



**European Instrument for Democracy and Human Rights for the Kyrgyz Republic**

# **Strengthening the fight against torture and impunity in Kyrgyzstan: Prevention, Accountability, Remedy, and Reparation**

## **Handbook on monitoring places of deprivation of liberty**



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Ludwig Boltzmann Institute  
Human Rights





# Tools and Legal Standards for Monitoring Torture and Ill-treatment in Places of Detention

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## I. Introduction

Torture constitutes one of the most serious human rights violations under international law. However, acts of torture continue to be inflicted upon detainees<sup>1</sup> in a number of countries, affecting their physical and mental conditions and directly and deliberately violating their inherent and inalienable rights and dignity.

To react to these violations, regular and independent monitoring of places of deprivation of liberty is fundamental both as a mean to prevent the occurrence of other acts of torture and to contribute to the protection of the rights of persons held under any form of detention. In fact, the situation of power imbalance between potential torture victims and the authorities and institutions in detention settings is significant, due to, among other things, the limited access of detainees to the external world.

Human rights monitoring of places of detention therefore fulfils several functions, including the exercise of external control of the treatment of detainees and the conditions of their detention, thereby directly deterring the commission of abuse. In addition, onsite visits to detention facilities allow for the collection of evidence-based information and provide direct support to detainees in urgent cases. Given the seriousness of torture and ill-treatment, the most important function of detention monitoring is, however, to contribute to the prevention of such human rights violations from occurring at all.

National Preventive Mechanisms (NPMs), established under the Optional Protocol to the Convention against Torture (OPCAT), are mandated to carry out regular and systematic visits to all places on the national jurisdiction, where persons are or might be detained. One of the main NPMs' tasks is to analyse the conditions and treatment of detainees by competent authorities, identify risk factors leading to human rights violations, and advocate with the national authorities on how to improve the compliance with international and national human rights obligations by, *inter alia*, submitting evidence-based reports and proposing tailored recommendations for interventions. Thus, NPMs are one of the main mechanisms available for monitoring places of deprivation of liberty. Nevertheless, other stakeholders and actors, such as other National Human Rights Institutions, NGOs, lawyers, can complement, support, and strengthen the role and work of the NPMs.<sup>2</sup>

In order for NPMs and other stakeholders to effectively carry out their external monitoring mandates and activities, it is necessary to follow a number of principles and apply techniques that contribute to the overall goal of preventing torture and ill-treatment. Therefore, in its first chapter, this handbook aims at providing an overview of these principles and techniques to support the torture prevention work of NPMs and any other relevant actor. This first part is intended as a guiding tool to increase the effectiveness of monitoring activities and to facilitate the training of junior and new staff within NPMs and NGOs highlighting key ethical principles that apply when dealing with detainees. For details

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<sup>1</sup> For the purpose of this publication, the term "detainee" refers to any person deprived of liberty, including in cases of administrative or pre-trial detention, confinement in health structures, and regardless of conviction.

<sup>2</sup> All these actors are commonly referred to in this publication as "monitors".

regarding general monitoring skills and logistical arrangements linked to a visit to a place of detention, very comprehensive handbooks already exist that can be referred to.<sup>3</sup>

In its second part, the handbook presents an overview of the tools and methods available to NPMs to follow up on their recommendations to State authorities and monitor their implementation. This overview is the result of in-depth research conducted by the Ludwig Boltzmann Institute of Human Rights and the Human Rights Implementation Centre of the University of Bristol on current methods, procedures and institutional frameworks for follow-up on recommendations of NPMs in European Union (EU) member States.

Since the NPMs' main responsibilities include the promotion of structural changes at the legislative, institutional, and policy levels to adequately address the root causes of torture and ill-treatment through the formulation of evidence-based recommendations produced as result of monitoring visits, the second chapter is also meant to provide guidance on available tools to engage the State authorities in a dialogue which facilitates the effective implementation of the recommendations.

The handbook also includes in its third part a compilation of the most relevant international provisions on torture and ill-treatment under International Human Rights Law and International Humanitarian Law and it also consolidates the most relevant principles enshrined in soft law documents. The objective of this compilation is to support the work of monitors by providing them with the legal basis of their work and guidance on how to increase the effectiveness of their actions.

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<sup>3</sup> See for example Association for the Prevention of Torture (APT): *Monitoring Places of Detention - A practical guide*, Geneva, 2004; APT, *Monitoring Police Custody – a practical guide*, Geneva, 2013; Penal Reform International, *Women in detention: A guide to gender-sensitive monitoring*, London, 2013

## II. Principles of monitoring

Detainees are particularly likely to suffer from traumatic experiences such as torture, ill-treatment, sexual and gender-based violence, committed upon arrest or at a later stage in the place of deprivation of liberty. In detention, they might still recurrently suffer a range of abuses. It is therefore fundamental for monitors to be aware of the possible implications of interviews on detainees. The concept of “do no harm” should in that regard always guide the work of the monitors, from the planning of a visit to its follow-up with authorities in order to avoid harming emotionally and psychologically detainees suffering from traumas, but also to lower the risk of stigma or reprisals, such as punishments or intimidations by law enforcement officials that detainees might face after talking to a delegation if due precautions are not properly taken to protect them. There are a number of other principles monitors should respect when asking questions to detainees. The following chapter therefore aims at highlighting several important ethical standards to be applied and kept in mind while monitoring torture and ill-treatment, in order not to risk harming detainees.

### *General Ethical Principles and Operational Principles*

#### **Do no harm**

This principle is the cornerstone of human rights work in general, and detention monitoring in particular. Under all circumstances and at all times, monitors have to take all measures possible for the detainees not to be victims of reprisals, stigma or violence by other detainees or the authorities following a visit, or due to the unwanted publication of sensitive data. The main duty of the monitors is to avoid a further endangerment of the detainee. Therefore, monitors have to find a balance between the need to collect information and the potential harm that can be brought on the person interviewed. Conducting an interview should at no cost expose detainees to any additional risk.

#### **Manage expectations**

Visiting monitors should be mindful of not creating false hopes in relation to what they can do to help individual detainees. The monitors should be explicit about their role, mandate, and competences and transparent about the follow-up steps they would take, if any. Complying with this principle will prevent problems with detainees and authorities and will maintain and increase the credibility of the monitors. Should the monitor lose the element of credibility, detainees will cease to share information.

