



STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

Review Report of the Committee on the Fiji Corrections Service 01 January-31 July 2016 Annual Report



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Chair's Foreword

I am pleased to present the review report of the Standing Committee on Foreign Affairs and Defence on the *Fiji Corrections Service 1 January – 31 July 2016 Annual Report*.

The Standing Committee is established under Section 109(2)(e) of the Standing Orders (SO) of the Parliament of the Republic of Fiji.

The purpose of the review was to scrutinise the *FCS 2016 Annual Report* specifically on the department's operations and the administration.

The FCS has moved from relying on punishment-based approaches to a more modern approach of rehabilitation of incarcerated persons through implementation of various Trade and Manufacturing Account (TMA) programmes that help build skills and knowledge which will assist them to re-integrate back into the society upon release.

The FCS' direction is forward-looking with a vision strategically aligned to the then Governments Road-Map for Democracy and Sustainable Development Socio-Economic Development (RDSSED) and the Sustainable Development Goals (SDGs).

The positive impacts of rehabilitation programs for inmates are evident in all activities of the organisation. The Committee noted that the FCS has made initiatives to address the SDGs namely:

1. **SDG 1 (No poverty)** – The FCS has put in place rehabilitation programmes for inmates with the intention of instilling entrepreneurial skills to make them self-sufficient. Rehabilitation programmes such as:
 - Vegetable farming
 - Crops farming
 - Aqua-culture (Tilapia farming)
 - Art Gallery
 - Piggery
 - Poultry
 - Joinery
 - Bakery
 - Garment

2. **SDG 2 (End hunger)** – The FCS aims to achieve food security and improve nutrition through the promotion of sustainable agriculture;
3. **SDG 5 (Gender Equality)** – The FCS is an equal opportunity employer and currently within the service there are a good number of senior women officers that are placed with senior appointments in the organisation to make a difference.

The Small Business Units (SBU) of the FCS operating under the TMA is a prime focus in providing business skills sets to inmates that are selected in various field of work. This will enable inmates upon release to be productive and law abiding citizens of the country.

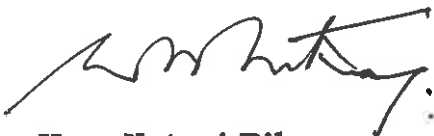
It is worth noting that revenue collected through TMA in 2016 was \$358,160.23 which had doubled from the 2015 returns. Revenue collected through TMA in 2015 was \$103,384.56. The variance TMA collected from 2015 to 01 January-31 July is \$254,775.67.

The FCS strives to operate seamlessly to maintain quality services to ensure that the deliveries of outcomes including key financial outputs are a return of investment to government.

The Committee upon review with consultations with the service had identified areas of concern that need addressing to ensure the organisation is dynamic and reduces recidivism.

I take this opportunity to thank the Commissioner of Corrections and all officers for a marvelous job well done with a tireless commitment to public service.

On behalf of the Standing Committee on Foreign Affairs and Defence, I commend this report to Parliament.



Hon. Netani Rika
Chairperson

Table of Acronyms

ACCS	Assistant Commissioner Corporate Services
CCTV	Closed Circuit Television
FCS	Fiji Corrections Service
RDSSD	Road-Map for Democracy and Sustainable Development Socio-Economic Development
SBU	Small Business Unit
SDGs	Sustainable Development Goals
SO	Standing Orders
TMA	Trade and Manufacturing Account

Introduction

The Committee had gone through the Annual Report and identified key areas that need to be assessed and these included the department's policies, programs, projects of 2016, human resources, capacity development and the overall administration.

On 24th April, 2018 the Fiji Corrections Service Executives made a presentation to the committee that reflects the operations and the whole administration of FCS in 2016.

In summary, the information for this report was obtained through:

1. A thorough assessment by the Standing Committee on the FCS 2016 Report.
2. An oral presentation by the FCS executive management.

The content of the FCS 2016 Report are listed below:

- 1) Introduction.
- 2) FCS Achievements for 2016.
- 3) Challenges.
- 4) Financial and Budgetary Constraints.
- 5) Strategic Direction and the Way Forward.

The Report is divided into three Parts:

Part One: covers the Committee recommendations to Parliament.

Part Two: covers the FCS Gender Analysis and SDGs.

Part Three: focuses on the Findings of the report.

Part Four: covers the Conclusion.

PART ONE

Recommendations

- FCS to Review the Corrections Services Act 2006 to capture the paradigm shift from punitive confinement to rehabilitation.
- Aligning systems and processes to the Mandela Rules (UN Minimum Standard) proper care and custody of inmates and persons in remand awaiting court processes.

PART TWO

Gender Analysis

In terms of Gender Equality the Parliament of Fiji Standing Orders 110 (2) specifically states that a committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on men and women.

The gender analysis of the FCS is done to observe the footprint of women corrections officers and civilian staff in the service.

Sustainable Development Goals

The positive impacts of rehabilitation programs for inmates are evident in all activities of the organisation. The Committee notes that the FCS has made progress in achieving the SDGs namely:

1. **SDG 1 (No poverty)** – The FCS has put in place rehabilitation programs for inmates with the intention of instilling entrepreneurial skills to make them self-sufficient.
2. **SDG 2 (End hunger)** – The organisation aims to achieve food security and improve nutrition through the promotion of sustainable agriculture;

PART THREE

Findings

The Committee's findings are that:

- FCS is aligning to the Mandela Rules, the UN minimum standard regarding the rights of detainees (prisoners in remand and prisoners serving their conviction) in FCS facilities.
- Progress in training across FCS organisation has been revamped.
- Male inmates recorded a 20% increase in 2016; from 1407 in 2015 to 1689 in 2016.
- Female inmates recorded a 46% reduction in 2016; from 89 in 2015 to 48 in 2016.
- Key challenge of FCS as an institution is reviewing the Corrections Services Act 2006, to capture the paradigm shift from punitive confinement to rehabilitation.

PART FOUR

Conclusion

The Standing Committee on Foreign Affairs and Defence has fulfilled its mandate approved by Parliament which was to examine the Fiji Corrections Service 2016 Annual Report. The Committee has conducted its review and formulated the findings with regard to the Fiji Corrections Service's performance in 2016.

The Committee report is bi-partisan and contributions from both sides have provided the final report which is closely supported by the Secretariat.

The response and the input from the FCS were overwhelming which contributed immensely to the compilation of this report. The Committee has assembled few recommendations to Parliament on the result of the review that was undertaken with regards to the FCS mandated responsibilities with its performance in 2016.

The recommendations highlight areas of concern which include the FCS budgetary allocation in terms of operations, administration and capital projects which will assist in achieving the FCS goals.

The key areas highlighted by the Committee in its findings would improve the overall performance of the FCS in the future in reducing recidivism.

**Verbatim Notes
of the Standing Committee on
Foreign Affairs & Defence**

Submittee: Fiji Corrections Service

Tuesday, 24th April, 2018

VERBATIM NOTES OF MEETING OF THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE, HELD IN THE COMMITTEE ROOM (WEST WING), PARLIAMENT PRECINCTS, GOVERNMENT BUILDINGS ON 24TH APRIL, 2018 AT 12.00 P.M.

Interviewee/Submittee: Fiji Corrections Service

Attendance:

- | | | |
|---------------------------|---|--|
| 1. Mr. Francis B. Kean | - | Commissioner |
| 2. Ms. Helen Koi | - | Senior Accountant |
| 3. Mr. Aporosa Toroca | - | AO |
| 4. Mr. Sevuloni Naucukidi | - | SHQ |
| 5. Ms. Salesia Racaca | - | Assistant Commissioner Corporate Service |
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DEPUTY CHAIRPERSON.- At this juncture, I would like to welcome the Commissioner of Corrections Service and his team to the Standing Committee on Foreign Affairs and Defence.

This afternoon, I am actually sitting in for the Honourable Netani Rika as he has got an engagement to attend to this afternoon. In saying that, I would like to warmly welcome you all this afternoon and to commend the team for the comprehensive Annual Report for 2016.

We would also like to commend your leadership, Mr. Kean in your organisation and now I will now give you the floor to make your presentation.

MR F.B. KEAN.- Honourable Deputy Chair and Honourable Members of this august Committee, thank you sincerely for inviting us over to your Standing Committee this morning. We thank you sincerely for the words of reception and we look forward to responding to any questions or clarifications that may arise in relation to the written submission that we have already provided to your good self and to the Members of your Committee.

The team that I have with me this afternoon, Honourable Deputy Chair and Honourable Members, to my right is the Assistant Commissioner Corporate Services, Ms Salesia Racaca and to the right is Ms Helen Koi, our Senior Accountant. To my left is one of our senior officers who is accompanying us this afternoon, Mr Seru Naucukidi, for exposure purposes and to the rear, in his green t-shirt, is my good friend from Serua. He is also our Accountant from the Corrections Services. That is the team from Corrections this afternoon.

With all due respect, if it is agreeable to your good self, Chair and Members of the Honourable Committee, if I could invite my Assistant Commissioner Corporate Services to take us through our responses to your questions that you have made available this morning.

MS. S. RACACA.- Thank you to the Deputy Chairperson of the Standing Committee on Foreign Affairs and Defence. For the response this morning, we have done a written submission in terms of the questions that have been raised and on the clarification to our January- July 2016 Annual Report.

So, as per your question raised in regards to Question No.1, we had answered it in terms of the question that had been raised, according to the reports that we had also provided. If I may be allowed to go through as we go according to questions.

Question No. 1 explains the highlights of the operations and administrative work in the FCS during the period.

We came up with about five bullet points that we had raised in terms of the questions:

- The appointment of our new Commissioner on March 5, 2016, also brought about the introduction of a lot of changes; significant changes in the way we deal with our business at the FCS. This is just straightening up all the rules and regulations and the way that we should be operating in observing the rules and regulations in place to carry out our operations in the FCS.
- This transformation was imperative after the thorough observation and analysis on strategic directions the FCS was pursuing at that time. We have come up with some of the new ways of how the Commissioner is going to take or the direction that the Commissioner is taking through the FCS.
- The announcement by Government through the Ministry of Economy in the changes in the new financial year, so the reporting was just for the six months in terms of the first six months of 2016. This has also triggered some mechanisms in the FCS to lift its financial performance during the short period of time.
- The massive task to capture the recognition of the FCS as a disciplined force. This also came about in the 2013 Constitution, was surmounting and also challenging. We are still working through that - work in progress.
- The injection of good governance practices also in the way FCS conducted its business was one of its top priority.
- The identification of training as a glaring gap was recognised and appropriate remedial actions that are currently implemented to correct the failures in the system, which has plagued FCS in the past years. So this is another area too that we really plugged into, to uplift or enhance the performance within FCS.

On Question 2, we have been very straight on this. Elaborate on the FCS financial manual.

Yes, this is one of the mandatory requirements under the Financial Act, where all the Ministries are required to prepare their Ministry's financial manual.

On Question 3, on the unqualified status of the financial reports.

An unqualified financial report means the opinion is given to us by the Auditor-General. It is the opinion of the Auditor-General. It tells us that a company's financial records and statements are fairly and appropriately presented and in accordance with the Generally Accepted Accounting

Principles (GAAP). That is according to the auditing standard. Deputy Chairperson, are there any questions or any?

DEPUTY CHAIRPERSON.- What we will do, we just run over the questions and then we will have our response on that.

MS. S. RACACA.- Thank you, Sir.

Question No. 4, Please explain the doubling of the FCS returns (\$358,160.23) through Trade and Manufacturing Accounts (TMA)?

The significant increase in profit, in line with Question No.1 and the transformation of the way we do our business in FCS was one of the contributing factors in the doubling up of FCS return has been raised. This basically involves honest and sound leadership, cutting down of unnecessary expenses and doubling up on our effort in marketing. Most importantly, the introduction of good governance practices as has been alluded to earlier, involving accountability and transparency over the way we operate our business.

Question 5, What sections of the FCS TMA performed well during the above period?

We have Six Small Business Units (SBUs) and analysis is tabulated on the revenue that had been from January to July, 2016. That is the performance under each of the six SBUs.

The performing business units in comparison to the two different years (2015 to 2016) is tabulated above and also the average percentage of 20, achievement of each of the rate in 2016. That is the one on the 2016 column, the last column in the table.

For FCS, we remitted to the Ministry of Economy the amount of \$103,384.56 in 2015 and \$358,160.23 in 2016; an increase of \$254,775.67 - the difference or the increase from 2015 to 2016.

Question 6: What is the United Nations Minimum Standard Rules for the Treatment of Offenders? In fact, we have given some of the examples:

- The UN Minimum Standard Rule sets out what is generally accepted as being good principle and practice of how the prisoners are treated and the management of the institution. It is now known the Mandela rules.
- This rule, the treatment of prisoners were adopted by the United Nations General Assembly in 17th December 2015, after a five years revision process.

Question 7, please gives examples on the FCS context?

- The rules on general application on basic principles are applied in the FCS.

Similarly the following actions are executed in accordance with the minimum standards - that is in the UN standard.

- All prisoners are registered the first day they are brought into prison;
- All prisoners are categorised according to their crime;
- All prisoners are appropriately accommodated;
- All prisoners are provided with appropriate clothing and beddings;
- All prisoners are given adequate food and proper hygiene;
- All prisoners are given time for exercise and recreation;
- All prisoners are provided with adequate medical service;
- All prisoners are capable for internal and external education, in line with the rehabilitation framework; and
- Upon prisoners' death, illness and transfer, immediate family members are informed.

Those are some of the highlights of the book.

Question 8: In reporting 2016, for the month of July, there was a noted increase in inmates of female inmates? Please explain the gender analysis?

- Male inmates recorded a 20 percent increase in 2016; from 1,407 in 2015 to 1,689 in 2016;
- Female inmates recorded 46 reduction in 2016, from 89 in 2015 to 48 in 2016; and
- The statistics of prisoners entering our Correctional Centres is beyond our control.

Question 9: What is the key challenge facing the FCS as an institution?

The urgent need to review the FCS Act, to capture the paradigm shift from punitive confinement to rehabilitation corrections, to recognise the organisation as a Disciplined Service under the 2013 Constitution, introduction of community based correction and introduce electronic monitoring and restraint system.

We have emphasis placed on training, spearheaded by the Commissioner to plug the gaps of our human resource development. Also, the challenge of acquiring correction/ prison training exposed in overseas jurisdiction due to different legislations and implementation.

The need to embrace the use of technology which is a trend in modern prisons. However, this will cover the cost but also result in the reduction of manpower.

Question 10: What is the lesson learnt and the way forward?

The importance of sound effective and efficient leadership in the FCS. The system has failed the men and women of the Correction Service and corrective measures through robust training, regiment is now implemented to ensure that we conduct our correctional services professionally in accordance with the intent of the Commissioner, expectations of Government and all our customers.

With due respect, Sir, we hereby submit our response, Sir. *Vinaka vakalevu.*

DEPUTY CHAIRPERSON.- Vinaka Ms Racaca. I would like to thank you for the comprehensive response to the questions that we have posed. Just before I hand the floor to Members of the Committee, the Commissioner, Corrections Service, would you like to make any comments?

MR. F.B. KEAN.- No, Deputy Chairperson and Honourable Members.

DEPUTY CHAIRPERSON.- Now, I give the floor to Honourable Members of the Standing Committee on Foreign Affairs & Defence, just to inform the team from the Fiji Correctional Services that we have a bi-partisan approach where we have both the Members of Government and Opposition in our team. The floor is now open for questions from Honourable Members.

HON. RATU K. KILIRAKI.- Chair, can I be given the opportunity to pose the first question. I will refer us to the Report for January to 31st July, 2016 that was tabled in Parliament. This is in regards to the Foreword for the Commissioner of Corrections.

The last paragraph at the bottom, “the over reliance on prisoners is a deep rooted culture of laziness ingrained in the work ethics of FCS. This is an ongoing challenge for FCS personnel, however I am confident that this transformation will be successful through the top down approach in implementing to oversee changes.”

And I must commend also on the returns on the efforts of the TMA, which is a positive outcome of the efforts of the FCS,

I would ask if the Commissioner can elaborate for our insight as to that comment there, “the over-reliance on prisoners is a deep rooted culture of laziness ingrained in the work ethics at FCS.” Thank you, Chair.

MR. F.B. KEAN.- Thank you, Honourable Deputy Chairman and Honourable Kiliraki and Honourable Members of the Standing Committee.

First of all, thank you for your comments or commendation in relation to the Trading & Manufacturing Account (TMA) and this is all credit to the good work of the team operating our TMA or small business units and also our finance team, the Heads are present with us this afternoon.

One of the key issues, the comments that is raised in that particular sentence, Honourable Members, I want to say in this forum is that the officers, men and women of FCS as being alluded to by Assistant Commissioner Racaca, the system has failed us. One of the areas that we are trying to focus on a lot as part of this trans-management is on leadership. All our training that is now conducted at the FCS is leadership-focused. At the moment, the reason we said this is that officers, men and women of FCS, in order for us to mirror what we have put down in our vision and also in our mission.

