provide a voice for women in traditional proceedings.
- Include customary law in the training of lawyers.

In post-conflict societies

Governments should introduce measures to:

- Recruit judges, prosecutors, defence lawyers, police and prison officers in peacekeeping operations and programmes of national reconstruction.
- Include the services of national NGOs, CBOs and faith-based groups in the reestablishment of the criminal justice system especially where the need for speed is paramount.
- Consult with traditional, religious and community leaders and identify common values on which peace-keeping should be based.

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

Resolution 2007/24

The Economic and Social Council,

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

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

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

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

Bearing in mind further the Basic Principles for the Treatment of Prisoners⁵ and the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules),⁶

¹ General Assembly resolution 217 A (III).

² General Assembly resolution 2200 A (XXI), annex.

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

⁴ General Assembly resolution 43/173, annex.

⁵ General Assembly resolution 45/111, annex.

⁶ General Assembly resolution 45/110, annex.

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

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

Recalling also its resolution 1998/23 of 28 July 1998, on international cooperation aimed at the reduction of prison overcrowding and the promotion of alternative sentencing, in which it noted that the International Conference on Community Service Orders in Africa, held at Kadoma, Zimbabwe, from 24 to 28 November 1997, had adopted the Kadoma Declaration on Community Service,⁹

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

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

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

Bearing in mind also its resolution 2006/21 of 27 July 2006, on implementation of the Programme of Action, 2006-2010, on strengthening the rule of law and

⁷ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex.

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

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

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

¹¹ General Assembly resolution 60/177, annex.

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

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

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

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

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

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

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

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

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

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

1. Notes the progress made by Member States and the recent efforts by some to provide legal assistance for defendants and suspects in criminal cases;
2. Encourages Member States implementing criminal justice reform to promote the participation of civil society organizations in that endeavour and to cooperate with them;
3. Commends the initiation by the United Nations Office on Drugs and Crime of work focused on providing long-term sustainable technical assistance in the area of criminal justice reform to Member States in post-conflict situations, in particular in Africa, in cooperation with the Department of Peacekeeping Operations of the Secretariat, and the increased synergy between the two entities;
4. Requests the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, in cooperation with relevant partners, to continue to provide advisory services and technical assistance to Member States, upon request, in the area of penal reform, including restorative justice, alternatives to imprisonment, the development of an integrated plan for the provision of legal assistance, including paralegals and similar alternative schemes to provide legal aid for persons in communities, including victims, defendants and suspects at all critical stages in criminal cases, and legislative reforms that guarantee legal representation in accordance with international standards and norms;
5. Also requests the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources and in cooperation with the African Institute for the Prevention of Crime and the Treatment of Offenders, to assist African States, upon request, in their efforts to apply the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa;¹³
6. Further requests the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to convene an open-ended intergovernmental meeting of experts, with interpretation, to study ways and means of strengthening access to legal aid in the criminal justice system, as well as the possibility of developing an instrument such as a declaration of basic principles or a set of guidelines for improving access to legal aid in criminal justice systems, taking into account the Lilongwe Declaration and other relevant materials;

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

7. Requests the Commission on Crime Prevention and Criminal Justice to include the issue of penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems, as a potential thematic topic for discussion by the Commission at one of its future sessions;
8. Requests the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its eighteenth session on the implementation of the present resolution.

45th plenary meeting

26 July 2007

E. NON-CUSTODIAL MEASURES

1. Kadoma Declaration on Community Service Orders in Africa

Adopted by the International Conference on Community Service Orders in Africa, Kadoma, Zimbabwe, 24-28 November 1997.