#### **Complete privacy:**

In order to ensure privacy and confidentiality of the interview and diminish the risk of reprisals against a detainee, guards should not be able to hear the interview at any time, and should, whenever possible, not be able to see the interview. This principle should be extended to other detainees and only the delegates should have the possibility to listen to what the detainee says. However, listening devices are nowadays very affordable and small. It is thus impossible to completely ensure the privacy of an interview. Detainees should be informed about this and decide whether they want to take this risk. Should authorities fail to ensure these conditions, monitors should not carry out the interview and address the concerns to the person in charge of the premises.

### **Following the detainee's choice and always ensuring a comfortable and safe place**

It is important to respect the preference of the detainee regarding the location for the interview. However, as many detainees do not dare to choose a place when asked, it is good to keep in mind that some prefer to remain in their cells, or in places that do not remind them of negative experiences, such as guards' offices or interrogation rooms. Suggestions by the authorities should be treated with caution and the location should be checked for potential surveillance before starting the interview.

### **Data confidentiality**

When conducting its visit, the monitors should be careful of not disclosing the identity of the source and subject of information received. Immediately passing to the cell that was mentioned by a detainee in the previous interview as well as the prompt change of attitude towards authorities after receiving information might put detainees at risk. The principle of confidentiality also applies when monitors meet the responsible authorities in the debriefing. No names or details allowing identifying a detainee should be stated without the express consent of the person. Finally, notes of the monitors contain sensitive information and cannot be read or shared by anyone else. However, monitors should also consider hiding sensitive content by encoding specific data.

### **Avoiding interferences with the daily routine**

In order to make a respectful impression on the detainees as well as the authorities, the monitors should adapt visit and interview schedule to the daily routine of the detention facility (meal times, work, education, cultural and religious activities etc.). Although it is often unavoidable to disturb detainees' activities and the work of the officials, the monitors should avoid being intrusive but rather sensitive to the concrete context.

### ***During interviews with detainees***

#### **Individual or group interviews**

Group interviews can be useful to receive general information on the conditions of detention, the detainees' group dynamics, common concerns and requests, as well as to gain an overall picture of the place of detention. However, it is essential for the monitors to avoid asking personal questions or questions related to individual cases of torture and ill-treatment during a group interview, as this might put the detainees in a delicate position. Individual interviews should be the main source of information on potential torture and ill-treatment.

#### **Individual requests**

The monitors should be responsive to individual requests for interviews and keep in mind it is not always possible to talk to each detainee requesting an interview. However, the monitors should keep any promise to carry out an individual interview. It is equally important for the monitors not to only talk to detainees who actively ask for an interview but also approach the ones who are more reserved and do not directly volunteer to talk. Victims of torture and ill-treatment might at first be afraid to talk to monitors, and trust-building measures are therefore particularly important.

### **Adequate introduction of the mandate and purpose of the monitoring visit**

Any interview should begin with information on the function, mandate, competences and objective of the monitors. Each member should be introduced. In order to adequately manage expectations, the monitors must be clear on what they can and cannot offer and be able to refer the detainees to other more appropriate bodies when it is the case.

### **Voluntary nature of the interview**

Monitors should emphasise that the interviews are voluntary and not obligatory. The refusal to talk to monitors should be approached with sensitivity. Particularly in police custody, detainees may be afraid of reprisals. In such cases, the monitors should consider noting down the identity from the register in order to be able to interview the detainee at a later stage, after transfer to a different facility.

### **Informed consent**

Interviews have to be carried out with the informed consent of the interviewee. Monitors must highlight the confidential nature of the interview's content. Detainees have to explicitly authorise any use of information provided during the interview and be first clearly informed about any intended use of data. In this context, the monitors should also raise the risk of reprisals and provide information on how to be reached in case of reprisals or any other reason. The monitors could envisage distributing an information sheet specifying their mandate and providing contact information for questions or complaints in case of reprisals.

### **Time management**

Monitors should try as much as possible to be consistent in the duration of interviews regardless of the amount of information a detainee can provide. Lengthy interviews may indicate to the authorities that the detainee is complaining about violations. This may expose the detainee to reprisals at a later stage. Should a detainee be willing to share numerous details or possess much relevant information, follow-up interviews can be organised in subsequent visits.

### **Contact information**

The contact information of the monitors and any other relevant institutions should be provided to the detainees, in case of reprisals after the visit but also to in order to communicate more details or make a formal complaint.

### **Use of interpreters**

Detainees should be allowed to conduct the interview in their language of choice. In case the monitor does not speak the language, arrangements for an interpreter to be present should be made. It is critical to ensure that interpreters understand that all information received is confidential. For this, the monitor has to prepare the interpreter before the interview, clearly explaining its scope and modalities to avoid misunderstandings in front of the detainee. It is advisable to provide the interpreter with a glossary on the most important technical terms before the interview. In carrying out the interview, the monitor should not speak "through" the interpreter but directly to the detainee, keeping eye contact and framing questions in the second person, rather than the third.

## ***Attitudes to adopt***

### **Sensitivity**

Recounting traumatic events is usually stressful and potentially re-traumatising for the survivor. The detainee should have control over a maximum possible of elements during the interview. Show empathy, understanding, respect and encouragements. Be sensitive to signs and act with tact: make pauses and change the subject if needed. Be particularly patient – the detainee may have difficulties to articulate certain events or memories.

### **Awareness of re-traumatisation**

Many detainees are in a fragile mental state and are traumatised by some past experience. The interviewers should keep that in mind and avoid personal or painful questions irrelevant for the interview. Direct questions relating to the criminal case of which the detainee is suspected or convicted should be avoided as much as possible. Also, breaks are welcome during the interview if the interviewee seems overwhelmed. The detainee should in any case not be forced to continue telling the story if this feels uncomfortable or if the topic is too delicate.

### **Respectful atmosphere**

While in detention, a detainee's cell is his/her home. When entering a cell, the monitors should show respect and sensitivity (ask permission to enter, greet detainees in an adequate manner and respect the privacy by not touching personal items without first asking). If possible, both detainee and interviewer should be seated during the interview.

### **Open and relaxed bodily attitude**

Keeping eye contact, showing interest, remaining calm and focused on the person are important elements during the interview. A tense posture will be perceived by the detainee and may create mistrust. When talking to children, it is recommended to sit down to their level to not intimidate them.

### **Trust-building**

Individual interviews can be a painful experience for some detainees as they may evoke bad memories. The interview situation should therefore be approached with a high degree of sensitivity and an effort to build trust between detainee and monitors. The monitors should not strictly follow a pre-established checklist but follow the detainee's thoughts.

### **Empathy**

An essential element of trust building is the adoption of an empathic attitude towards the accounts of detainees. Effective interviews are carried out once the monitor is able to see issues from the point of view of the interviewee while expressing understanding and giving recognition to the suffering endured. Showing understanding for the suffering detainees have been through can contribute to their healing process.