Our new mission at FCS is to positively restore lives. It is like the old adage - the carriage before the horse. So we want to be seen first to be doing the work because for us, rehabilitation is central. The perception and the view that we had in coming together with this statement, that particular sentence and also in changing our vision, our mission, our values and even introducing a new motto to FCS was all rehabilitation-centred.

At the moment, now the challenge to us all Corrections Officers is we need to be Rehabilitation Officers. It is a mammoth task and I commend the work that has been undertaken by the men, women and the officers of FCS.

That sentence is not to say that the men and women are lazy. It is something that is a culture that needs to be changed and changing culture is quite a mammoth task.

I commend the men and women officers of the FCS for accepting some of the changes that have been brought into the organisation and I think we are making some headway in that regard and right now, as part of our rehabilitation, we have a lot of volunteers that come in but first and foremost, we want to take on that rehabilitation training as Correctional Officers and the volunteers are to support the work that we do as Correctional Officers.

So if I could give an example for now; when we are doing cleaning up in the correctional centres, our officers at the FCS, we need to get involved rather than sitting back and just letting the prisoners get involved with the cleaning up, if I could use that as an example in relation to that question. But this has got nothing to take away all the good work, all the hard work that the officers, men and women of FCS are, have and will be undertaking. I hope I have clarified that particular sentence. *Vinaka.*

DEPUTY CHAIRPERSON.- Thank you, Commissioner Kean. Is there anyone else who wants to raise a question? But just a comment on that. Thank you for your leadership and for bringing about these radical changes to the FCS, making that point of rehabilitation. Members, any questions?

HON. RATU K. KILIRAKI.- We went through the report yesterday and one interesting part was the table of stats, Page 13, and we noted the relatively high intakes from the other provinces, in the big provinces, and we did discuss probably more, more clearer picture would be to be relative to the number of people in a province. We talked about Namosi and Namosi, even though the number there is small, but relatively the number of people from Namosi is also small. So percentage-wise, it will not give a reflection of the prisoners who come from the various provinces.

I think you are trying to highlight here that this has been a concern too at the provincial level, of the *Turaga ni vanua*, who will address this situation, but whether there could be more detailed analysis so that it keeps a better information for consumption percentage-wise in relation to the number of the people in each provinces. So, that is just a suggestion whether that can be taken on board, Deputy Chair.

MR. F. KEAN.- Thank you, Honourable Ratu Kiliraki, yes, we will definitely take that on board and measure this against the general population of the province. We will work very closely with the Bureau of Statistics and also with the Ministry of iTaukei Affairs in regards to that.

DEPUTY CHAIRPERSON.- *Vinaka*

HON. RATU S. MATANITOBUA.- In line with the Honourable Kiliraki's statement on the number of prisoners per province; how do you identify them that they are from Tailevu, or Namosi? You identified them with the VKB, birth certificate, et cetera?

MR. F.B. KEAN.- Thank you, Honourable Ratu Matanitobua, Honourable Deputy Chair and Honourable Members. Yes, that is a very good question. In some of the forums that we go to, to the relevant provinces we are represented, we go to the Provincial Council Meetings and the *Tikina* Council Meetings, there are lots of concerns from some of the provinces that this person is not from here and not from there. That is something that we look into. We give them the benefit of the doubt. When they come in, as mentioned in the Mandela Rules, that is one of the first thing to the processing.

We register where they are from and we take it as an honest opinion from our inmates but that is the next step for us. We have talked about it at FCS for our reception officers, who are officers in charge to go out to the registry office and get their birth certificates, so we can confirm and if I use the word “eliminate” some of the concerns that are coming in from the provincial councils and the *Tikina* councils and also the question that has been raised by Honourable Ratu Matanitobua.

HON. RATU S. MATANITOBUA.- Only from the Namosi Province. Can I have the names so that I can table it to my District Officer, Namosi, to be the next agenda in the upcoming meeting of our provincial council.

DEPUTY CHAIRPERSON.- Thank you, Honourable Matanitobua.

MR. F.B. KEAN.- Thank you, Honourable Deputy Chair. I forgot to mention this. I was a bit worried mentioning this at the outset but to Honourable Ratu Matanitobua, apology for Namosi losing to Naitasiri on Saturday. But we will definitely forward response to the Roko’s office and also give a copy to your good self, Sir.

HON. J.N. KUMAR.- Through you, Deputy Chairman, thank you so much for your contribution this morning.

My question is the FCS motto, ‘Semper Restituens’ (always rehabilitation is important). How does this relate to the vision, mission and core values of the organisation on a daily basis? What are some practical examples carried out on the ground?

MR. F.B. KEAN.- Thank you, Honourable Kumar. For 2017, going into 2017 in fact when I came in, we met with the Senior staff of FCS and looking at where we came from, where we were and where we wanted to go, one of the key things that we wanted to look at was, as mentioned in some of the contributions to some of the questions earlier on are shift from containment to corrections. I think it was first introduced by our former Commissioner, Major-General Iowane Naivalurua, but somewhere along the line, this was sort of watered down and we had a thorough look, did some thorough analysis and we changed our vision to where it says:

“We want every citizen, every person under our care, when they depart from our care and go back to the community they can go back and positively contribute to our country.”

That is reflected in the Mission that we have, to positively restore lives in a positive manner and the values that we value.

We have also changed the Values which are very central to us, especially the comments raised by Assistant Commissioner, the change from a purely Civil Service organisation to a Disciplined Service under the 2013 Constitution. That was not an easy task, a mammoth task. The change of the mind-set of the officers (both men and women) of the Corrections Service and I am very thankful that the change is slowly coming in, the pain is starting to drop with the men and women and for them to understand the need for us to embrace these changes.

I think the key word in the Vision and the Mission is in relation to the motto which is the word, “rehabilitation”. I think it is central in the Vision, Mission and reflects what we have down in our motto.

We have also reviewed our Rehabilitation Policy, it was reviewed in 2016. We are going to review it again this year. In light of some of the changes that we are doing at the Corrections Service, right now at the Nasinu Correctional Centre we have dedicated it to become a young, first time offenders for those below the age of 24. As we speak, it has already been done.

We are also converting Nasinu to become a Vocational Training Center. We are working very closely with the Ministry of Youth and Sports, the Ministry of Education to accredit us so that the young kids who come through the Correctional Centre get accredited at least up to Certificate Level II with accreditation to FNU.

We are also looking at our sex offenders, which I believe is a major topic for us in the corridors of our Judicial system.

We have developed a new Treatment Programme. We are currently housing them up at the Maximum Corrections Centre, where we find some space to actually accommodate them so that we can impart to them some dedicated treatment programmes so that it will help them when they come out they can be law-abiding citizens.

Also we are looking at our Pre-Release Center. As we speak, the Pre-Release Centre is work-in-progress for us. We want to ensure that we have people that are allocated to the Pre-Release Center, have at least a minimum of two years. We have a lot of land down at Naboro. What we intend to do is to treat that particular place like a halfway home or as they call it “a Community-Based Corrections Sentencing”, so that they can farm the land, sell products and make a profit out of it, so that when they go back home, they go back and do something.

The key for our rehabilitation back home at the Corrections Service, Deputy Chairperson and Honourable Members, is to ensure that when those under our care leave the four walls of prison, they can go back to something.

In light of those changes, we have also changed part of our goals. We normally have three goals:

1. Security;
2. Safety; (those remain)
3. There used to be In-Care, now we have changed that to “Through-Care”.

In-Care previously meant that we only look after them when they are under our care, once they go out of the doors of prison that is it. It is the responsibility of the community, the *vanua*, the church leaders, but now through Through-Care, we are taking the rehabilitation right to the doorsteps of those under our care. It is a mammoth task but I commend the officers and the men and women of the Fiji Corrections Service, those that particularly work under the Rehabilitation Unit for taking up this challenge.

DEPUTY CHAIRPERSON.- Thank you, Commissioner Kean. I think with all of us here we are grateful for the tour that we have made to Korovou and Naboro because we have seen it for ourselves. I think just to make a whole summary of that visit, anyone who has been incarcerated, has been released into the community, now he can do something on his own rather than relying on the community, pretty much they come up with a skillset that they are ready to contribute to the community, and also to running their own families rather than relying on relatives to help them get on with life once they are released back into the communities. Thank you. Honourable Kumar.

HON. J.N. KUMAR.- Thank you, Deputy Chairperson. Thank you, Commissioner of Corrections Services for your commendable contributions and what you have just alluded to us today.

I think that all of us have noticed the changes that have taken place in these Corrections Complexes that we have visited and even what you have alluded to us. The worries that concern the nation and the Government and even your Department, even our Committee, that despite the services that have been provided for these inmates to go back to be reliable people in society, but we still receive the increase of inmates coming in.

I believe that there are a lot of contributing factors. What is your opinion on this? Maybe because of the services that are provided in Corrections Services are so good and they are happy, they feel good about it, when they go back to the community and they want to come back, is that one of the reasons. I would like to hear your opinion, Commissioner. Thank you.

MR. F.B. KEAN.- Thank you, Honourable Kumar, Deputy Chairperson and Honourable Members. First of all, I would like to commend, I think, the dividends of our rehabilitation efforts, the work that we are doing with the Fiji Police Force (FPF) in partnering with them in their community policing. We want to thank the relevant provincial councils that have invited us to their meetings; the relevant *tikina* councils that invite us to their meetings; we also want to thank the volunteers; church leaders that come down every Sundays to conduct church services; on Saturdays the Adventists; also all the volunteers. I think they are doing a wonderful work and I think this is reflected in the recidivism rate if I could announce to this august Committee. I am glad to report, as we stand today in respect of the year ending last year 31st July, our recidivism rate stood at 4.9 percent, which is equivalent to 70.

As we speak today, our recidivism rate stands at 10 which is 0.7 percent, there is a reduction in the recidivism rate. We have got another three more months to go. I hope it can stay the same but like I said, the work of rehabilitation goes back to my opening response to the Honourable Ratu Kiliraki. We need to change our modus operandi. The message to the officers (men and women) of the Fiji Corrections Service is, the day those under our care see us championing the rehabilitation efforts is the day the penny will drop for them to also make the change in their personal lives.

The journey has started, we hope that we can be consistent and maintain this. It is not only the work of Fiji Corrections Service. We are basically the back-end of the Judicial system, but the mammoth task of rehabilitating someone for us all members of this august forum, we all know that only one person can change a person. It requires a lot of spiritual guidance, a lot of spiritual help and a lot of work on our knees.

But I am thankful that in partnership with the church groups, volunteers, partnership with the *vanua*, partnership with Government, Government Ministries like the Ministry of Youth and Sports, Education, the Fiji Police Force, I think we are making some headway in relation to this and we just hope that our recidivism rate will continue to remain low as I have announced this afternoon.

DEPUTY CHAIRPERSON.- Thank you, Mr. Kean. I still believe also that that will continue to remain low as I have announced this afternoon. I still believe also that your recidivism rate, is also reflected through your rehabilitation programmes. Once the incarcerated goes through this programme, they now see a purpose in life regardless of our backgrounds wherever we come from. Some of us could have missed out an education because back then we had to pay school fees. If we had a family of ten, oversee the first four or three, would not attend school to sacrifice the money to go to the younger ones to get an education, and then you end up with the older ones getting into problems later on in life. But again after that visitation to the Corrections facilities, you have an amazing rehabilitation programme going on there and there is now a purpose in life for the incarcerated when they get out.

Honourable Members, any other question?

HON. J.N. KUMAR.- Thank you once again, Commissioner of Corrections Services, for your contribution. My question is on Human Resources. What sort of programmes or processes that are in place which would develop Human Resources' capacity and capability?

MR. F.B. KEAN.- Thank you, Honourable Kumar and Deputy Chairperson and Honourable Members, as I shared in the opening comments by the Assistant Commissioner, Corporate Service, when we talked about the system has failed us, one of the glaring gaps was training. I believe in any organisation, training is a very central and a very key component for Human Resource Development, whether it is a one-week training, one-day workshop or four weeks training, that is the very key. We are driving this training down at our Academy in Naboro as we speak. Our recruits will be passing out on Saturday. We have 60 recruits that will be passing out. We also have another course that is running for our Principal Correctional Officers and our Chief Correctional Officers. A leadership course that has been running for the past four weeks. I was down with them this morning. They had to sit for their three-hour leadership examination paper today, this week and next week is part of the examination. It is a six-weeks training programme for this particular rank grouping in Corrections Service. We have a Training Manual for the first time, we have developed a Training Manual in the Fiji Corrections Service.

The Training Manual, Deputy Chairperson and Honourable Members, actually tells the young recruit, when he comes out after recruit his career pathway until the day he becomes an Assistant, we will only take it up up til the rank of Assistant Superintendent. Anything after that, is at the prerogative I believe of the Commissioner, so the career pathway, the training courses that every officer (men and women) of the Fiji Corrections is to undertake, that is promulgated in our Training Manual at the Fiji Corrections Services. That offers a pathway to officers (men and women), and how will they perform on the course and how they will also keep themselves in the Service will determine how high they will reach in the Fiji Corrections Service so that is basically, I think, to sum it up, and maybe answer your question, Honourable Kumar, *vinaka*.

DEPUTY CHAIRPERSON.- Thank you, Commissioner Kean, I was just about to ask you the question on the Training Manual as you have mentioned in your way forward.

Honourable Members, do you have any other questions this afternoon, Honourable Ratu Kiliraki?

HON. RATU K. KILIRAKI.- Deputy Chairperson, there was one Treaty that this Committee is going to scrutinise, it is the International Covenant on Civil and Political Rights (ICCPR) of which its relevancy is probably that we need some enlightenment from the Commissioner so that it can be incorporated in our Report in regards to the Treaty, which is Article 10.

You will remember too, Deputy Chairperson, on the report from the Fiji Corrections Services, we were deliberating on the remand, commonly regarded as inmates awaiting trial. But as for the Treaty on the International Covenant on Civil and Political Rights, Fiji has not ratified the Covenant, however its principles have been incorporated into the Fijian Constitution under Chapter 2 of the Bill of Rights.

For Article 10, as I have mentioned, and if I can quote:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person: and
2. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall subject to separate treatment appropriate to their status as unconvicted persons.

So if there can be an enlightenment from the Commissioner so that we can be able to contribute as we go through the Treaty as mandated by Parliament.

DEPUTY CHAIRPERSON.- Mr. Commissioner.

MR. F.B. KEAN.- Honourable Ratu Kiliraki, thank you, for your question, Deputy Chairperson and Honourable Members, I would kindly request if we could make a written submission to the august Parliamentary Standing Committee for us to go and do a bit of read up. Is there any due date that you would specifically require us to make the submission?

DEPUTY CHAIRPERSON.- Probably by next week, within seven days?

MR. F.B. KEAN.- Next seven days.

DEPUTY CHAIRPERSON.- (Inaudible)

MR. F.B. KEAN.- Thank you.

DEPUTY CHAIRPERSON.- Honourable Ratu Matanitobua.

HON. RATU S. MATANITOBUA.- Thank you, Deputy Chairperson. How many women are in the organisation, on the subject of gender equality, Mr. Commissioner, you do not have to hate all the women, women are beside men, on the subject of the female gender, it is No. 5 on the Sustainable Development Goals (UN SDG). How has the FCS entrenched this regarding the number of women in the Service?

MR. F.B. KEAN.- Thank you, Honourable Ratu Suliano, Deputy Chairperson and Honourable Members. My apology for I cannot give you an exact figure of the number of women that we have in the Correctional Centre, but I can reassure you that I think the FCS is very much compliant to the United Nations Sustainable Development Goals that you have mentioned, No. 5.

I think the women in our Correctional Service are becoming the envy of some of our men. I have two Assistant Commissioners who are females; one is sitting beside me, Mrs. Sala Racaca, who heads my Corporate Service; and the other Assistant Commissioner is also a female, Senior Superintendent Salote Panapasa, she heads up our Operations, and above them is the Deputy Commissioner. They are well-placed within the organisation. We hope to have a few more trainings, but at the moment, we just have two females. Apart from those two correctional centres we also have them embedded in some of the other institutions doing administrative work and some other correctional work but not purely custodial work in men correctional centres. So I am happy to furnish you those numbers through the secretariat, Honourable Ratu Suliano, and I apologise for not having that figure with me this afternoon.

DEPUTY CHAIRPERSON.- Thank you, Commissioner Kean. We have noted also the decrease in incarcerated females. What do you think could be the contributing factor to that because if there is a model that can be adopted also for the male incarcerated. Would you would see a decrease in male incarcerated numbers?

MR. F.B. KEAN.- Deputy Chairperson and Honourable Members, that is a very tough question to respond to. But if I could, in a very honest and frank manner, respond, I believe life is all about choices. Sometimes we make the wrong choice and end up on the wrong side of the law and we pick ourselves up from it and move forward. I think again it also starts from all our old Jerusalem.