Preamble

Recalling the Kampala Declaration of 1996 which takes into account the limited effectiveness of imprisonment, especially for those serving short sentences, and the cost of imprisonment to the whole of society;

Noting the growing interest in many countries in measures which replace custodial sentences and the promising developments across the world in this regard;

Further noting with appreciation that the importance of the Kampala Declaration was recognised when it was noted in, and annexed to, a resolution on *Internatinal co-operation for the improvement of prison conditions in developing countries* by the United Nations 6th Session of the Commission on Crime Prevention and Criminal Justice in Vienna, Austria (28 April - 9 May 1997);

Bearing in mind the United Nations Standard Minimum Rules for Non-Custodial Measures (« The Tokyo Rules ») 1990 and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (« The Beijing Rules ») 1985;

Considering that in many countries in Africa the level of overcrowding is inhuman;

Recalling the African Charter on Human and Peoples' Rights reaffirmation of the dignity inherent in a human being and the prohibition of degrading punishment and treatment;

Welcoming the success of the Zimbabwe Community Service scheme and its adoption by the government of Zimbabwe following a three year trial period;

Also noting with appreciation that other African countries including Francophone and Lusophone countries are interested in introducing community service as a penal sanction in their criminal justice systems;

The participants at the International Conference on Community Service Orders in Africa, held in Kadoma, Zimbabwe, from 24-28 November 1997 make the following declaration:

1. The use of prison should be strictly limited as a measure of last resort. Prisons represent a waste of scarce resources and human potential. The majority of prisoners who occupy them pose no actual threat to society.
2. The overcrowding in our prisons requires positive action through – *inter alia* - the introduction of community service.
3. Community Service is in conformity with African traditions of dealing with offenders and with healing the damage caused by crime within the community. Furthermore, it is a positive and cost-effective measure to be preferred whenever possible to a sentence of imprisonment.
4. Community Service should be effectively implemented and supervised and involve a programme of work where the offender is required to carry out a number of hours of voluntary work for the benefit of the community in his/her own time.
5. Governments, donors and civil society organisations are invited to support research, pilot schemes and other initiatives in this important area.
6. Countries that already have community service should take into account lessons learned from elsewhere and review their own schemes accordingly.
7. There should be promotion of community support through sensitisation campaigns targeting public opinion; and the development of statistical databases to measure the effectiveness of community service.
8. We encourage those countries that have not yet done so to develop non-custodial sentencing alternatives and to this end we commit ourselves to co-operating with, and co-ordinating our action through, other national committees on community service, and/or interested groups, in order better to promote the scheme.
9. We adopt the Plan of Action attached hereto.

2. Kadoma Declaration on Community Service Orders in Africa plan of action

Further to the Declaration made by participants to the Kadoma Conference on Community Service Orders in Africa held in Kadoma, Zimbabwe, from 24-28 November 1997

The participants adopt the following plan of action:

1. Network

Establish a network of National Committees on Community Service (NCCS) and other interested groups to provide mutual support and encouragement through:

- providing resource persons to assist at seminars in the sub-region and elsewhere,
- sharing documentation (legislation, guidelines, administrative forms) and ideas,
- co-ordination and support of new projects,
- co-operation and assistance in administering the scheme,
- assistance in staff training,
- exchange visits.

2. Community Service Directory

Compile a Community Service Directory. To this end, a home page will be established on the Internet informing any interested person(s) of any developments in this area; and a book will be produced which will include:

- Contact points and addresses of all National Committees on Community Service (NCCS) and those contacts engaged in community service schemes,
- List of experts and resource persons,
- Contacts in interested countries,
- Interested groups and organisations around the world,
- Donor contacts and government contacts, to be distributed in other languages including French & English translations.

3. Newsletter

Issue a Newsletter -

- to be produced by each NCCS at regular intervals and circulated to the network,
- to include: initiatives undertaken, problems encountered, solutions found, reports on workshops, calendar of events, requests for support (eg: resource persons), statistics and other information,
- disseminated through the internet or mail (or both).

4. Research and data-gathering

Set up mechanisms for research and data-gathering:

- Research findings and data gathered to be shared through the Newsletter or via internet,
- Research projects identified (eg: on cost-benefit analyses) and funding application supported by the network,
- Joint research projects on the benefits, problems and effectiveness of community service where the scheme is applied — undertaken regionally and internationally.