Interrogative styles, judgmental comments and disbelief have to be avoided, even if some accounts may sound unrealistic or exaggerated. The monitors should remain patient, keeping in mind that some victims and survivors have troubles recounting their story in a comprehensive and logical manner. All interviewees should be given the same attention even if it is the last interview of the day and accounts may become repetitive. The impression of being under time pressure and rushing from one interview to the next should be avoided.

### **Avoiding interruptions of the interview**

Distractions and interruptions, for example by inviting guards or doctors during the interview to check the accuracy of information must be avoided, unless requested by the detainee. Most detainees do not have opportunities to talk about their ordeal, and the interview should give them a space where they feel confident and in trusting company. If the interview is interrupted by third persons, detainees included, this might disturb the interviewee and harm the quality of the information provided.

### **Sensitivity to the psychological state of the interviewee**

Particularly when the detainee has provided information on a traumatic event, the monitor should make sure to leave the detainee in a calm state of mind. Seek the detainee's feedback on how the interview was carried out.

### ***Principles in reporting***

#### **General principles of reporting**

The credibility and effectiveness of any type of human rights reporting depends on the quality of the collected information and on how this is then reflected into the report. In the follow-up of recommendations a monitoring entity can resort to various tools and can involve a diverse stakeholders. For more information on the tools available to NPMs, see Chapter 2 of this handbook.

#### **Accuracy and corroboration**

Monitors need to pay particular attention to precise and accurate documentation of information. Where information is incomplete or inconclusive, crosschecking and further research may be necessary before valid conclusions can be drawn.

#### **Objectivity**

It is important to assess the collected information in an unbiased manner in light of the applicable international human rights standards. Reports and recommendations are most effective if based on an objective evaluation of the situation observed.

#### **Promptness**

reports written in a timely manner will have more relevance and impact if drafted promptly after the visit, in a clear format.

#### **Confidentiality**

the principle of confidentiality naturally applies to data included in visiting reports. The publication of any data related to detainees must have been first approved by them.

### **III. The National Preventive Mechanism – A Crucial Driver for Change**

The Ludwig Boltzmann Institute of Human Rights (BIM) and the Human Rights Implementation Centre of the University of Bristol (HRIC) conducted a large-scale research project analysing the follow-up procedures of all National Preventive Mechanisms (NPMs) operating in the EU whose results were published in the study *'Enhancing impact of National Preventive Mechanisms – Strengthening the Follow-up on NPM Recommendations in the EU:*

*Strategic Development, Current Practices and the Way Forward*<sup>4</sup>. The study provides the first collection of good practices of NPMs' follow-up tools and processes, and proposes 'building blocks' for the development of a follow-up strategy that can not only be used by NPMs but by all actors in the field of torture prevention.

The following chapter contains extracts of the study and summarises the main issues discussed. For the purpose of this handbook the principles, tools and strategies are only briefly described giving the reader an overview of the options to develop their follow-up practice and strengthen their impact for the prevention of torture. All 'follow-up tools' illustrated in section 3 emanate from the practice of NPMs in the EU and further information and a critical analysis can be found in the full study.<sup>5</sup> The study moreover proposes "10 building blocks" for the development of a follow-up strategy, which can be found in a very condensed form in section 4 of this chapter.<sup>6</sup>

### **Guiding principles of effective NPMs**

The OPCAT is dedicated to the prevention of torture and provides the basis for the establishment of National Preventive Mechanisms. The OPCAT establishes a triangular relationship between the State party, its National Preventive Mechanism (NPM) and the UN Subcommittee on Prevention of Torture (SPT) through a series of obligations and corresponding duties.

States bear the responsibility for implementing recommendations of the NPM and other monitoring bodies (see art. 22 OPCAT). NPMs have a responsibility to follow-up on their recommendations, i.e. to seek information on measures taken by the State and other stakeholders in relation to their recommendations and observations, as well as to actively encourage and foster the implementation of its recommendations.

The mandate of NPMs as set out under the OPCAT is guided by a number of fundamental principles to ensure their effectiveness: a preventive approach, independence, transparency, cooperation and constructive dialogue as well as effectiveness.

#### **Preventive approach**

The overall purpose of an NPM is to contribute to the improved treatment of persons deprived of their liberty. A preventive approach implies that action is taken before torture and ill-treatment occur, with a view to proactively creating an environment where torture is less likely to happen. The preventive approach must also be based on a holistic view focusing on the root causes of torture and the complex factors allowing torture to happen rather than on the individual level of violations. NPMs have the possibility to gather the relevant data to understand the structural causes of torture and ill-treatment, going beyond the consideration of its symptoms. The NPM must therefore look at all levels where the causes might be found, including the broader legal, policy and institutional frameworks.

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<sup>4</sup> M. Birk, G. Zach, D. Long, R. Murray, W. Suntinger: *Enhancing Impact of National Preventive Mechanisms. Strengthening the Follow-up on NPM Recommendations in the EU: Strategic Development, Current Practices and the Way Forward*. Vienna (2015), cf. [http://www.univie.ac.at/bimtor/dateien/NPM\\_Study\\_final.pdf](http://www.univie.ac.at/bimtor/dateien/NPM_Study_final.pdf).

<sup>5</sup> Ibid., Part II, pp. 45-84.

<sup>6</sup> Ibid., Part III, pp. 87-110

## Cooperation

NPMs operate under the principle of cooperation and should play the role of a ‘critical friend’ offering constructive advice to the authorities. This includes highlighting positive examples of State authorities, or best practices from other contexts, where appropriate.

The preventive approach implies that NPMs need to seek dialogue with the authorities in a cooperative spirit rather than one of condemnation and confrontation. While violations must be clearly stated and denounced, criticism should, always be constructive and accompanied with the offer of advice on how improvements could be made. This includes pointing out good practices, too, so that they can be replicated in other places and institutions. The dialogue and cooperation should not only involve the competent authorities, including the legislative and judiciary, but also other relevant domestic actors, including civil society, as well as international actors, in particular the SPT.<sup>7</sup>

In cooperating with state or non-state actors, the NPM always needs to ensure a professional distance and maintain its position as independent and impartial actor.

## Independence

Another fundamental principle for the effective functioning of NPMs is their functional independence (art. 18, para. 1 OPCAT). In practice this means that NPMs must be capable of working without hindrance or interference from State authorities and other actors. The NPM must also be institutionally, personally, and financially independent. The NPM should be clearly separated from any state institution. Its members should not occupy positions in the government or criminal justice system and have no personal allegiances with leading political figures or with law enforcement personnel.<sup>8</sup> The NPM must be provided with sufficient resources and budgetary autonomy to exercise its mandate without interference.