DEPUTY CHAIRPERSON.- Thank you, Mr. Kean. Do you have any other questions from the floor?

HON. RATU K. KILIRAKI.- Yes, probably the last one, just commending the rehabilitation. If it can be enlightened, the Rehabilitation Programme whether they get any help from outside to propel them to go forward like in micro small business enterprises like that.

DEPUTY CHAIRPERSON.- Thank you. Commissioner Kean.

MR. F.B. KEAN.- Thank you, Honourable Ratu Kiliraki, Deputy Chairperson and Honourable Members: as part of our rehabilitation scheme, under the Trading and Manufacturing Account (TMA), we have six small business units - the joinery, our tailor shops, our farm, piggery, poultry and the bakery. These are some of the skillsets we teach those under our care so when they leave us, they have

some skillsets to go and develop their small businesses. We do small business training as part of the rehabilitation effort in Corrections. We also have the Poverty Alleviation Fund (PAF) which is given by Government, I believe it is \$100,000 per annum.

This is also an avenue where those that live under our care can request funding to help them in their small business enterprises but when they make their submissions, they must give us their small business plan for us to look at to see whether it is viable. If not, then we try and move them towards an avenue to ensure that the projects that they are doing are sustainable.

We also have an early release scheme and under the scheme, we have several methods for early release: one is the community release; another is job placement; employment release, also weekend release and lastly, it is short-term release.

For the employment and job placement, it is very much part and parcel of our rehabilitation effort. We have some of those that have come under our care who have some very important skillsets to the organisations that they left, and we are very thankful that when we revisit these businesses, they are very receptive in wanting to get these people to return and work for them, so when they meet the prerequisites and the time for that that they are eligible to leave our care, we send them out on this Early Release Scheme for employment release, some for job replacements.

The Supervisors and the Officers in Charge, they go out to some of the business communities like those working in our tailor shops. We have had a few working in some garment factories, we secure some source of employment for those under our care.

Another big one is the *solesolevaki*. We are engaged in the *solesolevaki* with the *vanua*, *lotu*, families and we have had some very successful stories in relation to the *solesolevaki*. We want to take this to the next level.

Those, Honourable Ratu Kiliraki, Deputy Chairperson and Honourable Members are just some of the avenues that we have available for those under our care in relation to the rehabilitation.

DEPUTY CHAIRPERSON.- Thank you, Commissioner Kean. Just a question from my side, can you just, please, enlighten the purpose of the Prisoners Trust Fund Account?

MR. F.B. KEAN.- Deputy Chairperson, if you do not mind, I will just ask my Senior Accountant to give you a brief on this one, and if I can add anything else I will add on.

MS. H. KOI.- Thank you, Sir. Honourable Members, the Prisoners Trust Fund is usually fund that is collected on behalf of the inmates when they undertake work in our different sub-units and also different projects that are initiated to them, mainly our job placements when they have funding that comes in. This is all kept in the Prisoners Trust Account and this is usually given back to them upon their discharge dates.

DEPUTY CHAIRPERSON.- Thank you, Ms. Koi. Mr. Commissioner, would you like to add?

MR. F.B. KEAN.- Thank you, Deputy Chairperson and Honourable Members, as our Senior Accountant, Ms. Koi, has said, this is all prisoners' money. All prisoners who work for our Small Business Units are paid \$2 a day, that is the minimum we give them. Those who go out for cane harvesting, we also have a 60 40 percent share. Those who work in our art gallery, we also have a 60 40 percent share. Also there is stage money. When you reach for those long-term or serve long sentences, they reach a stage - Stage 1, Stage 2 and Special Stage and then you have the relevant funding that goes into the bank. All this moneys is actually called gratuity allowance, that is earmarked for those under our care when they are discharged from prison.

DEPUTY CHAIRPERSON.- Thank you, Mr. Kean. Is there any other question from the floor?

HON. J.N. KUMAR.- Maybe just the last question from me, Deputy Chair.

Thank you once again, Commissioner, yesterday, we were just looking at your Annual Report. There is a space there for your padre. I am just wondering, there is a table here too for different denominations and the number of inmates that belong to those denominations. My question is, what is the role of the padre in the Department and how does he liaise with other Ministers and other religious sects of the community in terms of those inmates that belong to those religious organisations?

MR. F.B. KEAN.- Thank you, Honourable Kumar, Deputy Chairperson and Honourable Members, we have a wonderful Chaplain at the Fiji Corrections Service, a very hardworking, committed and dedicated Chaplain, Rev. Josefa Tikonatabua.

I cannot thank him enough for all the work that he has undertaken. I think he plays a very central role in the rehabilitation work that is currently being undertaken by the Fiji Corrections Service. I think I can speak confidently that he has harnessed the relationship well with all the other Christian denominations in particular and also with our Muslim counterparts, the Muslim faith. He has worked hard well in that area - in harnessing.

Everything that comes in relation to religion is basically sent to the Chaplain to handle. He also plays a very central part, not only in the rehabilitation efforts of those under our care, but also for the officers, men and women for the Fiji Corrections Services.

As you all know, every now and then, we have the odd incident where I have to send him to go to a family and do some counselling on the home front. He comes in very handy in that regard. He goes around on a quarterly basis to visit the Correctional Centre, to visit the officers (men and women) of the Correctional Centre, and I cannot thank him enough for the wonderful work that our current Chaplain is undertaking.

DEPUTY CHAIRPERSON.- Thank you, Mr Kean. Just one last question, remember in one of your previous submissions, you had mentioned about the capacity-building in terms of getting a psychologist engaged into the Corrections Service. What is the status on that now?

MR F.B. KEAN.- Thank you, Deputy Chairperson and Honourable Members, as we speak, it goes again back to the question that was raised by the Honourable Kumar in relation to rehabilitation.

When we sat down and looked at where we are and where we are going, we had only one psychologist at that time. I am happy to report to this august Committee that we now have five psychologists in the Correctional Centre; a Senior Psychologist; a Psychologist posted to each of the four Divisions - the North, West, Central and the Southern Division basically Naboro. They play a very central and key role in our rehabilitation efforts.

It is amazing to see the feedback that comes from our psychologists' reports. I guess it is the trade that they go through to actually look at the inner person and they are doing a wonderful work for the Fiji Corrections Service and actually spearheading some of the rehabilitation programmes that we have under the FCS.

DEPUTY CHAIRPERSON.- Thank you, Commissioner Kean, that is about it for the submissions for today.

First of all, I would like to thank you and your team. That was a very comprehensive submission including your Annual Report for 2016.

In closing, *vinaka vakalevu*, and thank you all.

The Committee Interview adjourned at 2.52 p.m.

APPENDIX 2

SUBMISSION DOCUMENTS



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23 April 2018

C/O 5/91

The Honourable Netani Rika
The Chairman
Standing Committee on Foreign Affairs and Defense
Parliament of the Republic of Fiji
PO Box 2352
Government Buildings
SUVA

Dear Honourable N. Rika

**FIJI CORRECTIONS SERVICE SUBMISSION ON ANNUAL REPORT ON 01
JANUARY TO 31 JULY 2016**

Introduction

The FCS Annual Report for 01 January to 31 July 2016 highlights the monthly performance and achievements in our service delivery as amplified from our Annual Corporate Plan. Highlighted below are the responses by the Fiji Corrections Service to the questions raised by your Standing Committee:

Question 1.

In summary, please explain the highlights in the operations and administrative work of the FCS in the FCS Annual Report for the period 01 Jan – 31 July 2016?

- The appointment of the new Commissioner on 05 March 2016 brought about the introduction of significant changes to the way business was conducted in the FCS.
- This transformation was imperative after some thorough observations and analysis on the strategic direction the FCS was pursuing at that time.
- The announcement by Government through the Ministry of Economy for the new financial year to end on 31 July which was a trigger mechanism for FCS to lift its performance in the short time-frame that we had with us to complete this financial year.
- The massive task to capture the recognition of the FCS as a Disciplinary Service under the 2013 Constitution was surmounting, challenging and work in progress.

- The injection of good governance practices in the way FCS conducted its business was a top priority.
- The identification of training as a glaring gap was recognised and appropriate remedial actions were implemented to correct the failure of the system which has plagued the FCS in past years.

Question 2.

Please elaborate on the FCS Financial Manual?

- The Financial Manual is a mandatory requirement under the Financial Act.

Question 3.

Please explain the unqualified status of the financial reports based on the above period of the annual report?

- An unqualified opinion is an independent auditor's judgment that a company's financial records and statements are fairly and appropriately presented, and in accordance with Generally Accepted Accounting Principles (GAAP).
- This is a credit to our Accounts Team and the teamwork at FCS.

Question 4.

Please explain the doubling of the FCS returns (\$358,160.23) through Trade and Manufacturing Accounts (TMA)?

- This significant increase in profit is in line with Question 1: the transformation of the way we do business at the FCS. This basically involves honest and sound leadership, cutting down on unnecessary expenses and doubling up on our effort in marketing. Most importantly, the introduction of good governance practices involving accountability and transparency over our business operation.

Question 5.

What sections of the FCS TMA performed well during the above period?

- TMA has six Small Business Units (SBUs) and analysed below for reference.

Revenue Comparison 2015 – 2016 (Jan to July)				
SBU	2015	2015 Sales (Jan to July) Distribution %	2016	2016 Sales (Jan to July) Distribution %
Bakery	\$272,785.99	11	\$180,834.11	12
Crops	\$291,777.86	12	\$194,955.37	13
Joinery	\$136,018.51	6	\$102,418.02	7
Piggery	\$608,148.40	25	\$396,491.33	27
Poultry	\$668,908.77	27	\$358,034.85	25
Garment	\$369,064.07	15	\$176,867.44	13
Veges	\$115,569.19	5	\$37,179.54	3
TOTAL	\$2,462,707.79	100%	\$1,446,780.66	100%

- The performing business units, in comparison of the two different years (2015 – 2016); Piggery, Poultry and Tailor SBUs performed well in 2016 Jan to July Period. Not only did these SBUs performed well, they maintained their average percentage (20%) achievement at near consistent rate in 2016. FCS remitted to Ministry of Economy a remittance of \$103,384.56 in 2015 and \$358,160.23 in 2016, an increase of \$254,775.67.

Question 6.

What is the United Nations Minimum Standard Rules for the Treatment of Offenders?

- The UN Minimum Standard Rule sets out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions. It is now known as the Mandela Rules.
- The United Nations Standard Minimum Rules for the Treatment of Prisoners were adopted by the United Nations General Assembly on 17 December 2015 after a five-year revision process.

Question 7.

Please gives examples in the FCS context?

- The rules on general application on basic principles are applied in the FCS.
- Similarly the following action is executed in accordance to these minimum standards:
 - All prisoners are registered the first day they are brought to prison.
 - All prisoners are categorized according to their crime.
 - All prisoners are appropriately accommodated.

- All prisoners are provided with appropriate clothing and beddings.
- All prisoners are given adequate food and proper hygiene.
- All prisoners are given time for exercise and recreation.
- All prisoners are provided with adequate medical service.
- All prisoners are capable for internal and external education in line with the rehabilitation framework.
- Upon prisoners' death, illness and transfer, immediate family members are informed.

Question 8.

In reporting period 2015 – 2016 for the month of July there was a noted increase in male inmates over female inmates? Please explain the gender analysis?

- Male inmates recorded a 20% increase in 2016; from 1407 in 2015 to 1689 in 2016.
- Female inmates recorded a 46% reduction in 2016; from 89 in 2015 to 48 in 2016.
- The statistics of prisoners entering our Correctional Centers is beyond our control.

Question 9.

What is the key challenge facing the FCS as an institution?

- The urgent need to review the FCS Act, to capture the paradigm shift from punitive confinement to rehabilitation corrections, to recognize the organization as a Discipline Service under 2013 Constitution, introduce Community Based Corrections and introduce electronic monitoring and restraint systems.
- The huge emphasis placed on training spearheaded by the Commissioner to plug the gaps in our human resource development. The challenges of acquiring correction/prison training exposure in overseas jurisdictions due to differing legislations and its implementation.
- The need to embrace the use of technology which is a trend in modern prisons however this will come at a cost but also result in the reduction of manpower.

Question 10.

What is the lessons learnt and way forward?

- The importance of sound, effective and efficient leadership in the FCS. The system has failed the men and women of the FCS and corrective measures through robust training regime is now implemented to ensure that we conduct our correctional services professionally in accordance with the Intent of the Commissioner, expectations of government and all our customers.

We respectfully submit our response.



F.B.KEAN
Commander
Commissioner

THE NELSON MANDELA RULES

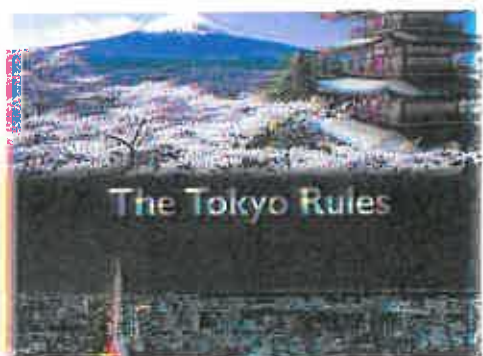


UNODC

United Nations Office on Drugs and Crime



*The United Nations
Standard/Minimum Rules for
the Treatment of Prisoners*



*The United Nations
Standard/Minimum Rules for
Non-Custodial Measures*



*The United Nations
Rules for the Treatment of
Women Prisoners and Non-Custodial
Measures for Women Offenders*

Foreword



This United Nations Minimum Standard is a universal document developed and endorsed by the United Nations Assembly to better address the Treatment of Prisoners, Treatment of Women Prisoners and address the Non Custodial Measures for Offenders.

In 1995 Fiji became a signatory to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) therefore adopting the Bangkok Rules is paramount in Fiji's promise to this assent. The Mandela, Bangkok and Tokyo Rules are fundamental principles that all FCS personnel must be well versed in, to ensure compliance to our International obligations.

It is my intent that these three United Nations documents is circulated, read and understood by all Officers of the Fiji Corrections Service.

F.B. KEAN

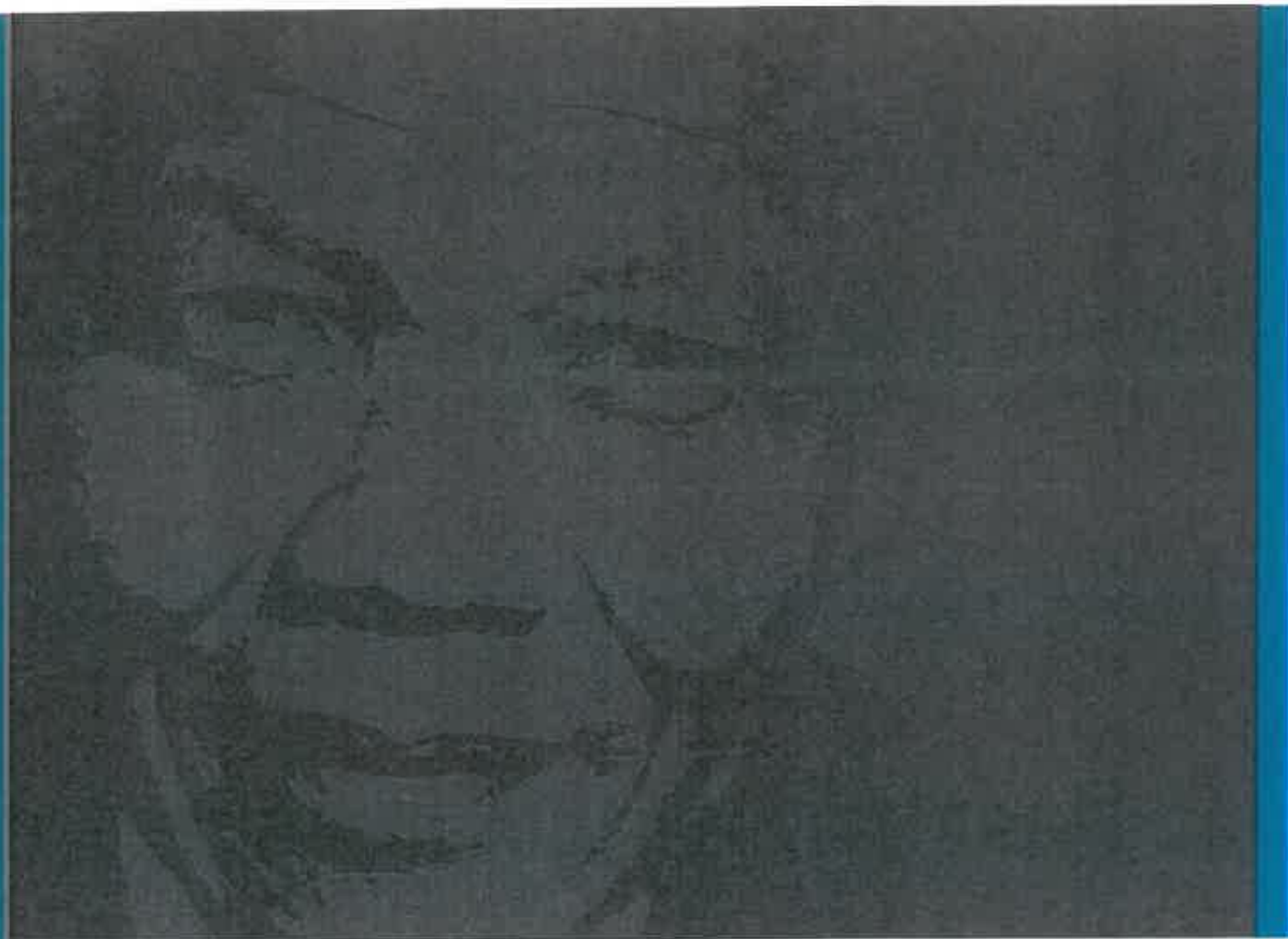
Commander

Commissioner



UNODC

United Nations Office on Drugs and Crime



**The United Nations
Standard Minimum Rules for
the Treatment of Prisoners**

(the Nelson Mandela Rules)

This publication has been made possible thanks to a contribution from the Government of Germany.