3. Code of conduct for national committees on community service

Members of the National Committee on Community Service in _____
(Country)

AGREE TO BE BOUND by the following Code:

1. Members of the National Committee and other persons co-opted onto the National Committee will provide their services on **A VOLUNTARY BASIS** and in particular will give their time freely when promoting the scheme whether as resource persons, facilitators or in their official capacity as members of the National Committee, provided however that payment may be made to such members in respect of out of pocket expenses or other expenses necessarily incurred in the attendance of any meetings or other business of the National Committee.
2. Members will actively **SUPPORT** each other and all other persons working to promote the scheme and upon whom the successful implementation of the scheme depends and, in addition, will respond as soon as possible to requests for support from other National Committees or officials of other countries and provide any such assistance as may be necessary.
3. Members will endeavour to provide **TECHNICAL ASSISTANCE** to others who seek it. To this end, they will draw up a list of experts and resource persons. These persons will provide their services on a voluntary basis but will be entitled to such out of pocket expenses as may be considered reasonable.
4. Members will commit themselves to **SHARING DATA AND INFORMATION** with other National Committee members, officials of other countries and interested organisations on a voluntary basis. They will maintain active communication links through such media as the internet and/or newsletter.
5. Members are to maintain **FINANCIAL ACCOUNTABILITY** and in particular to maintain a clear financial record which accurately reflects all transactions and expenses incurred. Records should be subject to audit and are to be accessible to any members of the National Committee or other interested persons on request.
6. Members will be persons of high moral calibre and are to be accountable to other members of the National Committee for any assignments allocated to them.

F. WOMEN

Banjul Declaration of the 59th Ordinary Session of the African Commission on Human and Peoples' Rights under the theme "Women's Rights: Our Collective Responsibility"

The African Commission on Human and Peoples' Rights (the **African Commission**), having convened a series of commemorative activities for the **African Year of Human Rights with Particular Focus on the Rights of Women in Africa** during its 59th Ordinary Session, which was held from 21 October to 4 November, 2016 in Banjul, The Gambia;

Affirming that the African Union (AU) has established human rights instruments to promote and protect human rights on the continent, including amongst others: the AU Constitutive Act; the African Charter on Human and Peoples' Rights (the African Charter); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol); the African Charter on the Rights and Welfare of the Child; the African Youth Charter; and the African Charter on Democracy, Elections and Governance;

Recalling the AU Agenda 2063, in particular Aspiration Number 3, which calls for "An Africa of good governance, democracy, respect for human rights, justice and the rule of law"; and Aspiration Number 6 which calls for "An Africa where development is people-driven, unleashing the potential of its women and youth";

Further recalling the decision of the Executive Council of the African Union to "... declare 2016 as African Year of Human Rights with Particular Focus on the Rights of Women" through decision EX.CL/Dec.842(XXV) which was adopted during its 25th Ordinary Session, held from 20 to 24 June 2014, in Malabo, Equatorial Guinea;

Recognizing that the African Year of Human Rights, with Particular Focus on the Rights of Women in Africa provides a unique opportunity to reaffirm commitment to the promotion and protection of human and peoples' rights in general and the rights of women in particular;

Having convened the following interactive panel discussions: a Human Rights dialogue to consider how to strengthen AU institutions, including through improving the rate of compliance of decisions of the African Commission and the African Court; interactive sessions of the respective Special Mechanisms of the African Commission to deliberate on issues relating to their thematic

areas and the impact on women; and a Youth Panel to discuss participation of the youth in policy and decision-making, adoption of the African Youth Decade and ratification of the African Youth Charter;

Commending the African Court on Human and Peoples' Rights (the African Court), the Committee of Experts on the Rights and Welfare of the Child (the Committee), the AU Department of Political Affairs, State Parties, National Human Rights Institutions (NHRIs) and civil society organizations (CSOs) for their participation in the Human Rights dialogue;

(...)