NPMs must have control over all aspects of their mandate and functioning such as: how, where and when to conduct visits to places of detention; how to spend their budget; and how to appoint staff. Independence is essential to ensure the overall effectiveness and credibility of NPMs.

## Transparency

Transparency is another key principle governing the NPM’s work. The very concept of preventive monitoring implies that closed institutions are ‘opened up’ to independent scrutiny. Secondly, NPMs are expected to engage in constructive dialogue with the relevant authorities and this dialogue need not take place in secrecy. Thirdly, unlike the SPT and the CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) who are bound by the principle of confidentiality and may not generally publish reports without the express consent of the State concerned, NPMs may publish their reports and findings, along with the response of the authorities. This can benefit interested stakeholders, in particular civil society or the media, in following up the observations and recommendations of the NPM. The identity and information of individual detainees, however, must always be protected and kept confidential.

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<sup>7</sup> See paragraphs 23 and 32, Sub-Committee on Prevention of Torture, *Analytical Self-Assessment Tool for NPM*, February 2012, available at <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>

<sup>8</sup> See APT, OPCAT Briefings, Membership of National Preventive Mechanisms: Standards and experiences November 2013, available at [http://www.apt.ch/content/files\\_res/opcat-briefing-on-npm-designation-en.pdf](http://www.apt.ch/content/files_res/opcat-briefing-on-npm-designation-en.pdf)

## **Effectiveness**

The principle of effectiveness requires the NPM to employ appropriate tools to achieve tangible, concrete results in practice: the NPM's planning of visits and visiting methodology need to contribute to reaching the objective stipulated in OPCAT. The same is applicable for the follow-up process. It should be systematically and strategically geared towards maximising impact and effecting positive change in the life of persons deprived of their liberty. This presupposes NPM members with "the required capabilities and professional knowledge" to fulfil the NPM mandate. An effective NPM requires a multi-disciplinary composition with an adequate gender balance and representation of ethnic and minority groups in the country (art. 18 para. 2).

## **Follow-up and implementation of NPM recommendations**

The range and type of recommendations issued by NPMs vary significantly in terms of content, time frame and resources that may be required to implement them. Some recommendations may address particular issues observed in a specific place of detention, whereas others may relate more to system-wide problems. It will depend on the content of a particular recommendation whether it will be addressed to authorities at the local or the national level.

"Follow-up" is understood to be the process by which a monitoring body seeks information on measures taken by States and other stakeholders in relation to its recommendations and observations. It is also the process by which it actively encourages and fosters the implementation of its recommendations. The purpose of 'follow-up' is often closely associated with the concepts of 'implementation' and 'compliance'. 'Follow-up' is frequently understood to be a means not only to monitor but to secure, or at least, facilitate, implementation. Implementation can be understood as the process by which States, their authorities and agencies, take steps to address recommendations of torture monitoring bodies.

NPMs must play a leading role in follow-up, but should not be the sole actors involved. It depends on the national context who else should engage with it, and whether the NPM should lead the process. The NPM itself will have to determine in collaboration with others a clear strategy on follow-up, which involves all relevant stakeholders. Whatever role the NPM plays in follow-up, it needs to be provided with sufficient financial and human resources to do so. NPMs need to consider how they will measure implementation at the time of drafting recommendations and have a strategy in place to consider how they will present their assessment of the level of implementation. This is helpful for NPMs themselves to measure their own impact, and to plan thematic or ad hoc visits.

## ***Follow-up tools***

### **Dialogue with the competent authorities**

NPMs have at their disposal different methods to follow-up and promote the implementation of their recommendations. The OPCAT expressly prescribes a duty for the State and the NPM to establish a dialogue on implementation which is commonly also spelled out in the national legal instrument laying down the mandate of the NPM (art. 22 OPCAT).

The SPT formulates some principles for the dialogue with the State in its 'Analytical Self-Assessment Tool': "[t]he NPM should "maintain a dialogue with both governmental authorities and institution directors/managers regarding the implementation of recommendations"; the NPM should "establish sustainable lines of communication" and "a mechanism for communicating and cooperating with relevant national authorities on the implementation of recommendations", and the dialogue should "involve both written and oral exchanges' exchanges"<sup>9</sup>. The means and ways by which NPMs engage in this dialogue with State authorities are manifold and address different stakeholders in the process.

### **Follow-up visits**

Follow-up visits to places of detention are one main tool to verify if authorities have taken action in response to the NPM's recommendations. These follow-up visits can be used to regularly check the implementation of recommendations, particularly for 'high risk establishments' (institutions where the risk that the rights of detainees are not respected is known to be high). They are also instrumental to follow-up particularly negative or urgent observations and individual cases that necessitate a timely check-up. Revisiting a place of detention is a way to observe how and to what extent to which areas of concern have been addressed, and to maintain a constructive dialogue with the administrative authorities and staff.

Many issues addressed by the NPM are of a practical nature and often can and should be resolved directly by the institution. The better informed the authorities are, the greater the likelihood that they will participate in the development of solutions to implement a recommendation. For most NPMs and other monitoring mechanisms it is therefore common that the visiting delegation holds a meeting with the person in charge of the institution at the end of every visit. This not only gives the delegation the opportunity to transmit urgent observations and recommendations, but also provides for an immediate exchange of views and direct communication with relevant personnel. A frank and cooperative discussion on the preliminary findings and recommendations can further strengthen the trust and cooperation between both sides. It makes it possible to immediately identify those recommendations which the institution itself can implement (such as displaying information for detainees, etc.). In this regard it is suggested that the implementation of recommendations should follow a 'subsidiarity principle': the practical issues under the direct control of the staff or the director should be resolved by the institution immediately. Only the issues requiring an intervention at a higher level, such as the Ministry, should be taken up with the governmental authorities.

### **Written dialogue and exchange of information**

The written dialogue and exchange of information is the main way of interaction with the authorities for most NPMs. The visiting reports form the main reference for the NPM and the authorities in the follow-up process. Consequently, sharing the visit reports both with the visited institution and the relevant supervisory body can be considered good practice. NPMs often request additional information after a visit to complete their reports and some have used surveys, either addressing the authorities or the detainees. This is a very useful means to receive specific information in preparation of further follow-up action. NPMs may also issue thematic reports and circulars as additional means to increase awareness on important issues. Apart from the authorities concerned, the NPM may also choose to

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<sup>9</sup> UN Doc CAT /OP /1, para 22; cf. <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>

address other actors such as parliamentarians, the judiciary, civil society organisations, or professional bodies.