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

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.

¹ General Assembly resolution 70/175, annex, adopted on 17 December 2015.

Preliminary observation 3

1. Part I of the rules covers the general management of prisons, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.
2. Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

Preliminary observation 4

1. The rules do not seek to regulate the management of institutions set aside for young persons such as juvenile detention facilities or correctional schools, but in general part I would be equally applicable in such institutions.
2. The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

I. RULES OF GENERAL APPLICATION

Basic principles

Rule 1

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

Rule 2

1. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.

2. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.

Rule 3

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

Rule 4

1. The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.

2. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.

Rule 5

1. The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

2. Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

Prisoner file management

Rule 6

There shall be a standardized prisoner file management system in every place where persons are imprisoned. Such a system may be an electronic database

of records or a registration book with numbered and signed pages. Procedures shall be in place to ensure a secure audit trail and to prevent unauthorized access to or modification of any information contained in the system.

Rule 7

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

- (a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender;
- (b) The reasons for his or her commitment and the responsible authority, in addition to the date, time and place of arrest;
- (c) The day and hour of his or her admission and release as well as of any transfer;
- (d) Any visible injuries and complaints about prior ill-treatment;
- (e) An inventory of his or her personal property;
- (f) The names of his or her family members, including, where applicable, his or her children, the children's ages, location and custody or guardianship status;
- (g) Emergency contact details and information on the prisoner's next of kin.

Rule 8

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

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

Rule 9

All records referred to in rules 7 and 8 shall be kept confidential and made available only to those whose professional responsibilities require access to such records. Every prisoner shall be granted access to the records

pertaining to him or her, subject to redactions authorized under domestic legislation, and shall be entitled to receive an official copy of such records upon his or her release.

Rule 10

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

Separation of categories

Rule 11

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

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

Accommodation

Rule 12

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

2. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the prison.

Rule 13

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard

being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

Rule 14

In all places where prisoners are required to live or work:

- (a) The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
- (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

Rule 15

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

Rule 16

Adequate bathing and shower installations shall be provided so that every prisoner can, and may be required to, have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

Rule 17

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

Personal hygiene

Rule 18

1. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
2. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be able to shave regularly.

Clothing and bedding

Rule 19

1. Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating.
2. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.
3. In exceptional circumstances, whenever a prisoner is removed outside the prison for an authorized purpose, he or she shall be allowed to wear his or her own clothing or other inconspicuous clothing.

Rule 20

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

Rule 21

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

Food

Rule 22

1. Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
2. Drinking water shall be available to every prisoner whenever he or she needs it.

Exercise and sport

Rule 23

1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.

Health-care services

Rule 24

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

Rule 25

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special 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 prison director whenever he or she considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

Rule 34

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

Rule 35

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

- (a) The quantity, quality, preparation and service of food;
- (b) The hygiene and cleanliness of the institution and the prisoners;
- (c) The sanitation, temperature, lighting and ventilation of the prison;
- (d) The suitability and cleanliness of the prisoners' clothing and bedding;
- (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

2. The prison director shall take into consideration the advice and reports provided in accordance with paragraph 1 of this rule and rule 33 and shall take immediate steps to give effect to the advice and the recommendations in the reports. If the advice or recommendations do not fall within the prison director's competence or if he or she does not concur with them, the director shall immediately submit to a higher authority his or her own report and the advice or recommendations of the physician or competent public health body.

Restrictions, discipline and sanctions*Rule 36*

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

Rule 37

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

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of sanctions that may be imposed;

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

Rule 38

1. Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.
2. For prisoners who are, or have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison.

Rule 39

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

Rule 40

1. No prisoner shall be employed, in the service of the prison, in any disciplinary capacity.
2. This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

Rule 41

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

Rule 42

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

Rule 43

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:
 - (a) Indefinite solitary confinement;
 - (b) Prolonged solitary confinement;
 - (c) Placement of a prisoner in a dark or constantly lit cell;
 - (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
 - (e) Collective punishment.
2. Instruments of restraint shall never be applied as a sanction for disciplinary offences.
3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted

for a limited time period and as strictly required for the maintenance of security and order.

Rule 44

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

Rule 45

1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.
2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice,² continues to apply.

Rule 46

1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.
2. Health-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.
3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.

² See rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (resolution 45/113, annex); and rule 22 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders [the Bangkok Rules] (resolution 65/229, annex).

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 of exercising such rights, a member of the prisoner's family or any other person who has knowledge of the case may do so.

Rule 57

1. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue

delay, the complainant shall be entitled to bring it before a judicial or other authority.

2. Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.

3. Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71.

Contact with the outside world

Rule 58

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

- (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
- (b) By receiving visits.

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

Rule 59

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

Rule 60

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

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

Rule 61

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.
2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.
3. Prisoners should have access to effective legal aid.

Rule 62

1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

Rule 63

Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the prison administration.

Books*Rule 64*

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

Religion*Rule 65*

1. If the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or

approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

2. A qualified representative appointed or approved under paragraph 1 of this rule shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times.

3. Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his or her attitude shall be fully respected.

Rule 66

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

Retention of prisoners' property

Rule 67

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

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

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

4. If a prisoner brings in any drugs or medicine, the physician or other qualified health-care professionals shall decide what use shall be made of them.

Notifications

Rule 68

Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a

contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. The sharing of prisoners' personal information shall be subject to domestic legislation.

Rule 69

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

Rule 70

The prison administration shall inform a prisoner at once of the serious illness or death of a near relative or any significant other. Whenever circumstances allow, the prisoner should be authorized to go, either under escort or alone, to the bedside of a near relative or significant other who is critically ill, or to attend the funeral of a near relative or significant other.

Investigations

Rule 71

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

Rule 72

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

Removal of prisoners*Rule 73*

1. When prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
2. The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.
3. The transport of prisoners shall be carried out at the expense of the prison administration and equal conditions shall apply to all of them.

Institutional personnel*Rule 74*

1. The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends.
2. The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.
3. To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison staff and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

Rule 75

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

Rule 76

1. Training referred to in paragraph 2 of rule 75 shall include, at a minimum, training on:
 - (a) Relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates;
 - (b) Rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment;
 - (c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation;
 - (d) First aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.
2. Prison staff who are in charge of working with certain categories of prisoners, or who are assigned other specialized functions, shall receive training that has a corresponding focus.

Rule 77

All prison staff shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

Rule 78

1. So far as possible, prison staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.
2. The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

Rule 79

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

Rule 80

1. The prison director, his or her deputy, and the majority of other prison staff shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.
2. Whenever necessary, the services of a competent interpreter shall be used.

Rule 81

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

Rule 82

1. Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff

who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.

2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.

3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.

Internal and external inspections

Rule 83

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

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

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

Rule 84

1. Inspectors shall have the authority:

- (a) To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention;
- (b) To freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview;
- (c) To conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits;
- (d) To make recommendations to the prison administration and other competent authorities.

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

Rule 85

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

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

II. RULES APPLICABLE TO SPECIAL CATEGORIES

A. Prisoners under sentence

Guiding principles

Rule 86

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

Rule 87

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

Rule 88

1. The treatment of prisoners should emphasize not their exclusion from the community but their continuing part in it. Community agencies should therefore be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners.

2. There should be in connection with every prison social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

Rule 89

1. The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups. It is therefore desirable that such groups should be distributed in separate prisons suitable for the treatment of each group.

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

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

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

Rule 90

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

Treatment

Rule 91

The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

Rule 92

1. To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.
2. For every prisoner with a sentence of suitable length, the prison director shall receive, as soon as possible after his or her admission, full reports on all the matters referred to in paragraph 1 of this rule. Such reports shall always include a report by the physician or other qualified health-care professionals on the physical and mental condition of the prisoner.
3. The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Classification and individualization*Rule 93*

1. The purposes of classification shall be:
 - (a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;
 - (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.
2. So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.

Rule 94

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

Privileges*Rule 95*

Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every prison, in

order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of prisoners in their treatment.

Work

Rule 96

1. Sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified health-care professionals.
2. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

Rule 97

1. Prison labour must not be of an afflictive nature.
2. Prisoners shall not be held in slavery or servitude.
3. No prisoner shall be required to work for the personal or private benefit of any prison staff.

Rule 98

1. So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
2. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
3. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, prisoners shall be able to choose the type of work they wish to perform.

Rule 99

1. The organization and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life.
2. The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the prison.

Rule 100

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

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

Rule 101

1. The precautions laid down to protect the safety and health of free workers shall be equally observed in prisons.
2. Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workers.

Rule 102

1. The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workers.
2. The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of prisoners.

Rule 103

1. There shall be a system of equitable remuneration of the work of prisoners.
2. Under the system, prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
3. The system should also provide that a part of the earnings should be set aside by the prison administration so as to constitute a savings fund to be handed over to the prisoner on his or her release.

Education and recreation

Rule 104

1. Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterate prisoners and of young

prisoners shall be compulsory and special attention shall be paid to it by the prison administration.

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

Rule 105

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

Social relations and aftercare

Rule 106

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

Rule 107

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

Rule 108

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

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

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

B. Prisoners with mental disabilities and/or health conditions

Rule 109

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

Rule 110

It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare.

C. Prisoners under arrest or awaiting trial

Rule 111

1. Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.
2. Unconvicted prisoners are presumed to be innocent and shall be treated as such.
3. Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit from a special regime which is described in the following rules in its essential requirements only.

Rule 112

1. Untried prisoners shall be kept separate from convicted prisoners.
2. Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

Rule 113

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

Rule 114

Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

Rule 115

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

Rule 116

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

Rule 117

An untried prisoner shall be allowed to procure at his or her own expense or at the expense of a third party such books, newspapers, writing material and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

Rule 118

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

Rule 119

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



Rule 120

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

D. Civil prisoners*Rule 121*

In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. Persons arrested or detained without charge*Rule 122*

Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights,³ 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.

³ See resolution 2200 A [XXI], annex.



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THE BANGKOK RULES



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United Nations Office on Drugs and Crime



**United Nations Rules
for the Treatment of Women Prisoners
and Non-custodial Measures
for Women Offenders
with their Commentary**



General Assembly

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Resolution adopted by the General Assembly on 21 December 2010

[on the report of the Third Committee (A/65/457)]

65/229. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)

The General Assembly,

Recalling the United Nations standards and norms in crime prevention and criminal justice primarily related to the treatment of prisoners, in particular the Standard Minimum Rules for the Treatment of Prisoners,¹ the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners,² the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment³ and the Basic Principles for the Treatment of Prisoners,⁴

Recalling also the United Nations standards and norms in crime prevention and criminal justice primarily related to alternatives to imprisonment, in particular the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)⁵ and the basic principles on the use of restorative justice programmes in criminal matters,⁶

Recalling further its resolution 58/183 of 22 December 2003, in which it invited Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and the ways in which they can be addressed,

Considering the alternatives to imprisonment as provided for in the Tokyo Rules, and taking into consideration the gender specificities of, and the consequent need to give priority to applying non-custodial measures to, women who have come into contact with the criminal justice system,

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

² Economic and Social Council resolution 1984/47, annex.

³ Resolution 43/173, annex.

⁴ Resolution 45/111, annex.

⁵ Resolution 45/110, annex.

⁶ Economic and Social Council resolution 2002/12, annex.

Mindful of its resolution 61/143 of 19 December 2006, in which it urged States to, inter alia, take positive measures to address structural causes of violence against women and to strengthen prevention efforts that address discriminatory practices and social norms, including with regard to women who need special attention in the development of policies to address violence, such as women in institutions or in detention,

Mindful also of its resolution 63/241 of 24 December 2008, in which it called upon all States to give attention to the impact of parental detention and imprisonment on children and, in particular, to identify and promote good practices in relation to the needs and physical, emotional, social and psychological development of babies and children affected by parental detention and imprisonment,

Taking into consideration the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,⁷ in which Member States committed themselves, inter alia, to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders, and the plans of action for the implementation of the Declaration,⁸

Calling attention to the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,⁹ as it relates specifically to women in detention and in custodial and non-custodial settings,

Recalling that, in the Bangkok Declaration, Member States recommended to the Commission on Crime Prevention and Criminal Justice that it give consideration to reviewing the adequacy of standards and norms in relation to prison management and prisoners,

Having taken note of the initiative of the United Nations High Commissioner for Human Rights to designate the week from 6 to 12 October 2008 as Dignity and Justice for Detainees Week, which placed particular emphasis on the human rights of women and girls,

Considering that women prisoners are one of the vulnerable groups that have specific needs and requirements,

Aware of the fact that many existing prison facilities worldwide were designed primarily for male prisoners, whereas the number of female prisoners has significantly increased over the years,

Recognizing that a number of female offenders do not pose a risk to society and, as with all offenders, their imprisonment may render their social reintegration more difficult,

⁷ Resolution 55/59, annex.

⁸ Resolution 56/261, annex.

⁹ Resolution 60/177, annex.

Welcoming the development by the United Nations Office on Drugs and Crime of the *Handbook for Prison Managers and Policymakers on Women and Imprisonment*,¹⁰

Welcoming also the invitation, contained in Human Rights Council resolution 10/2 of 25 March 2009,¹¹ to Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote greater attention to the issue of women and girls in prison, including issues relating to the children of women in prison, with a view to identifying and addressing the gender-specific aspects and challenges related to this problem,

Welcoming further the collaboration between the World Health Organization Regional Office for Europe and the United Nations Office on Drugs and Crime, and taking note of the Kyiv Declaration on Women's Health in Prison,¹²

Taking note of the Guidelines for the Alternative Care of Children,¹³

Recalling Commission on Crime Prevention and Criminal Justice resolution 18/1 of 24 April 2009,¹⁴ in which the Commission requested the Executive Director of the United Nations Office on Drugs and Crime to convene in 2009 an open-ended intergovernmental expert group meeting to develop, consistent with the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules, supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings, welcomed the offer by the Government of Thailand to act as host to the expert group meeting, and requested the expert group meeting to submit the outcome of its work to the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, subsequently held in Salvador, Brazil, from 12 to 19 April 2010,

Recalling also that the four regional preparatory meetings for the Twelfth Congress welcomed the development of a set of supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings,¹⁵

Recalling further the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,¹⁶ in which Member States recommended that the Commission on Crime Prevention and Criminal Justice consider the draft United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders as a matter of priority for appropriate action,

1. *Takes note with appreciation* of the work of the expert group to develop supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings at its meeting, held in Bangkok from 23 to 26 November 2009, and of the outcome of the meeting;¹⁷
2. *Expresses its gratitude* to the Government of Thailand for having acted as host to the meeting of the expert group and for the financial support provided for the organization of the meeting;
3. *Adopts* the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, annexed to the present resolution, and approves the recommendation of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice that the rules should be known as "the Bangkok Rules";

¹⁰ See World Health Organization Regional Office for Europe and United Nations Office on Drugs and Crime, *Women's Health in Prison: Correcting Gender Inequity in Prison Health* (Copenhagen, 2009).

¹¹ Resolution 64/142, annex.

¹² See Official Records of the Economic and Social Council, 2009, Supplement No. 10 (E/2009/30), chap. I, sect. D.

¹³ See A/CONF.213/RPM.1/1, A/CONF.213/RPM.2/1, A/CONF.213/RPM.3/1 and A/CONF.213/RPM.4/1.

¹⁴ Resolution 65/230, annex.

¹⁵ See A/CONF.213/17.