PART TWO:

CONCERNING ACTIVITIES OF SPECIAL MECHANISMS IN RELATION TO WOMEN'S RIGHTS, the African Commission declares:

(...)

D. Prevention of Torture:

31. *States* should adopt specific anti-torture legislation, which takes account of the gendered impact of acts of torture and other ill-treatment on women whether perpetrated by individuals in their official or private capacities, and also take the necessary measures to ensure effective implementation of anti-torture legislation;

32. *States* should ensure full redress for victims/survivors of torture, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, with the victims/survivors participating in the decision-making process;

33. *States* should address impunity by holding perpetrators of acts of torture and other ill-treatment accountable;

34. *States* should ensure that culture is not used as an excuse or justification for the torture or other ill-treatment of women, and practices such as female genital mutilation and wicked widowhood should be outlawed and sanctioned;

35. *States* should put in place effective national preventive measures which may be made operational through National Preventive Mechanisms or other independent bodies such as National Human Rights Institutions;

36. *States* should put in place systematic education, training and sensitization targeting judicial, medical and security personnel, and other relevant actors on the gendered impact of acts of torture and other ill-treatment, such as gender-based violence; and

37. International, regional and sub-regional agencies, National Human Rights Institutions (NHRIs), and CSOs should support States to implement

obligations that ensure eradication of torture and other ill-treatment generally and specifically in relation to women.

(...)

F. Prisons, Conditions of Detention and Policing in Africa:

41. *States* should dedicate additional resources to prisons and places of detention, renovate old prisons, build more prisons and implement the Revised Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) as well as the UN Rules for the Treatment of Women and Non-Custodial Sanctions (the Bangkok Rules);

42. *States* should encourage the use of alternative sentencing in the criminal justice system and establish or designate independent national bodies mandated to undertake regular visits to prisons as well as establish or designate Independent Civilian Police Oversight Institutions, where civilians can freely access and report/complain about cases of abuse and allegations of torture committed by the police;

43. *States* should conduct independent and timely investigation into any assault, including sexual assault, or death in corrective or pre-detention custody, and bring the perpetrators to justice expeditiously;

44. *States* should increase the number of female police officers and provide women's units in prisons with adequate facilities for female inmates and in particular female inmates with children; and

45. *States* should develop training programmes and provide sufficient human rights training, including training on women's rights to prison and police officers.

(...)

K. Death Penalty and Extra-judicial, Summary or Arbitrary Killings in Africa:

63. *States* should observe a moratorium on the death penalty and work towards its abolition in law altogether;
and

64. *States* should review the measures in place, or that are being undertaken, to combat extra-judicial killings to include domestic violence and all other forms of violence that result in the death of women, including scaling up awareness of its population on the need for the legal abolition of the death penalty through the use of indigenous approaches that are in consonance with human rights standards and principles, amongst others.

(...)

PART THREE:

WHEREFORE THE AFRICAN COMMISSION:

73. **Calls upon** State Parties, with the support of their respective NHRIs, to implement and support the implementation of this Declaration;

74. **Urges** States Parties, NHRIs and CSOs to include a report on the status of implementation of the recommendations in this Declaration at successive Sessions of the African Commission;

75. **Encourages** the Special Mechanisms and Members of the African Commission to follow up on the recommendations in this Declaration, and to provide regular updates on its implementation in the African Commission's Activity Report to the AU Policy Organs.

Done in Banjul, The Gambia, this 21st Extraordinary Session, held from 23 February to 4 March 2017

III

INTERNATIONAL CRIMINAL LAW

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human rights (Malabo Protocol)

Adopted par the African Union, June 2014

The Member States of the African Union parties to the Constitutive Act of the African Union;

RECALLING the objectives and principles enunciated in the Constitutive Act of the African Union, adopted on 11 July 2000 in Lome, Togo, in particular the commitment to settle their disputes through peaceful means;

FURTHER RECALLING the provisions of the Protocol on the Statute of the African Court of Justice and Human Rights and the Statute annexed to it adopted on 1 July 2008 in Sharm-El-Sheikh, Egypt;