### **Action Plans**

NPMs can also request institutions to develop action plans setting out how they will implement their recommendations. Action plans can be a practical tool to measure implementation and to strategically work towards the implementation of recommendations. Action plans can formulate a set of agreed measures that need to be taken in order to address a particular problem and to support and evaluate the steps taken by the authorities.

### **Meetings and personal exchanges with the authorities**

In line with the SPT recommendation that a dialogue should 'involve both written and oral exchanges', most NPMs hold meetings with the supervisory authorities in between the visits. The importance of an oral dialogue lies in the opportunity to explain the findings and recommendations, to avoid misunderstandings and, more generally, to build a trustful and cooperative relationship which increases the willingness to implement the NPM's recommendations.

### **Working Groups**

A particularly interesting tool to ensure a regular, institutionalised and structured dialogue are specific working groups with the authorities. Some NPMs have established working groups on a permanent basis to enable an on-going discussion of the NPMs' work. Others established working groups on an ad hoc basis in order to deal with a specific topic. They can either exclusively bring together State actors or include external experts and civil society members.

Working groups with State actors have shown the potential to generate more willingness of the authorities to engage in a pro-active dialogue with the NPM. Moreover, effective and sustainable solutions often require the involvement of and coordination between several State actors. Working groups with a clearly defined goal and composed of the relevant and competent stakeholders and experts have proven to be an important forum to jointly develop concrete plans and solutions for complex problems and to assign responsibilities among the different actors.

### **Training**

Some NPMs carry out trainings for State authorities including personnel in places of detention, and have described this as a convenient forum for dialogue with the authorities, particularly at the operational level. Training activities have shown to provide room for the NPM to present its work and explain the rationale behind the recommendations it makes and for the authorities to voice their concerns and problems. It thereby creates credibility as well as visibility for the NPM and thus constitutes a chance to establish trust and a cooperative relationship.

### **Individual complaints and investigations**

While NPMs regularly receive individual complaints and requests during their visits to places of detention, the OPCAT does not grant them the mandate to investigate individual complaints. Instead, they are meant to intervene preventively, before a violation has occurred. NPMs need to make a decision as to how to deal with complaints and requests, e.g. to transmit them – with the informed consent of the victim and an adequate

consideration of the risk of reprisals – to the responsible authorities, such as the Ombudsinstitution, internal State complaint mechanisms and the police and prosecution. Individual cases received by an NPM may be useful in the follow-up process. The number of complaints can be interpreted as an indication of systemic problems, possibly also a lack of implementation of recommendations. Thus, an analysis of the follow-up to the cases by the responsible bodies may provide relevant information on issues of impunity, remedy and reparation. Furthermore, individual cases can provide significant evidence to illustrate problems, support recommendations and promote their implementation in the dialogue with the competent authorities, and can be important for the NPM's publicity strategy.

A key consideration when dealing with individual cases always has to be the 'do no harm approach', focusing on the protection of the victim (cf. Chapter I of this handbook). Thus, NPMs should develop a clear policy and procedure to deal with individual cases received during visits. The policy and procedure should also be clearly explained to the complainants in order not to raise false expectations.

### **Commenting on and proposing draft legislation and policy**

The OPCAT specifically grants NPMs the mandate '[t]o submit proposals and observations concerning existing or draft legislation' (art. 19 b). According to the SPT, this requires that the State informs the NPM of any relevant draft legislation or policy and take into consideration the NPM's view in the legislative process.<sup>10</sup> The NPM's mandate, however, is not limited to reactively commenting on draft laws and policies. The SPT emphasises: 'The NPM is mandated to assess draft and existing legislation against the State's international obligations and against other international standards. Therefore, the NPM should propose and advocate for necessary legislative changes and their implementation, e.g. with parliamentarians and government, in conjunction with other relevant actors when appropriate.'<sup>11</sup> NPMs should not only react but also bring forward their own proposals for legal and policy changes. Doing this via thematic reports and specific opinions and recommendations generates greater visibility and enhances the follow-up process.

### **National Action Plans**

The process of developing National Action Plans (NAPs) on human rights as well as the reporting to international bodies such as the UN Committee against Torture and the UN Universal Periodic Review is a good opportunity for a strategic involvement of NPMs. It is advisable for NPMs to be closely involved in the development of NAPs and the international state reporting processes. This helps promoting the implementation of their recommendations on a strategic level and it is also relevant for the monitoring and evaluation of the goals set for the prevention of torture and other ill-treatment on a national level.

### ***Communication and cooperation with other actors***

The SPT explicitly recommends that an 'NPM should establish sustainable lines of communication [...] with other relevant national and international actors in the field of prevention of torture, including the SPT, and with civil society organisations' and 'establish a strategy for cooperation with other national and international actors, including the SPT, on

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<sup>10</sup> For further reference see the "Guidelines on National Preventive Mechanisms", para. 28

<sup>11</sup> Paragraph 28, UN Subcommittee on Prevention of Torture, *Analytical Self-Assessment Tool for NPM*, February 2012.

prevention of torture and on follow-up of cases of suspected or documented torture or ill-treatment<sup>12</sup>.

### **Interaction with Parliament**

The Parliament is an important partner for NPMs, which can support the implementation of recommendations by setting relevant topics on the political agenda, by influencing public opinion, holding authorities to account, developing policies, and passing the necessary laws. There are a number of ways in which NPMs generally engage with Parliaments: National legal frameworks governing the work of NPMs commonly stipulate that the annual report of the NPM is presented to and discussed in Parliament. This not only helps to underpin the principle of transparency but can also provide a platform for dialogue between the NPM and the legislature. Moreover, the SPT also recommends that NPMs advocate and lobby with parliamentarians for necessary legislative changes and their implementation.<sup>13</sup> Some NPMs are also endowed with the right to inform the Parliament if recommendations are not being implemented. Many NPMs attend parliamentary sessions relevant to their work, mostly specialised committees, on invitation or on their own initiative. Parliamentary committees were seen by these NPMs to be a useful means to engage with members of Parliament and advocate for implementation of their recommendations. They are moreover said to be a critical entry point for communication and cooperation with Parliament as they can call for parliamentary debates or studies on NPM relevant subjects.

### **Interaction with the Judiciary**

In some jurisdictions where supervising magistrates or the judiciary have a role in the oversight of detention, this provided opportunities for interaction with the NPM. In addition, NPMs have also found ways of engaging with the judiciary, including informing them of the NPM's activities, and through meetings and participation in events with judges. Moreover, working groups and advisory councils can also be suitable fora for a regular interaction with the judiciary.