4. *Recognizes* that, in view of the great variety of legal, social, economic and geographical conditions in the world, not all of the rules can be applied equally in all places and at all times; and that they should, however, serve to stimulate a constant endeavour to overcome practical difficulties in their application, in the knowledge that they represent, as a whole, global aspirations amenable to the common goal of improving outcomes for women prisoners, their children and their communities;
5. *Encourages* Member States to adopt legislation to establish alternatives to imprisonment and to give priority to the financing of such systems, as well as to the development of the mechanisms needed for their implementation;
6. *Encourages* Member States having developed legislation, procedures, policies or practices for women in prison or on alternatives to imprisonment for women offenders to make information available to other States and relevant international, regional and intergovernmental organizations, as well as non-governmental organizations, and to assist them in developing and implementing training or other activities in relation to such legislation, procedures, policies or practices;
7. *Invites* Member States to take into consideration the specific needs and realities of women as prisoners when developing relevant legislation, procedures, policies and action plans and to draw, as appropriate, on the Bangkok Rules;
8. *Also invites* Member States to collect, maintain, analyse and publish, as appropriate, specific data on women in prison and women offenders;
9. *Emphasizes* that, when sentencing or deciding on pretrial measures for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent;
10. *Requests* the United Nations Office on Drugs and Crime to provide technical assistance and advisory services to Member States, upon request, in order to develop or strengthen, as appropriate, legislation, procedures, policies and practices for women in prison and on alternatives to imprisonment for women offenders;
11. *Also requests* the United Nations Office on Drugs and Crime to take steps, as appropriate, to ensure broad dissemination of the Bangkok Rules, as a supplement to the Standard Minimum Rules for the Treatment of Prisoners¹⁸ and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),¹⁹ and to ensure the intensification of information activities in this area;
12. *Further requests* the United Nations Office on Drugs and Crime to increase its cooperation with other relevant United Nations entities, intergovernmental and regional organizations and non-governmental organizations in the provision of relevant assistance to countries and to identify needs and capacities of countries in order to increase country-to-country and South-South cooperation;
13. *Invites* specialized agencies of the United Nations system and relevant regional and international intergovernmental and non-governmental organizations to engage in the implementation of the Bangkok Rules;

¹⁸ Resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 of the Economic and Social Council.

¹⁹ Adopted by General Assembly resolution 45/110 of 14 December 1990.

14. Invites Member States and other donors to provide extrabudgetary contributions for such purposes, in accordance with the rules and procedures of the United Nations.

71st plenary meeting 21 December 2010

Annex

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)

Preliminary observations

1. The Standard Minimum Rules for the Treatment of Prisoners²⁰ apply to all prisoners without discrimination; therefore, the specific needs and realities of all prisoners, including of women prisoners, should be taken into account in their application. The Rules, adopted more than 50 years ago, did not, however, draw sufficient attention to women's particular needs. With the increase in the number of women prisoners worldwide, the need to bring more clarity to considerations that should apply to the treatment of women prisoners has acquired importance and urgency.
2. Recognizing the need to provide global standards with regard to the distinct considerations that should apply to women prisoners and offenders and taking into account a number of relevant resolutions adopted by different United Nations bodies, in which Member States were called upon to respond appropriately to the needs of women offenders and prisoners, the present rules have been developed to complement and supplement, as appropriate, the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)²¹ in connection with the treatment of women prisoners and alternatives to imprisonment for women offenders.
3. The present rules do not in any way replace the Standard Minimum Rules for the Treatment of Prisoners or the Tokyo Rules and, therefore, all relevant provisions contained in those two sets of rules continue to apply to all prisoners and offenders without discrimination. While some of the present rules bring further clarity to existing provisions in the Standard Minimum Rules for the Treatment of Prisoners and in the Tokyo Rules in their application to women prisoners and offenders, others cover new areas.
4. These rules are inspired by principles contained in various United Nations conventions and declarations and are therefore consistent with the provisions of existing international law. They are addressed to prison authorities and criminal justice agencies (including policymakers, legislators, the prosecution service, the judiciary and the probation service) involved in the administration of non-custodial sanctions and community-based measures.
5. The specific requirements for addressing the situation of women offenders have been emphasized at the United Nations in various contexts. For example, in 1980, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a resolution on the specific needs of women prisoners,¹⁸ in which it recommended that, in the implementation of the resolutions

²⁰ Above, No. 18

²¹ Above, No. 19

adopted by the Sixth Congress directly or indirectly relevant to the treatment of offenders, recognition should be given to the specific problems of women prisoners and the need to provide the means for their solution; that, in countries where it was not yet done, programmes and services used as alternatives to imprisonment should be made available to women offenders on an equal basis with male offenders; and that the United Nations, the governmental and non-governmental organizations in consultative status with it and all other international organizations should make continuing efforts to ensure that the woman offender was treated fairly and equally during arrest, trial, sentence and imprisonment, particular attention being paid to the special problems which women offenders encounter, such as pregnancy and child care.

6. The Seventh Congress, the Eighth Congress and the Ninth Congress also made specific recommendations concerning women prisoners.²²
7. In the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,²³ adopted by the Tenth Congress, Member States committed themselves to taking into account and addressing, within the United Nations crime prevention and criminal justice programme, as well as within national crime prevention and criminal justice strategies, any disparate impact of programmes and policies on women and men (para. 11); and to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders (para. 12). The plans of action for the implementation of the Vienna Declaration²⁴ contain a separate section (sect. XIII) devoted to specific recommended measures to follow up on the commitments undertaken in paragraphs 11 and 12 of the Declaration, including that of States reviewing, evaluating and, if necessary, modifying their legislation, policies, procedures and practices relating to criminal matters, in a manner consistent with their legal systems, in order to ensure that women are treated fairly by the criminal justice system.
8. The General Assembly, in its resolution 58/183 of 22 December 2003 entitled "Human rights in the administration of justice", called for increased attention to be devoted to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they could be addressed.
9. In its resolution 61/143 of 19 December 2006 entitled "Intensification of efforts to eliminate all forms of violence against women", the General Assembly stressed that "violence against women" meant any act of gender-based violence resulting in, or likely to result in, physical, sexual or psychological harm or suffering to women, including arbitrary deprivation of liberty,

²² Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August–5 September 1980: report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B, resolution 9.

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

See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. A.5 (Basic Principles for the Treatment of Prisoners (see also General Assembly resolution 45/111, annex)); and *ibid.*, sect. C, resolutions 17 (on pretrial detention), 19 (on the management of criminal justice and development of sentencing policies) and 21 (on international and interregional cooperation in prison management and community-based sanctions and other matters).

See A/CONF.169/16/Rev.1, chap. I, resolutions 1 (on recommendations on the four substantive topics of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders), 5 (on the practical implementation of the Standard Minimum Rules for the Treatment of Prisoners) and 8 (on the elimination of violence against women).

²³ See A/RES/55/59.

²⁴ *Ibid.*

whether occurring in public or in private life, and urged States to review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs discriminating against women or having a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they existed, complied with international human rights obligations, commitments and principles, including the principle of non-discrimination; to take positive measures to address structural causes of violence against women and to strengthen prevention efforts addressing discriminatory practices and social norms, including with regard to women in need of special attention, such as women in institutions or in detention; and to provide training and capacity-building on gender equality and women's rights for law enforcement personnel and the judiciary. The resolution is an acknowledgement of the fact that violence against women has specific implications for women's contact with the criminal justice system, as well as their right to be free of victimization while imprisoned. Physical and psychological safety is critical to ensuring human rights and improving outcomes for women offenders, of which the present rules take account.

10. Finally, in the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, adopted by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice on 25 April 2005,²⁵ Member States declared that they were committed to the development and maintenance of fair and efficient criminal justice institutions, including the humane treatment of all those in pretrial and correctional facilities, in accordance with applicable international standards (para. 8); and they recommended that the Commission on Crime Prevention and Criminal Justice should give consideration to reviewing the adequacy of standards and norms in relation to prison management and prisoners (para. 30).
11. As with the Standard Minimum Rules for the Treatment of Prisoners, in view of the great variety of legal, social, economic and geographical conditions worldwide, it is evident that not all of the following rules can be equally applied in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in how they are applied, in the knowledge that they represent, as a whole, the global aspirations considered by the United Nations as leading to the common goal of improving outcomes for women prisoners, their children and their communities.
12. Some of these rules address issues applicable to both men and women prisoners, including those relating to parental responsibilities, some medical services, searching procedures and the like, although the rules are mainly concerned with the needs of women and their children. However, as the focus includes the children of imprisoned mothers, there is a need to recognize the central role of both parents in the lives of children. Accordingly, some of these rules would apply equally to male prisoners and offenders who are fathers.

Introduction

13. The following rules do not in any way replace the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules. Therefore, all provisions contained in those two sets of rules continue to apply to all prisoners and offenders without discrimination.
14. Section I of the present rules, covering the general management of institutions, is applicable to all categories of women deprived of their liberty, including criminal or civil, untried or convicted women prisoners, as well as women subject to "security measures" or corrective measures ordered by a judge.

²⁵ Eleventh United Nations Congress on Crime Prevention and Criminal Justice (Bangkok, Thailand, 18-25 April 2005).

15. Section II contains rules applicable only to the special categories dealt with in each subsection. Nevertheless, the rules under subsection A, applicable to prisoners under sentence, shall be equally applicable to the category of prisoners dealt with in subsection B, provided they do not conflict with the rules governing that category of women and are for their benefit.
16. Subsections A and B both provide additional rules for the treatment of juvenile female prisoners. It is important to note, however, that separate strategies and policies in accordance with international standards, in particular the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),²⁶ the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),²⁷ the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty²⁸ and the Guidelines for Action on Children in the Criminal Justice System,²⁹ need to be designed for the treatment and rehabilitation of this category of prisoners, while institutionalization shall be avoided to the maximum possible extent.
17. Section III contains rules covering the application of non-custodial sanctions and measures for women and juvenile female offenders, including on arrest and at the pretrial, sentencing and post-sentencing stages of the criminal justice process.
18. Section IV contains rules on research, planning, evaluation, public awareness-raising and sharing of information, and is applicable to all categories of female offenders covered in these rules.

I. Rules of general application

1. Basic principle

[Supplements rule 6 of the Standard Minimum Rules for the Treatment of Prisoners] Rule 1

In order for the principle of non-discrimination embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.

2. Admission

Rule 2

1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.
2. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

²⁶ Resolution 40/33, annex.

²⁷ Resolution 45/112, annex.

²⁸ Resolution 45/113, annex.

²⁹ Economic and Social Council resolution 1997/30, annex.

3. Register

[Supplements rule 7 of the Standard Minimum Rules for the Treatment of Prisoners] Rule 3

1. The number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status.
2. All information relating to the children's identity shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children.

4. Allocation

Rule 4

Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.

5. Personal hygiene

[Supplements rules 15 and 16 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 5

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

6. Health-care services

[Supplements rules 22 to 26 of the Standard Minimum Rules for the Treatment of Prisoners]

(a) Medical screening on entry

[Supplements rule 24 of the Standard Minimum Rules for the Treatment of Prisoners] Rule 6

The health screening of women prisoners shall include comprehensive screening to determine primary health-care needs, and also shall determine:

- (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling;
- (b) Mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm;
- (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues;
- (d) The existence of drug dependency;
- (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.

Rule 7

1. If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.
2. Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counselling.
3. Specific measures shall be developed to avoid any form of retaliation against those making such reports or taking legal action.

Rule 8

The right of women prisoners to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times.

Rule 9

If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided.

(b) Gender-specific health care*Rule 10*

1. Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners.
2. If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination.

Rule 11

1. Only medical staff shall be present during medical examinations unless the doctor is of the view that exceptional circumstances exist or the doctor requests a member of the prison staff to be present for security reasons or the woman prisoner specifically requests the presence of a member of staff as indicated in rule 10, paragraph 2, above.
2. If it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.

(c) Mental health and care*Rule 12*

Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison or in non-custodial settings.

Rule 13

Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support.

(d) HIV prevention, treatment, care and support*Rule 14*

In developing responses to HIV/AIDS in penal institutions, programmes and services shall be responsive to the specific needs of women, including prevention of mother-to-child transmission. In this context, prison authorities shall encourage and support the development of initiatives on HIV prevention, treatment and care, such as peer-based education.

(e) Substance abuse treatment programmes*Rule 15*

Prison health services shall provide or facilitate specialized treatment programmes designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds.

(f) Suicide and self-harm prevention*Rule 16*

Developing and implementing strategies, in consultation with mental health-care and social welfare services, to prevent suicide and self-harm among women prisoners and providing appropriate, gender-specific and specialized support to those at risk shall be part of a comprehensive policy of mental health care in women's prisons.

(g) Preventive health-care services*Rule 17*

Women prisoners shall receive education and information about preventive health-care measures, including on HIV, sexually transmitted diseases and other blood-borne diseases, as well as gender-specific health conditions.

Rule 18

Preventive health-care measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynaecological cancer, shall be offered to women prisoners on an equal basis with women of the same age in the community.

7. Safety and security

[Supplements rules 27 to 36 of the Standard Minimum Rules for the Treatment of Prisoners]

(a) Searches

Rule 19

Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.

Rule 20

Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

Rule 21

Prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners.

(b) Discipline and punishment

[Supplements rules 27 to 32 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 22

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

Rule 23

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

(c) Instruments of restraint

[Supplements rules 33 and 34 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 24

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

(d) Information to and complaints by prisoners; inspections

[Supplements rules 35 and 36 and, with regard to inspection, rule 55 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 25

1. Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation.
2. Women prisoners who have been subjected to sexual abuse, and especially those who have become pregnant as a result, shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid.
3. In order to monitor the conditions of detention and treatment of women prisoners, inspectorates, visiting or monitoring boards or supervisory bodies shall include women members.

8. Contact with the outside world

[Supplements rules 37 to 39 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 26

Women prisoners' contact with their families, including their children, and their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.

Rule 27

Where conjugal visits are allowed, women prisoners shall be able to exercise this right on an equal basis with men.

Rule 28

Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.

9. Institutional personnel and training

[Supplements rules 46 to 55 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 29

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

Rule 30

There shall be a clear and sustained commitment at the managerial level in prison administrations to prevent and address gender-based discrimination against women staff.

Rule 31

Clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment shall be developed and implemented.

Rule 32

Women prison staff shall receive equal access to training as male staff, and all staff involved in the management of women's prisons shall receive training on gender sensitivity and prohibition of discrimination and sexual harassment.

Rule 33

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

Rule 34

Capacity-building programmes on HIV shall be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, shall also be part of the curriculum.

Rule 35

Prison staff shall be trained to detect mental health-care needs and risk of self-harm and suicide among women prisoners and to offer assistance by providing support and referring such cases to specialists.

10. Juvenile female prisoners*Rule 36*

Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.

Rule 37

Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.

Rule 38

Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners.

Rule 39

Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.

II. Rules applicable to special categories**A. Prisoners under sentence****1. Classification and individualization**

[Supplements rules 67 to 69 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 40

Prison administrators shall develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners to ensure appropriate and individualized planning and implementation towards those prisoners' early rehabilitation, treatment and reintegration into society.

Rule 41

The gender-sensitive risk assessment and classification of prisoners shall:

- (a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high-security measures and increased levels of isolation can have on women prisoners;
- (b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other caretaking responsibilities, to be taken into account in the allocation and sentence planning process;
- (c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs;
- (d) Ensure that those with mental health-care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.

2. Prison regime

[Supplements rules 65, 66 and 70 to 81 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 42

1. Women prisoners shall have access to a balanced and comprehensive programme of activities which take account of gender-appropriate needs.
2. The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities.

3. Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison.
4. Particular efforts shall be made to provide appropriate services for women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.

Social relations and aftercare

[Supplements rules 79 to 81 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 43

Prison authorities shall encourage and, where possible, also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration.

Rule 44

In view of women prisoners' disproportionate experience of domestic violence, they shall be properly consulted as to who, including which family members, is allowed to visit them.

Rule 45

Prison authorities shall utilize options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage.

Rule 46

Prison authorities, in cooperation with probation and/or social welfare services, local community groups and non-governmental organizations, shall design and implement comprehensive pre- and post-release reintegration programmes which take into account the gender-specific needs of women.

Rule 47

Additional support following release shall be provided to released women prisoners who need psychological, medical, legal and practical help to ensure their successful social reintegration, in cooperation with services in the community.

3. Pregnant women, breastfeeding mothers and mothers with children in prison

[Supplements rule 23 of the Standard Minimum Rules for the Treatment of Prisoners] Rule 48

1. Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.

2. Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.
3. The medical and nutritional needs of women prisoners who have recently given birth, but whose babies are not with them in prison, shall be included in treatment programmes.

Rule 49

Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.

Rule 50

Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.