RECOGNIZING that the Protocol on the Statute of the African Court of Justice and Human Rights had merged the African Court on Human and Peoples Rights and the Court of Justice of the African Union into a single Court;

BEARING IN MIND their commitment to promote peace, security and stability on the continent, and to protect human and people's rights in accordance with the African Charter on Human and Peoples Rights and other relevant instruments;

FURTHER RECOGNIZING the efforts and contribution of the African Commission on Human and Peoples Rights in the promotion and protection of human and peoples rights since its inception in 1987;

NOTING the steady growth of the African Court on Human and Peoples Rights and the contribution it has made in protecting human and people's rights on the African continent as well as the progress towards the establishment of the African Court of Justice and Human and Peoples Rights;

FURTHER BEARING IN MIND the complementary relationship between the African Commission on Human and Peoples Rights and the African Court on Human and Peoples Rights, as well as its successor, the African Court of Justice and Human and Peoples Rights;

FURTHER RECALLING their commitment to the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council;

REITERATING their respect for democratic principles, human and people's rights, the rule of law and good governance;

FURTHER REITERATING their respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities, unconstitutional changes of governments and acts of aggression;

FURTHER REITERATING their commitment to fighting impunity in conformity with the provisions of Article 4(o) of the Constitutive Act of the African Union;

ACKNOWLEDGING the pivotal role that the African Court of Justice and Human and Peoples Rights can play in strengthening the commitment of the African Union to promote sustained peace, security and stability on the Continent and to promote justice and human and peoples rights as an aspect of their efforts to promote the objectives of the political and socio-economic integration and development of the Continent with a view to realizing the ultimate objective of a United States of Africa;

FURTHER RECALLING Assembly Decision Assembly/AU/Dec.213 (XII) adopted by the Twelfth Ordinary Session of the Assembly in Addis Ababa, Federal Democratic Republic of Ethiopia, on 3 February 2009 on the implementation of the Assembly's Decision on the Abuse of the Principle of Universal Jurisdiction;

FURTHER RECALLING Assembly Decision Assembly/AU/Dec.263 (XIII) adopted by the Thirteenth Ordinary Session of the Assembly in Sirte, Libya, on 3 July 2009 on the transformation of the African Union Commission to the African Union Authority;

FURTHER RECOGNIZING the need to take the necessary measures to amend the legal instruments of the principal organs of the African Union in the light of the aforementioned Assembly Decisions;

CONVINCED that the present Protocol will complement national, regional and continental bodies and institutions in preventing serious and massive

violations of human and peoples rights in keeping with Article 58 of the Charter and ensuring accountability for them wherever they occur;

HAVE AGREED to adopt the present amendments to the Protocol on the Statute of the African Court of Justice and Human Rights and the Statute annexed thereto as follows: -

(...)

Article 28 C

Crimes Against Humanity

1. For the purposes of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack or enterprise directed against any civilian population, with knowledge of the attack or enterprise:

(...)

c) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

d) Torture, cruel, inhuman and degrading treatment or punishment;

(...)

g) Enforced disappearance of persons;

i) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health.

(...)

2. For the purpose of paragraph 1:

(...)

e) ‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(...)

i) ‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on

the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Article 28 D

War Crimes

For the purposes of this Statute, ‘war crimes’ means any of the offences listed , in particular when committed as part of a plan or policy or as part of a large scale commission of such crimes.

a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- i) Wilful killing;
- ii) Torture or inhuman treatment, including biological experiments;
- iii) Wilfully causing great suffering, or serious injury to body or health;
- (...)
- v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- vii) Unlawful deportation or transfer or unlawful confinement;

b) Grave breaches of the First Additional Protocol to the Geneva Conventions of 8 June 1977 and other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(...)

- xi) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(...)

- xxviii) Unjustifiably delaying the repatriation of prisoners of war or civilians;

c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(...)

i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(...)

iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

d) Paragraph 1 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(...)

xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(...).