### **Interaction with civil society**

The cooperation and communication with civil society organisations (CSOs) can be crucial for NPMs, given their important role in the prevention of torture. NPMs commonly exchange information with CSOs, e.g. before visits, and some NPMs have regular or institutionalised exchange with CSOs, e.g. through periodic meetings, in working groups or in inter-institutional advisory councils. The cooperation with civil society encompasses not only NGOs but a range of other actors including professional organisations (e.g. bar associations, medical associations, etc.), research institutes and universities who can play an important role in supporting the NPM as it monitors the implementation of its recommendations.

### **International cooperation**

Cooperation among NPMs can be useful to exchange ideas on common issues of concern, working methods and institutional practices. Multilateral and bilateral exchanges have increased over recent years, including joint workshops, conferences and visits. NPMs experiences indicate that a peer-to-peer exchange is beneficial to their work. There are several formal and informal exchange platforms in Europe ,for example the South-East

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<sup>12</sup> Idem, paragraphs 30 and 32

<sup>13</sup> See SPT, UN Doc CAT /OP /1, para 28.

Europe NPM Network (SEE Network)<sup>14</sup> as well as the bi-monthly European NPM Newsletter, sent to all Council of Europe region NPMs and a wide circle of interested third parties including the SPT, CPT and many NGOs.<sup>15</sup> It gives updates on the developments and news from the region's NPMs. It also provides a platform where NPMs can pose questions to each other on particular challenges encountered and seek peer advice. Related networks, such as the International Ombudsman Institute,<sup>16</sup> have also been said to influence the NPMs' work. Some NPMs also maintain bilateral exchanges with other NPMs.

Cooperation between the SPT and NPMs is expressly promoted by the OPCAT (art. 20 f) and should be considered a guiding principle of these bodies. Procedures have been put in place by the SPT that aid cooperation and communication with NPMs, such as the establishment of regional teams and a country focus for its members. It would be important for NPMs to establish a focal point within their own organisation with responsibility for communicating with the SPT. In the spirit of transparency and to assist the exchange of information, NPMs should always send their annual reports to the SPT.

In order to evaluate and strengthen their activities and working methodologies it is considered important that NPMs consult guidance developed by the SPT such as the '*Analytical Self-assessment Tool for NPMs*' and their '*Guidelines on National Preventive Mechanisms*'. Legal, policy and strategic guidance can also be found in the SPT's annual reports.

As a further tool in follow-up activities, many NPMs encourage their respective State to authorise publication of the SPT's visit reports. In relation to the SPT's own recommendations, the SPT's *Guidelines on National Preventive Mechanisms* expressly state that NPMs should '[...]actively seek to follow-up on the implementation of any recommendations which the SPT has made in relation to the country in question, liaising with the SPT when doing so.'<sup>17</sup> Therefore it is envisaged that the relationship between the SPT and NPMs should be collaborative and mutually reinforcing. However, the extent to which NPMs can follow-up on the SPT's own recommendations will depend on whether the State party concerned has agreed for these to be made public.

### ***Effecting change, protecting detainees***

#### **The dimensions of change**

The purpose of NPMs is to contribute to systemic and sustainable change towards improving the treatment and the conditions of detainees and preventing torture and ill-treatment. In order to achieve this, changes might need to take place at various levels: in the concrete functioning and management of the respective place of detention; at the higher organisational level/institutional arrangement, e.g. in the Ministerial bureaucracy; in the central prison administration; at the level of public policies, e.g. with regard to public security; at the level of the law; or in relation to public awareness:

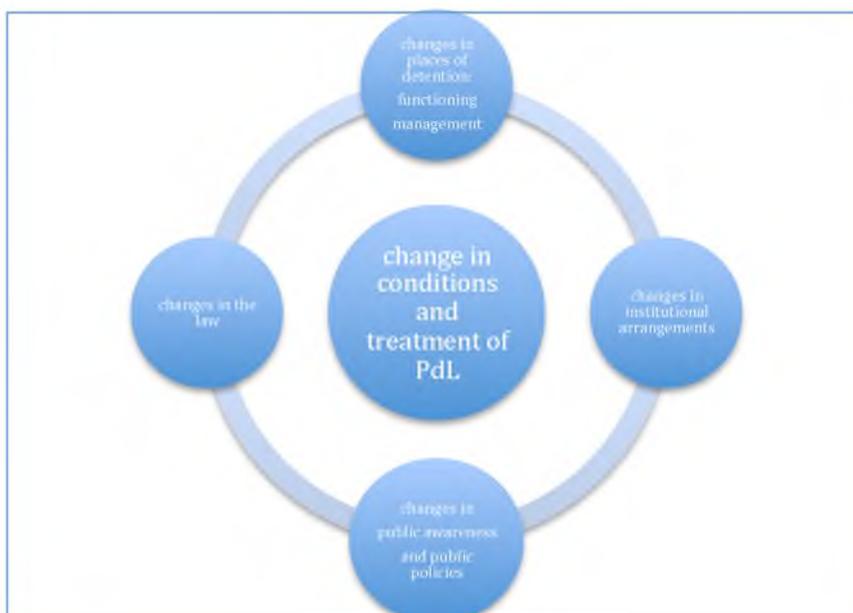
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<sup>14</sup> <http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/varuh-kot-drzavni-preventivni-mehanizem/south-east-europe-npm-network/>

<sup>15</sup> [http://www.coe.int/t/dgi/hr-natimplement/npm\\_newsletter\\_en.asp](http://www.coe.int/t/dgi/hr-natimplement/npm_newsletter_en.asp)

<sup>16</sup> <http://www.theioi.org/>

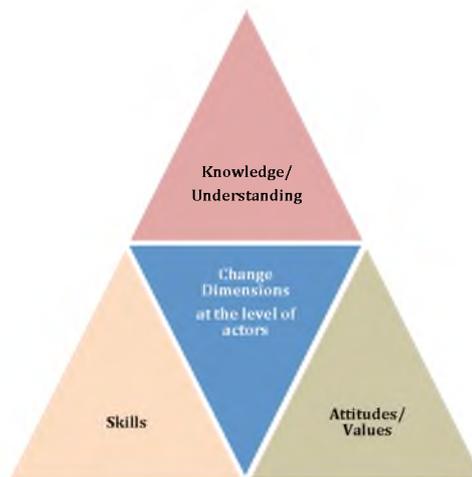
<sup>17</sup> Also see the "Guidelines on National Preventive Mechanisms", para.38; [www2.ohchr.org/english/bodies/cat/.../SPT\\_Guidelines\\_NPM\\_en.doc](http://www2.ohchr.org/english/bodies/cat/.../SPT_Guidelines_NPM_en.doc)



Another way of looking at dimensions of change is to focus on the three dimensions of learning that need to take place for sustainable change. These dimensions envisage enhancing the capacity of State authorities (the duty-bearers) to be better able to respect, protect and fulfil the human rights of detainees as well as detainees (rights-holders) to claim their rights. In the context of preventive monitoring, the most relevant duty-bearers are staff and management at places of detention as well as officials at the system administration/Ministry level.