Rule 51

1. Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services.
2. The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

Rule 52

1. Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.
2. The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.
3. After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

4. Foreign nationals

[Supplements rule 38 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 53

1. Where relevant bilateral or multilateral agreements are in place, the transfer of non-resident foreign-national women prisoners to their home country, especially if they have children in their home country, shall be considered as early as possible during their imprisonment, following the application or informed consent of the woman concerned.

2. Where a child living with a non-resident foreign-national woman prisoner is to be removed from prison, consideration should be given to relocation of the child to its home country, taking into account the best interests of the child and in consultation with the mother.

5. Minorities and indigenous peoples

Rule 54

Prison authorities shall recognize that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender- and culture-relevant programmes and services. Accordingly, prison authorities shall provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves and the relevant groups.

Rule 55

Pre- and post-release services shall be reviewed to ensure that they are appropriate and accessible to indigenous women prisoners and to women prisoners from ethnic and racial groups, in consultation with the relevant groups.

B. Prisoners under arrest or awaiting trial

[Supplements rules 84 to 93 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 56

The particular risk of abuse that women face in pretrial detention shall be recognized by relevant authorities, which shall adopt appropriate measures in policies and practice to guarantee such women's safety at this time. (See also rule 58 below, with regard to alternatives to pretrial detention.)

III. Non-custodial measures

Rule 57

The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.

Rule 58

Taking into account the provisions of rule 2.3 of the Tokyo Rules, women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties. Alternative ways of managing women who commit offences, such as diversionary measures and pretrial and sentencing alternatives, shall be implemented wherever appropriate and possible.

Rule 59

Generally, non-custodial means of protection, for example in shelters managed by independent bodies, non-governmental organizations or other community services, shall be used to protect women who need such protection. Temporary measures involving custody to protect a woman shall only be applied when necessary and expressly requested by the woman concerned and shall in all cases be supervised by judicial or other competent authorities. Such protective measures shall not be continued against the will of the woman concerned.

Rule 60

Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.

Rule 61

When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds.

Rule 62

The provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes.

1. Post-sentencing dispositions*Rule 63*

Decisions regarding early conditional release (parole) shall favourably take into account women prisoners' caretaking responsibilities, as well as their specific social reintegration needs.

2. Pregnant women and women with dependent children*Rule 64*

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.

3. Juvenile female offenders*Rule 65*

Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making.

4. Foreign nationals

Rule 66

Maximum effort shall be made to ratify the United Nations Convention against Transnational Organized Crime³⁰ and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime³¹ 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

- i. 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.

³⁰ United Nations, Treaty Series, vol. 2225, No. 39574.

³¹ Ibid., vol. 2237, No. 39574.

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.

**COMMENTARY TO THE UNITED NATIONS RULES FOR THE
TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL
MEASURES FOR WOMEN OFFENDERS (THE BANGKOK RULES)²⁸**

²⁸ This Commentary is not part of the Bangkok Rules. It was prepared by the United Nations Office on Drugs and Crime (UNODC) and it was approved by the Open-ended intergovernmental expert group meeting to develop supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings, held in Bangkok, Thailand from 23 to 26 November 2009.

PART I

RULES OF GENERAL APPLICATION

Rule 1

The principle of non-discrimination enshrined in Rule 6 of the SMR and the principle of individualization provided in Rule 63 (1) clearly imply that providing for the special needs of individuals is an essential element of putting into practice the principle of non-discrimination. Thus, taking action to eliminate discriminatory practice in the case of women prisoners requires taking account of special considerations, when applying SMR and these rules to women prisoners. This understanding is reflected in Principle 5 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which makes clear that special measures to address the particular needs of women prisoners and other special categories are not to be deemed discriminatory. It is also a reflection of Article 4, of the UN Convention on the Elimination of All Forms of Discrimination against Women.

Rule 2 (1)

Women, especially those who are illiterate, poor, those who have been violently victimized and who are the primary carers of their children and families, feel particularly vulnerable on first admission to prison. They are often unaware of their legal rights, are extremely distressed about what is happening to them and what impact that will have on their children. According to some studies prisoners are at heightened risk of self-harm and suicide during the initial period following admission to prison.³³ Facilities where new prisoners can spend their first 48 hours to help with transition to prison life, which have been introduced in a number of prisons in the UK, for example, should be provided to all prisoners, but are particularly important in the case of women prisoners, who are especially vulnerable to mental distress, and particularly during their first days of imprisonment.³⁴ The importance of a special reception area and procedures, which assists newly arrived prisoners to contact their families and to receive comprehensive information about the prison regime and where to seek help when in need, has been highlighted also by other literature, including WHO.³⁵ Foreign nationals, especially if non-resident, feel particularly vulnerable at this time and should receive the additional assistance to which they are entitled.

³³ According to the US Department of Justice, National Institute of Corrections research, 50% of prison suicides occur in the first 24 hours and 27% occur during the first 3 hours (Hayes, Lindsay, M., Project Director, National Centre on Institutions and Alternatives, U.S. Department of Justice, National Institute of Corrections, *Prison Suicide: An Overview and Guide to Prevention* (1995)); research published by the Royal College of Psychiatrists (UK) found that 17% of suicides in UK occurred during the first week of imprisonment, 28.5% within a month, 51.2% within three months and 76.8% within a year (Dooley, E., *Prison Suicide in England and Wales*, British Journal of Psychiatry, Royal College of Psychiatrists (1990)); research carried out in Canada revealed that those in the initial phase of imprisonment show the highest rate of suicide (John Howard Society of Alberta, *Prison and Jail Suicide* (1990)); according to research carried out by the UK NGO, Howard League for Penal Reform, in the UK 50% of those who take their own lives in prison do so during the first month. They point out that first night centres which have been put in place in a number of prisons in the UK have helped ease transition from the outside to prison life. The Howard League for Penal Reform's research shows that a dedicated wing, or unit, where all new prisoners spend their first 48 hours at the prison can prevent suicides.

³⁴ The Howard League for Penal Reform, 'Care, concern and carpets': How women's prisons can use first night in custody centres to reduce distress, (2006).

³⁵ Möller, L., Stöver, H., Jürgens, R., Gatherer, A and Nikogosian, H. eds., *Health in Prisons, A WHO guide to the essentials in prison health*, The World Health Organisation Europe (2007), p. 142.

Rule 2 (2)

Most women who face detention or imprisonment are mothers³⁶ and often primary carers of children. The sudden and often unexpected removal of the carer requires alternative care arrangements to be made in order to protect and provide for the children, taking into account their best interests in line with the provisions of the Convention on the Rights of the Child. The mother would also need to have access at this time to information and legal advice on alternative care arrangements and their long term implications. It is recognised that granting suspension of detention or sentence may not be possible in some jurisdictions, in which case, authorities are encouraged to use options such as home leave, immediately on detention to allow for the requisite arrangements in relation to caring responsibilities to be made.

Rule 3

This information, gathered in accordance with the purpose of detention, as well as with consideration for the mother's protection of privacy, will be valuable in assisting with contact between the mother and child living outside prison if required, as well as in gathering data about the parental status of women in prison, with a view to increasing knowledge about imprisoned mothers and improving the suitability and effectiveness of criminal justice responses to women offenders, while taking account of the best interests of their children. Mothers should receive information about the purposes for which this information is being collected and be encouraged to provide it, though many may have reasons for not wishing to disclose it, and their choice must be respected by the authorities.

Rule 4

All prisoners should be allocated, as far as possible, close to their homes or places of social reintegration, in order to facilitate communication with their families, as well as agencies and services used to enhance their social rehabilitation, in order to put into practice of Rules 79 and 80 of SMR, which provide that special attention should be paid to the maintenance and improvement of relations between the prisoners and their families. These Rules state that from the beginning of a prisoner's sentence, consideration should be given to his or her future after release. Prisoners should be encouraged and assisted to maintain or establish relations with agencies outside prison which may promote the best interests of his or her family and his own social rehabilitation. However, women are most often disadvantaged in their allocation, due to the small number of women's prisons in most countries and therefore experience immense challenges in maintaining contact with their families. In accordance with this rule, prison authorities should, to the extent possible, introduce the means to ensure that women are allocated closer to home or places where they can be in communication with agencies which can assist with their social rehabilitation. Given women's history with violence and exploitation, it should not be assumed that women's former residence is a preferred or safe place for her to be released to (e.g. due to past abuse or expected future stigmatization) and her allocation close to services that will assist with social reintegration should therefore take account of this factor.

Rule 5

Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels/pads, are of particular importance. These should be available to women under conditions in which they do not need to be embarrassed asking for them (for example either dispensed by other women or, better yet, accessible whenever needed). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considers that the failure to provide such basic necessities can amount to degrading treatment.³⁷

³⁶ UNODC Handbook for prison managers and policymakers on Women and Imprisonment (2008), pp.18-19.

³⁷ CPT Standards, 2006 Edition, Extract from the 10th General Report, CPT/Inf (2000) 13, para. 31.

Rule 6

Rule 24 of the SMR provides that the medical officer should see and examine every prisoner as soon as possible after his or her admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures. The Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment (Principle 24) also provides that a proper medical examination should be offered to a detained or imprisoned person as promptly as possible after his or her admission to the place of detention or imprisonment, and thereafter medical care and treatment should be provided whenever necessary.

It is vital that all prisoners undergo a medical examination and health screen on entry, on an individual basis, to ensure that the prisoner starts receiving proper treatment for any health conditions immediately. The medical practitioner carrying out such screening should ideally be independent from the prison authorities to ensure an impartial, objective examination report. Women prisoners, typically from economically and socially disadvantaged backgrounds, and many women in low-income countries suffer from a variety of health conditions which may be untreated in the community. In many countries women face additional discrimination and barriers in accessing adequate health-care services in the community, due to their gender. Therefore women prisoners often have greater primary health-care needs in comparison to men. For these reasons, a comprehensive screening of women on entry to prison is vital to ensure appropriate treatment. Such screening should be accompanied by the provision of information on primary healthcare and protection from infectious diseases.³⁸

Rule 6 (1)

Violence against women, especially sexual violence, has numerous short- and long-term sexual and reproductive health consequences for women. As such, women prisoners represent a high-risk group for sexual and reproductive health diseases. It is vital to diagnose any reproductive or sexual health diseases as early as possible and provide appropriate treatment. As regards testing for HIV, it is essential that informed consent is sought and secured non-coercively before HIV/AIDS testing or medical interventions are provided to prisoners and that the process of securing consent specifically allows prisoners to refuse such testing and treatments.³⁹

³⁸ Medical examinations undertaken on entry to police detention facilities need not be as comprehensive as outlined in Rule 6, which applies primarily to pre-trial detention and prison facilities. The main purpose of medical examination in police detention is to provide any emergency medical care necessary and prevent ill-treatment and abuse, therefore to record the detainee's basic medical conditions and needs, and in particular whether or not he or she had any injuries on admission.

³⁹ UNODC, WHO, UNAIDS, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, A Framework for an Effective National Response, Lines, R. and Stöver, H., 2006, p. 19. See also Council of Europe, Committee of Ministers Recommendation No. R (93) 6, Concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS Related Health Problems in Prison, Rule 3 and CPT 3rd General Report, CPT/INF (93) 12, para. 55.

Rule 6 (2)

The assessment should take into account the mental health history of the prisoner, drug and/or alcohol addiction and prior self-harm and suicide attempts, in determining risks. In a number of countries research indicates that women have much higher levels of mental health-care needs than men on entry to prison, are more likely to be addicted to drugs and have higher rates of self-harm attempts. In at least one country, research indicates higher levels of suicide among women prisoners in comparison to men. Research in some countries indicates that prisoners who commit suicide suffered from some form of mental disability or substance dependence (or both) on entry to prison. Studies of prisoner suicides have also indicated that long-term sentences, single-cell use, mental disabilities, substance abuse and a history of suicidal tendencies are associated with an increased suicide risk.⁴⁰ Research has also identified a higher prevalence of self-harm history among prisoners who commit suicide, compared to the general population, as well as higher levels of suicide “ideation” among self-harmers in prison.⁴¹ Thus, prisoners who harm themselves may be considered at higher risk of attempting suicide than others.

Rule 6 (3)

It is important that the reproductive health history of women is recorded in their medical files to assist with determining any future treatment. Current reproductive health complications should receive the appropriate medical responses without delay. For example, women who have recently undergone abortions, experienced miscarriages or complications during delivery may need urgent medical attention. Those who have recently given birth require post-natal care and, often, counselling related to this circumstance.

Rule 6 (4)

Research in a number of countries has found that a large proportion of women entering prison have a drug dependency. Drug offences are one of the most common category of crimes committed by women and drugs are often key to women’s offending behaviour.⁴² Some research also indicates that women prisoners are more likely to be addicted to harder drugs than male prisoners.⁴³ It is therefore important to diagnose any treatment needs for drug dependency on entry to prison, in order to provide the requisite healthcare services, as early as possible during detention and imprisonment, taking into account that drug dependency is a recognised underlying factor that can lead to conflict with the law and therefore to re-offending following release, if left untreated.

⁴⁰ Matsching T., Frühwald S and Frottier P., Suicide behind bars, an international review, *Klinische Abteilung für Sozialpsychiatrie und Evaluationsforschung, Universitätsklinik für Psychiatrie, AKH Wien, Österreich. Psychiatr Prax.* 2006 Jan;33 (1):6-13.

⁴¹ McArthur, M., Camilleri, P. and Webb, H., *Strategies for Managing Suicide and Self-harm in Prisons*, Australian Institute of Criminology, 1999, p. 1.

⁴² For example, it is estimated that at least 75% of women arriving in prison in England and Wales have some sort of drug-related problem at the time of arrest and another estimation states that 75% of women entering European prisons are problematic drug and alcohol users (see WHO/Europe, *Health in Prisons, A WHO guide to the essentials in prison health* (2007) and *Women in Prison, A Review of the Conditions in Member States of the Council of Europe*, Quaker Council for European Affairs, p. 12, citing “Health Care Needs of Women in Prison”: The Gap Between Policy and Implementation”, MacDonald M. presentation at “What Works with Women Offenders”, June 2005).

⁴³ A Review of the Conditions in Member States of the Council of Europe, Quaker Council for European Affairs, p. 12.

Rule 6 (5)

The health screening on admission is essential to identify any signs of ill-treatment or torture in previous detention/custody and take appropriate action. Torture and abuse of prisoners in custody, immediately after arrest, is more common than during the period of imprisonment. During the initial period, suspects mostly find themselves in the hands of the officers in charge of investigating the crime of which they are accused. The officers therefore have an interest in obtaining a confession or other relevant information.⁴⁴ During this time, women are at particular risk of sexual abuse, including rape.⁴⁵

Rule 7

Any woman who has been diagnosed as having been abused in previous custody or prior to that, (by prison staff or other prisoners) should be fully informed of her right to complain and adequate assistance shall be provided to her to enable her to proceed with her complaint if she wishes. The principle of confidentiality should be respected during this process and the woman concerned should receive the psychological support required by her situation, whether or not she chooses to complain. Psychological support may be provided by outside services, such as NGOs, in cooperation with prison authorities, especially when prison authorities do not have the capacity to provide for adequate and appropriate services. The provision of legal assistance to such women is essential. Such assistance may be provided by lawyers or qualified para-legal aid providers, at least in the first instance, in the absence of lawyers.

Rule 8

International standards guarantee the right to medical confidentiality for all individuals, including prisoners. Women may have particular safety and security concerns in relation to their reproductive health history, and therefore should never be coerced into giving information, which they feel may put them at risk. In this context women should have the right to refuse vaginal screening/hymen examination.

Rule 9

Many women worldwide who are admitted to prison are accompanied by their children, who may remain with them in prison, sometimes for long periods. It is vital to respect such children's right to the highest attainable standards of health, enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights and Article 24 of the Convention of the Rights of the Child, undertaking also a thorough health screening on their entry to prison and provide the requisite health care during the whole period of their stay in prison facilities. Wherever possible and in the best interests of the child, such screening should be undertaken in the presence of the mother.

⁴⁴ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Human Rights Council, Thirteenth Session, 9 February 2010, A/HRC/13/39, para. 52.

⁴⁵ For a discussion of custodial violence against women, see Human Rights Council, Seventh Session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008, paras 34-35 in particular. In para. 34 it is stated that "[c]ustodial violence against women very often includes rape and other forms of sexual violence such as threats of rape, touching, 'virginity testing', being stripped naked, invasive body searches, insults and humiliations of a sexual nature, etc. It is widely recognized, including by former Special Rapporteurs on torture and by regional jurisprudence, that rape constitutes torture when it is carried out by or at the instigation of or with the consent or acquiescence of public officials. In a 1997 decision on a case of custodial rape the European Court of Human Rights acknowledged that 'rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of the victim' and 'rape leaves deep psychological scars on the victims which do not respond to the passage of time as quickly as other forms of physical and mental violence'."