A wide range of activities, including but not limited to awareness raising and capacity development measures, might be undertaken to promote change in the following three dimensions:

- Change at the level of **knowledge and understanding** about required professional and human rights standards, including about the role and function of NPMs
- Change at the level of **skills** so as to perform one's duties according to the required professional and human rights standards, in particular communication skills
- Change at the level of **attitude and values** which determine how people perceive others, in particular detainees, how they act in the world, their worldview and their concept of the human being



It is clear that, in particular, changes at the level of attitude and values can only be understood through a close look at the institutional culture and group dynamics, operating in places of detention as ‘total institutions’, with very specific characteristics. The prevailing culture within places of deprivation of liberty has a direct bearing on the behaviour of people, both staff and detainees. If NPMs want to achieve positive human rights change in closed institutions, they need to be aware of cultural risks factors in places of detention as well as the characteristics and strategies for human rights based culture change.

### **Formulating the desired change in SMART recommendations**

NPMs make recommendations to the authorities with a view to achieving concrete change. The question of how to develop recommendations in a way that they have an impact is of paramount importance in the monitoring process: Recommendations contain a condensed problem description and they provide for an orientation of the NPM’s work which does not remain stuck in the problem mode and focus on the past, but fathoms possible solutions to the problems found. The double SMART model proposed by APT has been of particular relevance in this regard<sup>18</sup>: Recommendations should be specific, measurable, achievable, results-oriented, time-bound, solution-suggestive, mindful of prioritisation, sequencing & risks, argued, root-cause responsive and targeted in order to constitute conclusive and concrete proposals for remedying a particular situation in a place of detention.

### **Stakeholder analysis as tool for strategy development**

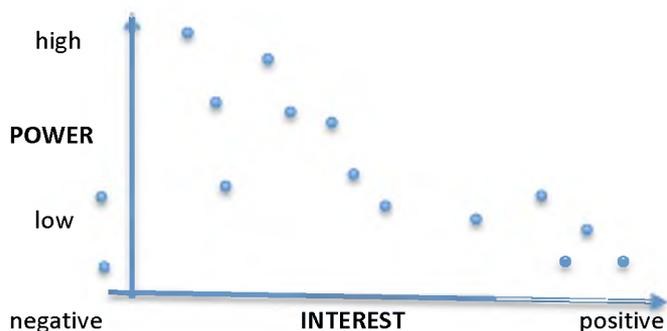
It is highly advisable for NPMs to carry out a stakeholder analysis in relation to specific issues or change proposals, which have been identified in the situational. Stakeholder analyses help clarifying who the stakeholders are (groups, organisations, individuals) who are affected by or affecting the implementation of NPM recommendations, as well as what their particular interests are, i.e. why they would either support or oppose the change desired and proposed by the NPM.

There are different ways of mapping and analysing stakeholders. An approach that appears particularly effective for the NPM’s work and, more generally, for human rights work, is a power-interest grid: Stakeholders are assessed according to two variables:

1. *What is the interest of the stakeholder in the change desired by the NPM?*

<sup>18</sup> <http://a5i.org/wp-content/uploads/2011/12/1.-APT-Detention-Monitoring-Briefing-No.11.pdf>

2. *What is the power of the particular stakeholder to promote or block the change desired?*



The result is a tentative picture of the particular forces at play. It allows a first grasp of the prospects/difficulties in achieving the change and, very importantly, an indication regarding which stakeholders would have to be worked on in order to get the change realised.

### **Measuring the power of NPMs**

In trying to uphold human rights within their mandate, NPMs do not normally have explicit enforcement powers and cannot order specific changes. Their power only encompasses making recommendations and taking persuasive action within a process of dialogue with the authorities in order to have their recommendations implemented. This obviously raises questions regarding the relevant social and political forces which determine the impact NPMs can have and the relative power of NPMs to achieve results. The following issues appear to be relevant:

- It is essential to thoroughly analyse the relative power of the NPM, in particular its cultural capital (technical knowledge, argumentative and communication skills, strategizing skills) and its symbolic capital (credibility, reputation, institutional basis within state structure). A useful tool for doing this could be a SWOT/C (Strengths, Weaknesses, Opportunities, and Threats/Challenges) analysis of the NPM.
- Tailor-made measures to enhance the capital of NPM should be undertaken, both at the organisational level (e.g. strategy development, communications planning) and at the level of individual members (training).

NPMs are important partners and advisers to State authorities in the process of guaranteeing the full protection of rights of detainees. The NPM's recommendations offer guidance to the authorities in complying with human rights standards. The NPM is responsible not only for issuing effective recommendations with a view to achieving change, but also for following-up their implementation. It disposes of a variety of tools to not only monitor the implementation of its recommendations but to contribute to its implementation in a cooperative and constructive spirit. It will need to engage all relevant State and non-State stakeholders in different forms of dialogue in order to achieve systemic, structural, sustainable change.

## **ANNEX I - COMPREHENSIVE COMPILATION OF INTERNATIONAL INSTRUMENTS ON TORTURE**

### ***International Human Rights Law***

#### **UN Universal Declaration of Human Rights**

##### **Article 5**

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

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

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 1 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 1 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 1 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 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. 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**

1. 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.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

### **Article 18**

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

### **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 1 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 1 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 1 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.

#### **Article 23**

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### **Article 24**

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

### **PART III**

#### **Article 25**

1. This Convention is open for signature by all States. 2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### **Article 26**

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### **Article 27**

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.  
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

#### **Article 28**

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.  
2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

#### **Article 29**

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.  
2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.  
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

#### **Article 30**

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.  
2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.  
3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

#### **Article 31**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.  
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes

effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

#### **Article 32**

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 25 and 26;

(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

#### **Article 33**

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

### **UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

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 II**

### **Subcommittee on Prevention**

#### **Article 5**

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.
4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.
5. No two members of the Subcommittee on Prevention may be nationals of the same State.
6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

#### **Article 6**

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.
2.
  - (a) The nominees shall have the nationality of a State Party to the present Protocol;
  - (b) At least one of the two candidates shall have the nationality of the nominating State Party;
  - (c) No more than two nationals of a State Party shall be nominated;
  - (d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.
3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to

submit their nominations within three months. The Secretary- General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

#### **Article 7**

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfillment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

#### **Article 8**

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

#### **Article 9**

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 ( d).