Rule 10

All women are entitled to treatment and care equivalent to that of community standards for their gender specific health-care needs. Due to the typical background of women in prison, risk factors and their health care needs as women, women's prisons require a gender-specific framework for health care which emphasizes reproductive and sexual health, mental health care, treatment for substance abuse and counselling victims of physical and sexual abuse.

Due to cultural reasons, and/or because of past negative experiences with men, including being subjected to sexual abuse or violence, women may not wish to be examined by a male medical specialist and may even feel re-traumatized by such an examination. This Rule takes into account this possibility, providing women with the right to request examination and treatment by a female medical specialist. Women should not have to provide a reason for such a request.

The rule recognises that in some circumstances an adequately qualified woman medical practitioner may not be available, especially in emergency situations. In these cases the presence of a woman member of staff should help prevent any perceived or real risk of harassment, and reassure the woman prisoner concerned.

Rule 11

The principle of confidentiality which applies to all medical examinations requires that patients should be examined individually, on their own, without the presence of any other person, unless specifically requested by the patient. In prisons, doctors may in exceptional circumstances request the presence of prison staff, if they feel at risk. Doctors should be advised by prison staff about the nature of the possible risks involved, in these cases, for the doctor to make an informed decision. However, in all cases security staff should be out of hearing of the patient and medical specialist.⁴⁶

The presence of male staff in the examination and treatment of a woman prisoner may cause extreme distress and violates the right to privacy and should be avoided in all cases.

Rule 12

High levels of domestic violence and physical and sexual abuse against women prior to their imprisonment have been documented in countries worldwide. Women who are admitted to prison are more likely than men to suffer from mental health problems, often as a result of domestic violence, physical and sexual abuse. This Rule underlines the need to ensure that mental health care provided in women's prisons should be gender sensitive and interdisciplinary. Women's distinctive mental health-care and psychological support needs should be recognized, including for example, of those who demonstrate acute distress and depression due to isolation, separation from children, families and communities. Rule 12 expressly underlines that treatment should be individualized and aim to address the reasons that provoke distress, depression, as well as psychiatric problems, based on a integrated and holistic approach of counselling, psychosocial support and medication, if necessary. This Rule takes account of the reality that in many prison systems women prisoners' unique mental health-care

⁴⁶ The UN Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture, and other cruel, inhuman or degrading treatment or punishment, Principle 1 provides that "[h]ealth 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." Confidentiality of medical examinations is one of the key principles which apply to the healthcare of all persons, including those in prison. The International Code of Medical Ethics of the World Medical Association (adopted in 1949, amended in 1968, 1983 and 2006), states that "[a] physician shall respect a patient's right to confidentiality. It is ethical to disclose confidential information when the patient consents to it or when there is a real and imminent threat of harm to the patient or to others and this threat." Thus the breaching of any confidentiality is exceptional and the decision to disclose any information due to real and imminent harm to the patient or others must be taken by the physician and /or with the consent of the patient.

needs are not adequately understood or treated, symptoms are addressed rather than the underlying reasons that lead to mental health problems. Too often women are prescribed medication to overcome their distress or depression, rather than being provided with psycho-social support, based on individual assessments. While counselling and treatment should be offered whether a woman is in pre-trial detention or sentenced, depending on the average length of time spent in pre-trial detention in each jurisdiction, long term treatment programmes may begin only if a woman is sentenced and therefore expects to stay a longer period of time in prison. Where possible and appropriate, treatment in the community, with adequate security measures, should be considered for such women, taking account of the negative impact of imprisonment on mental health.

Rule 13

Women are particularly susceptible to mental distress and depression at certain times, for example on admission to prison, due to separation or loss, upon receiving negative information from home, following the delivery of a child, following the experience of any act of victimization or violence, during menopause, after separation from a child previously in the prison with her and prior to release. Thus the rule encourages the adoption of an institutional policy to ensure staff awareness and training to recognize symptoms of mental distress and to respond to needs in an appropriate manner, by responding to the women's need with understanding and referring them to specialised support, as necessary (e.g. psycho-social support services, including those provided by specialised organisations of civil society, non-governmental organisations, etc).

Rules 14

Women have a particular physical vulnerability to HIV. Studies have shown that women are at least twice as likely as men to contract HIV through sex. The pre existence of sexually transmitted diseases (STD) can greatly increase the risk of contracting HIV.⁴⁷ Due to the typical background of women prisoners, which can include injecting drug use, sexual abuse, violence, sex work and unsafe sexual practices, a significant number of women are infected with STD, including HIV and hepatitis, at the time they enter prison. Thus, the proportion of women in prison with an STD is relatively very high.⁴⁸ As such, HIV prevention, treatment and care in women's prisons, covered by these rules, are vital to protect women from HIV/AIDS and prevent the spread of the disease. Peer education has proven to be particularly successful in a number of jurisdictions.

Rule 15

A large number of women prisoners worldwide are in need of treatment for substance addiction, though only a minority has access to treatment programmes, and especially to programmes designed for women offenders. When drug addiction is untreated in prison, the likelihood of re-offending is high, either on drugs charges or due to theft or illegal sex acts, often to finance the addiction.

In most countries, women experience social, cultural and personal barriers to treatment entry in the community. These include the significant stigma and shame associated with substance use and related problems among women, such as fear of losing custody of children, lack of partner and other family support to undertake treatment and lack of confidence about treatment. There is significant evidence that substance abuse is tied to both past histories of violence and trauma as well as mental health conditions.⁴⁹ In addition, it is increasingly recognized that women have distinctive needs in relation to substance abuse treatment, though few programmes offer specialized services for them. There is now increased knowledge and awareness that gender differences in substance use and related problems require different treatment approaches.⁵⁰

⁴⁷ Women and HIV in Prison Settings, HIV/AIDS Unit, UNODC, p. 3 www.unodc.org/unodc/en/drug_demand_hiv_aids.html.

⁴⁸ Ibid., p. 3.

⁴⁹ Bloom B., Owen, B. Owen & S. Covington, Gender Responsive Strategies: Research Practice & Guiding Principles for Female Offenders. National Institute of Justice, US Dept. of Justice, USA, 2003.

⁵⁰ UNODC Drug Abuse Treatment Toolkit, Substance abuse treatment and care for women: Case studies and lessons learned, United Nations, New York, 2004, p. 23.

In addition, Member States of the UN have reached consensus on treatment strategy development that specifically includes references to gender.⁵¹

A gender sensitive approach to women's health care should therefore also take into account the need to provide specialized treatment programmes for women substance abusers. Harm reduction programmes may be considered in programmes responding to the needs of women with drug dependency.

Rule 16

Research in some countries indicate that women may be at higher risk of harming themselves or attempting suicide in comparison to men in prison, due to the higher level of mental illness and substance addiction⁵² among women prisoners and the harmful impact of isolation from the community on the mental well-being of women. These rules therefore provide for appropriate measures to safeguard against such acts.

All too often initiatives to prevent suicide consist only of technical solutions, such as the removal of items that may be used for suicide, the introduction of additional restrictions to reduce possibilities of suicide, which do not address the cause of mental distress, which lead to acts of suicide or self-harm. Such precautions may in many cases exacerbate the situation.

It must be emphasized that a fundamental element of strategies to reduce incidents of self-harm and suicide in prisons, is to create a prison environment, which promotes mental health. In parallel to the identification, and supervision of "at-risk" prisoners and the individual treatment provided to them, there is a need for prison managers and staff to take a proactive and positive approach to improve prison morale, in order to reduce incidents of self-harm and suicide.

Rule 17

Women prisoners, typically from economically and socially disadvantaged backgrounds, and often uneducated and illiterate, will generally have received minimal education or awareness-raising about prevention from STDs and reproductive health conditions. It is therefore important to raise the level of knowledge and awareness among women in prison, in order to prevent the development of such diseases. Volunteers, health services from outside and NGOs may be constructively involved in providing such awareness raising and education. Consideration should also be given to giving access to condoms and dental dams to women prisoners, to prevent the spread of sexually transmitted diseases.

Rule 18

Since all persons in prison, including women, enjoy the right enshrined in the International Covenant on Economic, Social and Cultural Rights, Article 12, to the highest attainable standard of mental and physical wellbeing, the preventive health services provided in prisons should be equivalent, at least, to those in the community, which means that women should receive all the preventive services, such as Papanicolaou test and screening for cancer, that are available in the community for their age group. Contraception should be available in prison on an equal basis as in the community, taking into account that contraceptive pills are not only used to prevent pregnancy, but also to treat other gender specific conditions, such as painful menstruation. The European Committee for the Prevention of Torture and Inhuman or Degrading Punishment has noted, "[t]he

⁵¹ Ibid., referring to the Twentieth Special Session of the General Assembly, Devoted to Countering the World Drug Problem Together, 8-10 June 1998, paragraph 8 of the Declaration on the Guiding Principles of Drug Demand Reduction.

⁵² E.g. according to a study conducted by the Bureau of Justice Statistic in 2002 and 2004, mental health problems in prison were found to be much higher among women than men; in the UK, according to research published in 2006, 80 per cent of women prisoners were found to suffer from diagnosable mental health problems, 66 per cent were drug dependent or used alcohol to dangerous excess, 37 per cent had attempted suicide at some time in their lives (See UNODC Handbook on for prison managers and policy makers on women and imprisonment, 2008, p. 9).

fact that a woman's incarceration may – in itself – greatly diminish the likelihood of conception while detained is not a sufficient reason to withhold such medication.”⁵³

Such provision should be available in all women's prisons irrespective of security level, so that women do not have to be transferred to prisons with higher security levels than necessary in order to receive preventive healthcare services.

Rule 19

Article 17 of the International Covenant on Civil and Political Rights guarantees all persons' right to privacy. The Human Rights Committee, in its General Comment 16 on Article 17 stated that “[s]o far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex” (see HRI/GEN/1/Rev.3, part I).

This rule underlines that, in accordance with the Human Rights Committee, General Comment referred to above, male members of staff should never be involved in the personal searches of women prisoners including pat down and frisk searches. All searches of women should be carried out by women.

The searches referred to in this rule, which should be carried out by women staff include visual strip searches, but different rules apply to invasive or body cavity searches in the case of both male and women prisoners, as explained below.

A strip search refers to the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas, namely genitals, buttocks, breasts or undergarments. This definition distinguishes strip searches from more intrusive body cavity searches, which involve a physical inspection of the detainee's genital or anal regions.

Where permitted at all, internal (body cavity) searches and strip searches should only be carried out if absolutely and legally necessary, and never on a routine basis. No prisoner – regardless of gender – should be humiliated or be required to strip completely during a search. Such searches can be carried out by exposing parts of the body only in turn to protect, to the extent possible, the dignity of the individual being searched. Special sensitivity should be demonstrated in the case of women, however, because they are likely to feel the humiliation of undergoing intimate searches particularly.⁵⁴ The experience may be extremely distressing and traumatising if they have been victims of sexual abuse in the past.

All searches, but strip searches and body cavity searches in particular, should be undertaken in accordance with pre-established procedures.

⁵³ CPT Standards, 2006 Edition, Extract from the 10th General Report [CPT/Inf (2000) 13], para. 33.

⁵⁴ See Human Rights Council, Seventh Session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, 15 January 2008, paragraph 35 and footnote 18, where reference is made to the broadening of the scope of crimes of sexual violence that can be prosecuted as rape. For instance, the Inter-American Court of Human Rights resorted to the international jurisprudence on rape to conclude that “the acts of sexual violence to which an inmate was submitted under an alleged finger vaginal ‘examination’ constituted sexual rape that due to its effects constituted torture.” See *Miguel Castro-Castro Prison v. Peru*, Inter-American Court of Human Rights judgement of 25 November 2006, para. 312.

Strip and Cavity Searches – recommended procedures:

- A. There should be a clear written policy explaining the legal grounds and specific procedures for conducting a strip or cavity search
- B. This search is ordinarily authorized in advance, in writing, by the chief executive officer
- C. A strip or cavity search should not be conducted if it is likely to cause injury to the inmate
- D. Cavity searches should only be conducted by a member of the medical staff. The World Medical Association (WMA) states that the medical practitioner conducting the search should not be the prison doctor. (See the WMA statement below)
- E. Cavity searches should be restricted to digital intrusion and the use of instruments such as anoscope, otoscope, vaginal speculum, nasal speculum, tongue blade, and simple forceps
- F. If an item is located, it may be removed if the removal is easily effected by means of one of the simple instruments noted in “E” above or digitally
- G. Strict documentation is to be maintained of the probable cause, authorizing official, witnesses, and findings of the inspection

*Statement on Body Searches of Prisoners, World Medical Association:*⁵⁵

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

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

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

Rule 20

This Rule takes account the World Medical Association (WMA) Statement on Body Searches, where WMA urges all governments and public officials with responsibility for public safety to recognize that invasive search procedures are serious assaults on a person's privacy and dignity, and that they also carry some risk of physical and psychological injury. Therefore this rule recommends that to the extent feasible, without compromising public security, alternative methods should be used for routine screening of women prisoners.

Rule 21

The emotional trauma experienced by the child, if searched without professionalism and sensitivity, can be immense. Mothers can be so distressed at seeing her child being handled without appropriate care that they have even refused to accept visits from their children in order to avoid putting them through the humiliating and potentially damaging experience of such practices. Children should not be strip searched except for exceptional circumstances. If they are to be strip searched, such searches should be carried out in line with established

⁵¹ Adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993 and editorially revised at the 170th Council Session, Divonne-les-Bains, France, May 2005. (<http://www.wma.net/e/policy/b5.htm>).

procedures and following permission from the chief executive officer. Such searches should only be carried out in circumstances which do not violate the human rights and dignity of the child, as explained above.

It should be noted that visitors are not prisoners, and can therefore refuse to be searched and guardians of children (as well as the children themselves) can refuse children to be searched. In such cases the prison administration has the right to deny them entry to the prison.

Rule 22

The international instruments make clear that solitary confinement is not an appropriate punishment other than in the most exceptional circumstances; whenever possible its use should be avoided and steps should be taken to abolish it. These instruments also acknowledge the fact that, potentially, periods of solitary confinement are prejudicial to the mental health of the prisoner. Principle 7 of the Basic Principles for the Treatment of Prisoners calls for "...efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use..." Thus solitary confinement should be used only in exceptional circumstances in the case of all prisoners, and for the shortest possible period of time. Rule 22 takes account of the best interest of the children, in line with the Convention on the Rights of the Child and calls on member States to avoid using solitary confinement on certain categories of women prisoners altogether in order to avoid causing possible health complications to those who are pregnant or penalizing their children in prison by separating them from their mothers.

Rule 23

Total prohibition of family contact, especially of contact with children, has a very harmful impact on the mental wellbeing of women prisoners, as well as the children involved, and should therefore be avoided, unless the child has particular protection needs.

Rule 24

Rules 33 and 34 of the SMR place strict restrictions on the use of body restraints on prisoners. Firstly restraints may never be used as punishment, secondly they may be used in cases where there is genuine justification to believe that the prisoner may attempt escape during transfers and thirdly, following instruction from a medical officer, due to the imminent danger of harm or self-harm by the prisoner concerned. Nevertheless, in some countries body restraints, such as shackles, are used on pregnant women during transfers to hospitals, gynaecological examinations and birth. This practice violates international standards. Moreover, shackling during labour may cause complications during delivery such as haemorrhage or decreased foetal heart rate. If a caesarean section is needed, a delay of even five minutes may result in permanent brain damage to the baby.⁵⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has stated that "[...] from time to time, the CPT encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found."⁵⁷

⁵⁶ For example, the American College of Obstetricians and Gynecologists and the American Public Health Association have condemned the practice of shackling, recognising that it compromises women's health and causes severe pain and trauma. The Center for Reproductive Rights points out that unrestrained movement is critical during labour, delivery, and the post delivery recovery period. Shackles hamper a woman's ability to move to alleviate the pain of her contractions, which increases stress on the woman's body and may decrease the flow of oxygen to her fetus.

⁵⁷ The European Committee for the Prevention of Torture and Inhuman or Degrading Punishment, *The CPT Standards*, CPT/Inf/E (2002) 1 - Rev. 2006, Extract from the 10th General Report [CPT/Inf (2000) 13], para.27. In the U.S., in response to increasing concerns at the physical and psychological damage that can be caused by shackling during labour, there has been a move towards prohibiting shackling during labour and childbirth. In October 2008 the U.S. Bureau of Prisons policy, which applies to federal facilities in the U.S., barred the shackling of pregnant women, "except in the most extreme circumstances." Since 2000, four states - California, Illinois, Vermont and New Mexico - have passed legislation restricting the unnecessary use of restraints on pregnant women in prison. At the time of writing, New York and Texas had bills backed by legislative support waiting to become law. The New York "Anti Shackling Bill" prohibits state and local correctional authorities from using restraints on a pregnant female inmate who is being transported for childbirth, during labour and delivery, and in post-natal recovery.