#### **Article 10**

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

### **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 fulfill 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 fulfill 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 fulfill 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.

### **PART V**

#### **Declaration**

##### **Article 24**

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

### **PART VI**

#### **Financial provisions**

##### **Article 25**

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

##### **Article 26**

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

### **PART VII**

#### **Final provisions**

##### **Article 27**

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### **Article 28**

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

#### **Article 29**

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### **Article 30**

No reservations shall be made to the present Protocol.

#### **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.

#### **Article 33**

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

#### **Article 34**

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

#### **Article 35**

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

#### **Article 36**

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

#### **Article 37**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

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

#### **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.

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

#### **Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

#### **Article 39**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

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

#### **Article 10**

No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## UN Convention on the Rights of Persons with Disabilities

### Article 15

1. 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 or her free consent to medical or scientific experimentation.
2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

## Rome Statute of the International Criminal Court

### 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;

[...]

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;

### 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) Willful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Willfully causing great suffering, or serious injury to body or health;

[...]

(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:

[...]

(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;

[...]

(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;

[...]

### Article 55

### **Rights of persons during an investigation**

1. In respect of an investigation under this Statute, a person:

(a) Shall not be compelled to incriminate himself or herself or to confess guilt;

(b) Shall not be subjected to any form of coercion, duress or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment;

## ***Soft Law Standards***

### **UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)**

#### **Preliminary observations**

##### **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.

#### **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 health-care 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 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 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 punished twice for the same 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 commitment 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,<sup>28</sup> 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 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; (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 to exercise 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 under the prison regulations he or she is not allowed to retain 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 the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
2. The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.
3. The transport of prisoners shall be carried out at the expense of the 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

**Rule 89**

1. The fulfillment 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 five hundred. 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 professional.
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 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,<sup>29</sup> 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.

## **UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)**

**I. Rules of general application****1. Basic principle****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

**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**

#### **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**

#### **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**

#### **(a) Medical screening on entry**

##### **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 from 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 gynecological cancer, shall be offered to women prisoners on an equal basis with women of the same age in the community.

## **7. Safety and security**

### **(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**

#### **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**

#### **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**

#### **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**

#### **Rule 26**

Women prisoners' contact with their families, including their children, 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**

### **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 gynecologists, 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**

### **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**

### **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**

### **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**

### **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 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**

#### **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**

#### **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.

### **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 Crime<sup>28</sup> and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention<sup>29</sup> 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.

**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.

**UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)****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.

## **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 need of society; To implement the following rules thoroughly and fairly.

## **3. Extension of the Rules**

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

## **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.

## **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.

## **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.

## **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.

## **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.

## **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 Prisoners 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.

## **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.

#### **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.

#### **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.

#### **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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **20. Avoidance of unnecessary delay**

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

## **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.

## **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.

#### **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.

###### **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.

###### **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.

#### **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 inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

###### **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.

###### **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.

###### **29. Semi-institutional arrangements**

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

## **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.

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

### **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 fulfill 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-children 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 extra-curricular 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 home or who do not have homes 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 homeless 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. Governments 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 home, 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 Co-ordination**

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, educational 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 co-operation 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 co-ordination 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 co-operation 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.

## UN Basic Principles for the Treatment of Prisoners

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.

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

### Scope of the Body of Principles

These principles apply for the protection of all persons under any form of detention or imprisonment.

### 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" means 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.\* 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.
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 the 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 judgment.

**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.

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

**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.

## **UN 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**

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 judgments for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgments 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 judgments.

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.

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

#### **Principle 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; 2

(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.

## ***International Humanitarian Law***

### **Geneva Conventions**

#### **Common 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: [...]

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.

### **First Geneva Convention For The Amelioration Of The Condition Of The Wounded And Sick In Armed Forces In The Field**

#### **Article 12**

Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances.

They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

[...]

### **Second Geneva Convention For The Amelioration Of The Condition Of Wounded, Sick And Shipwrecked Members Of Armed Forces At Sea**

#### **Article 12**

Members of the armed forces and other persons mentioned in the following Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances, it being understood that the term “shipwreck” means shipwreck from any cause and includes forced landings at sea by or from aircraft.

Such persons shall be treated humanely and cared for by the Parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

### **Third Geneva Convention Relative To The Treatment Of Prisoners Of War**

#### **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.

[...]

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.

[...]

#### **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.

[...]

Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

[...]

#### **Article 89**

The disciplinary punishments applicable to prisoners of war are the following:

[...]

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.

### **Fourth Geneva Convention Relative To The Protection Of Civilian Persons In Time Of War**

#### **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.

### **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)**

#### **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 [ Link ] 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 willful 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.

#### **Article 75 Fundamental guarantees**

1. In so far as they are affected by a situation referred to in Article 1 [ Link ] 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;
- [...]

### **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)**

#### **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:

[...]

(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.

[...]

#### **Article 6 Penal prosecutions**

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.

[...]

(f) no one shall be compelled to testify against himself or to confess guilt.

#### **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.

#### **Customary Rule 87 of International Humanitarian Law**

Civilians and persons hors de combat must be treated humanely.

#### **Customary Rule 90 of International Humanitarian Law**

Torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited.



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The project is implemented by the Ludwig Boltzmann Institute of Human Rights and the Tian Shan Policy Center of the American University of Central Asia

### **Information about the European Union:**

*“The European Union is made up of 28 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 60 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders”.*

### **Information about the Ludwig Boltzmann Institute of Human Rights:**

*The Ludwig Boltzmann Institute of Human Rights was established in 1992 as independent research centre contributing to the scientific discourse on human rights. The Human Dignity and Public Security team at the Institute is specialized in human rights in the criminal justice system and the prevention of torture and ill-treatment. It carries out extensive research in this area and on that basis provides targeted support to States and civil society in the implementation of torture prevention measures.*

### **Information about the Tian Shan Policy Center:**

*The Tian Shan Policy Center (TSPC) is an innovative nonprofit, public interest organization focused on research, analysis, and implementation of effective public policy for the communities of Central Asia. TSPC specializes in the critical fields of strategic development policy, human rights, and sustainable development, and strives to strengthen good governance as the bedrock for efforts to better the lives of all peoples.*

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