Rule 25

Rule 35 of the SMR provides that each prisoner is given clear written and if necessary also oral information on complaints procedures on admission to prison, while Rule 36 provides for a confidential complaints mechanism and guarantees prisoners' right to complain both to prison and independent authorities on a confidential basis. The rule does not explicitly refer to complaints of abuse and the protection of prisoners who do allege ill-treatment, but the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Article 13, provides that "[e]ach State Party should 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 should 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." It is of utmost importance that women who have been subjected to any form of abuse in pretrial detention or prison should be able to complain without fear of retaliation by staff, confidentially, to the central prison administration, judicial authorities and independent inspectors, and that they should receive legal aid or assistance to do so. Women who claim to have been abused should be confident that they will be provided immediate protection and supervision, while their claims are investigated, and later on, if required, in line with the provisions of the Convention against Torture. Rule 25 therefore provides guidance to prison authorities in the application of the Convention against Torture. It takes account of the fact that women are particularly vulnerable to abuse in prison settings, but that they are often afraid of making complaints due to fears of retaliation. It is included to add an additional safeguard for women against violence and ill-treatment in prison settings.

Rule 25(3) supplements SMR, Rule 55, which provides for the regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. The inclusion of women members on inspection bodies/monitoring boards will help ensure that the provision of services addressing women prisoners' specific needs are properly inspected by a person of the same gender, as well as encouraging the receipt of complaints from women prisoners, who may feel inhibited in coming forward if all members of the monitoring body were to be male.

Rule 26

SMR underlines the need for all prisoners to have contact with their families. This Rule emphasizes particularly the importance for women prisoners of the maintenance of family links, whether in pre-trial detention or following sentence. It also recognises the particular need women prisoners have in accessing legal assistance, due to their lower educational, economic and social status in most societies, as well as due to abandonment by families on imprisonment experienced by many women in different countries, and therefore encourages prison authorities to assist them in obtaining legal assistance.

The rule emphasizes the flexibility that needs to be demonstrated by prison administrations in applying visiting rules to women prisoners, in order to safeguard against the harmful impact of separation from families and children, in view of the fact that many women are imprisoned far away from their homes. This flexibility may, for example, include extending the length of visits, particularly when visitors have travelled long distances to visit. Other considerations should also apply, such as taking account of the hours when children may visit their mothers without having to miss school.

Rule 27

This Rule aims to prevent discrimination suffered by women in some countries where conjugal visits are not allowed to women in prison or are allowed on a much more restricted basis than to male prisoners.

Rule 28

This Rule takes account of mothers' and their children's emotional need for close physical contact and the requirement for a child-friendly environment for children visiting their mothers, to reduce the trauma and distress suffered by the children in these circumstances. Generally, open contact between mother and child should be permitted, taking account of the best interest of the child. The conditions of visits are of utmost importance, so that visits are experienced as a positive experience, rather than discouraging further contact. Making an effort to enable imprisoned women to meet with their families in a friendly and comfortable environment will have a significant impact on the number of visits they receive and the quality of those visits, affecting the social reintegration prospects of women prisoners.

Rules 29-30

Recognising the vulnerability of women to sexual abuse, the SMR prohibit any involvement of male staff in the attendance and supervision of women prisoners. These Rules are based on the premise provided by the SMR that women staff will be employed to attend and supervise women prisoners, thus increasing safety and enhancing the rehabilitative environment. Increasing the capacity, morale and job satisfaction of women staff would enable them to perform their duties effectively, which impacts on the success of women prisoners' social reintegration. Prison authorities should base their personnel and training policies on Article XV of the Recommendation on the Selection and Training of Personnel for Penal and Correctional Institutions adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders.⁵⁸

Rule 31

Rule 54 of the SMR prohibits the use of force by prison staff, except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. It provides that officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution. Rule 31 adds further provisions relating to the use of force, taking into account women's gender specific needs of protection from varying forms of violence. For example, in some systems it has been reported that sexual services by prisoners may be required before they are accorded their most basic human rights, such as access to food and essential services. This Rule therefore explicitly prohibits sexual misconduct and abuse, which can amount to torture or ill treatment. Obviously such a prohibition is all the more vital in systems that have a policy of mixed gender staffing.

Rule 32

This Rule aims to ensure that women prison staff have equal opportunities to advance in their careers as male staff, taking account of provisions of the Convention on the Elimination of all forms of Discrimination against Women, Article 11, and with the aim of improving the gender sensitive supervision and treatment of women prisoners. SMR prohibits the involvement of male staff in the supervision of women's prisons. Nevertheless, even when not directly employed in the supervision of women prisoners, male staff in senior positions are involved in various aspects of the administration of women's prisons. This rule aims to ensure that such staff are trained in the principle of non-discrimination and are made aware of the total prohibition of sexual harassment against women staff and prisoners. Obviously, in systems where mixed gender staffing is used, the implementation of this rule becomes all the more important.

⁵⁸ See A/CONF.6/1.

Rule 33

This Rule takes account of the need to train prison staff in the gender specific treatment and supervision needs of women prisoners in order to ensure the effective management of and the promotion of rehabilitation in women's prisons. It also recognizes the reality that prison staff are typically the first responders to prisoners' and/or their children's health problems, including in emergencies, when prisoners or their children may be harmed and need immediate attention and other emergencies. In many systems prison medical specialists will not be readily available to respond in such circumstances. Training of prison staff on basic health care relevant to women and children and how to apply first aid in emergency situations, is therefore important to ensure that women and children receive immediate basic health care and are referred to specialists by prison staff without delay, as required.

Rule 34

This Rule complements other measures, provided in Rule 17, taking into account women's distinctive needs, which include protection from stigma and discrimination due to their HIV status.

Rule 35

This Rule complements Rule 16 to ensure effectiveness of the protection of women prisoners against suicide and self-harm, recognising the central role of prison staff in detecting those at risk and providing timely assistance.

Rules 36-39

Juvenile female prisoners referred to in this section include the age group referred to in the "United Nations Rules for the Protection of Juveniles Deprived of their Liberty" (1990), Rule 11 (a), which specifies that a juvenile is every person under the age of 18, adding that this is the age limit below which it should not be permitted to deprive a child of his or her liberty.

Recognizing the special needs of juvenile female prisoners, Rules 36-39 aim to provide guidance to prison authorities in providing for these needs. In this context it should be noted that Rule 26.4 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) states that "...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 should be ensured..." Accordingly, the Beijing Rules recognize the fact that the disadvantages faced by women prisoners, in comparison to their male counterparts, are even more acute in the case of juvenile female prisoners, as a result of their very small numbers in most prison systems. They may not be separated from adult prisoners, due to the lack of special facilities for juvenile female prisoners, and thereby their safety is put at risk.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 18 which applies to juveniles under arrest or awaiting trial, provides that

"The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention."

Thus in general juveniles in pre-trial detention should be offered educational and vocational programmes appropriate to their age, where possible. Juvenile female prisoners are likely to have even less access to suitable educational and vocational training facilities than either adult women or juvenile male prisoners, due to their small numbers. Any programmes provided for juveniles are likely to have been developed to address the needs of boys.

The provision of appropriate education and vocational training programmes may be problematic for a variety of reasons, including the shortness of pre-trial detention periods in some jurisdictions, but States should make every effort to prevent a break particularly in the education of juveniles during this period, in line with Article 28, 1 (a) and (d) of the Convention on the Rights of the Child. In any case, pre-trial detention should be used only in exceptional circumstances, in line with Rule 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the principles outlined in Convention on the Rights of the Child Article 40, 3 (b) and 4.

Juvenile female prisoners are unlikely to have access to gender sensitive health care or counselling for physical or sexual abuse suffered prior to imprisonment. Pregnant girl prisoners comprise one of the most vulnerable groups in prisons, due to the social stigmatization to which they may be subjected, their inexperience of dealing with pregnancy and the lack of adequate facilities for pregnant juvenile female prisoners.

PART II

RULES APPLICABLE TO SPECIAL CATEGORIES

A. PRISONERS UNDER SENTENCE

Rule 40-41

Rule 69 of SMR provides that, "...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 should be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions..." Rule 63 of the SMR emphasizes the need for a flexible system of classification, and underlines that the same level of security does not need to apply to all prisoners in one institution. Also in line with the principle that the security measures to which prisoners are subject should be the minimum necessary to achieve their secure custody, it states that "...open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners..."

However, once again, women are often discriminated against in the application of this principle, due to one or a combination of a series of factors. Firstly, since the same classification instruments are used for women and men in the vast majority of prisons worldwide, despite women's different needs and circumstances, information about a history of domestic violence, sexual abuse, and parental responsibility are areas in which screening is lacking for women. As a result classification and screening procedures do not provide essential information about the women, which may increase the probability of their placement in a higher security level than appropriate, while reducing possibilities of providing suitable prisoner programmes matching individual needs. A further problem is that "needs" are often assessed as risk factors during assessments, which can mean that prisoners with mental disabilities may be seen as requiring a higher level of security, rather than the opposite. Such misclassification affects women more so than men due to the higher level of mental health problems among women offenders. High security levels are inappropriate for the housing of prisoners with mental disabilities and will almost invariably further exacerbate existing mental health-care needs. Furthermore, due to the limited accommodation available for women prisoners, in a number of countries they are housed in security levels not

justified by their risk assessment undertaken on admission. Therefore this rule emphasizes the need to develop gender sensitive assessment and classification methods for women prisoners.

Rule 42

The requirement included in the SMR to apply individual treatment according to the needs of prisoners (SMR 69), implies that programmes should be available in prisons designed specifically for women prisoners, taking into account their gender specific needs, aiming to address the underlying factors that led to their offence and to cope with the challenges they face as women in prison. The current Rule spells out this requirement more clearly and offers some guidance on what measures might be taken to enable women to participate in activities on an equal basis to men.

This Rule also takes account of the gender specific needs of women prisoners, including pregnant women and women with children, as well as the typical background of women prisoners, which increases their need for appropriate, individualized psycho-social counselling and support.

Gender sensitive programmes offered to women prisoners to address the underlying causes that led to their offences and to assist in strengthening their confidence, self assurance and parenting skills may include therapeutic programmes, self-help groups and consultation dealing with substance abuse, mental health, history of abuse and domestic violence; parenting programmes, including child visitation programmes and parent education; and special programmes to build confidence and life skills. Programmes to assist women to live independent lives may include programmes to develop administrative skills, bookkeeping, computer skills, painting and decorating, cooking/catering, horticulture, hairdressing, gardening, women's health, childcare, dressmaking, embroidery managing income generating community projects and the use of micro-credit facilities.

Programmes offered should also include others which are not traditionally considered as appropriate for women, due to gender stereotyping.

Rule 43

The principle referred in this rule is applicable to all prisoners. However, the small proportion of women prisoners worldwide and the resource implications of building sufficient women's prisons to ensure that women offenders are imprisoned close to their homes, give rise to a situation in which women may either be housed in annexes of male prisons, close to their places of residence or in women's prisons, which are most often situated at a long distance from home. Being placed in annexes of male prisons may entail safety risks for the women. Most States have a combination of women's prisons and separate wings for women in men's prisons, which means that, in practice, many women are imprisoned a long distance from their homes, which reduces the possibility for family contact. The situation can be particularly problematic in large countries, where huge distances need to be covered to reach women's prisons. The disruption of family links has extremely harmful emotional consequences for women prisoners, especially if they are mothers, with a detrimental impact on their resettlement prospects. Rule 44 therefore requires prison authorities to remedy this disadvantage by finding ways in which to encourage and facilitate visits to women prisoners. Measures to be considered may include: (1) where possible assisting with transportation, especially where visits to mothers are concerned; (2) extending the length of visits, when families confront difficulties in visiting due to the long distances involved, lack of resources and transport; (3) providing overnight accommodation for families traveling a long way, free-of-charge; (4) if prisoners have access to telephones, increasing the telephone calls women prisoners are allowed to make to their families, if they are unable to visit due to the long distance; (5) Reducing or eliminating charges for phone calls, where possible; (6) never prohibiting family visits as a disciplinary measure in response to rule breaking by women prisoners; (7) granting prison leave to the greatest extent possible on medical, educational, occupational and family grounds; and do this as soon as and as frequently as possible, taking into account risk factors and family circumstances related to the prisoner concerned; (8) developing cooperation with social services and NGOs to assist with contact between women prisoners and their families; (9) developing other

means of enhancing communication with families, such as via taped, videoed or e-mail messages. It must be emphasized that prison visits should always be free-of-charge in the case of all prisoners.

Rule 44

This Rule aims to protect women from visits from those who may have abused or exploited them in the past and who the prisoners themselves do not wish to have contact with.

Rules 45-47

These Rules take account of the particular support requirements of women during their social reintegration and re-entry to society, following release. Although many problems women face during re-entry are similar to those of men, the intensity and multiplicity of their post-release needs can be very different. Women are likely to suffer particular discrimination after release from prison, due to social stereotypes. They might be rejected by their families and in some countries they may lose their parental rights. If they have left a violent relationship, women will have to establish a new life, which is likely to entail economic, social and legal difficulties, in addition to the challenges of transition to life outside prison. Women are likely to have particular support requirements in terms of housing, reunification with their families and employment, and will need assistance. Women are more likely than men to have been treated for a mental health problem in prison and will be in need of continued psychiatric treatment or counselling after release. Former prisoners experience high rates of drug-related accidents, overdose and death. The risk of renewed drug or alcohol abuse is high among all former prisoners, particularly during the early stages following release, when the myriad difficulties associated with re-entry may lead to despair and relapse into former habits. The high rate of substance addiction among women offenders may therefore pose a significant obstacle to successful reintegration. Pre-release preparation and post-release support policies and programmes are typically structured around the needs of men and rarely address the gender specific needs of women offenders, with targeted continuum-of-care in the community after release. These rules aim to emphasize prison authorities' responsibilities in ensuring that women receive the maximum possible support during this time, to ensure their effective resettlement and care and to reduce rates of re-offending.

It should be recognised, however, that prison authorities on their own cannot ensure that the multiple support requirements of former women prisoners are met, and need the full cooperation of outside agencies and services, to fulfil the provisions of this rule, while such agencies and services need adequate human and financial resources from relevant authorities to be able to implement their responsibilities.

Rule 48

The SMR provide very little guidance on meeting the special needs of pregnant women, breastfeeding mothers and women with children in prison. There is no guidance provided on the treatment of the children themselves. In view of the number of women in prison who are pregnant or who have dependent children living with them, it has become essential to provide more detailed guidance and rules as regards their treatment, in order to ensure that both the women's and the children's psycho-social and health-care requirements are provided for to the maximum possible extent, in line with the provisions of international instruments. Programmes for birthing companions, where they are available in the community, should also be made accessible to women in prison.

Rules 49-52

Viewpoints as to whether children of imprisoned mothers should stay with them in prison, and for how long,

vary among specialists, with no consensus. Countries worldwide have very different laws as to how long children can stay with their mothers in prison. Nevertheless, there is general consensus that, in trying to resolve the difficult question of whether to separate a mother from her child during imprisonment, and at what age, the best interests of the child should be the primary consideration, in line with the Convention on the Rights of the Child, Article 3. Issues to take into account should include the conditions in prison and the quality of care children can expect to receive outside prison, if they do not stay with their mothers. This principle would imply that prison authorities should demonstrate flexibility and take decisions on an individual basis, depending on the circumstances of the child and family, and on the availability of alternative care options in the community. These rules recognize that applying rigid policy in all cases, where circumstances vary immensely, is all too often not an appropriate course of action. They emphasise that, in order to prevent any physical or psychological harm to children who do remain with their mothers in prison, the environment in which they are brought up in prison should be as close as possible to a normal environment outside prison and that the healthcare of children, which would include their regular vaccinations, should be provided for. They also emphasize the need for continued communication between the mother and the child following separation to prevent as far as possible the psychological damage caused by separation. Where possible, extended visits of the child to the mother and/or home leave for the mother in order to settle the child with the carer outside prison should be part of the planned separation process.

Rules 53 (1)

Foreign national prisoners may be either resident or non-resident in the country of imprisonment. Both groups face particular difficulties. This is particularly salient given the disproportionate number of women caught up in international drug trafficking. The SMR provides limited guidance as to the treatment of foreign national prisoners. Rule 38 of the SMR covers foreign nationals' right to contact with their diplomatic or consular representatives, while rules 41-42 of the SMR deal with rights in relation to the practice of religion. In view of the fact that the number of foreign national prisoners is rising dramatically worldwide, including the number of foreign national women in prison, and taking into account the particularly vulnerable status, especially of non-resident foreign national women in prison settings, Rule 53 aims to provide further guidance to prison authorities in their treatment of foreign national women prisoners.

Where possible, and if the prisoner so wishes, a foreign national woman prisoner should be given the opportunity to be transferred to her home country to serve her prison sentence. It should be noted that "transfer" is completely different to "deportation", the former aiming to assist with the social reintegration of offenders and reduce the harmful effects of imprisonment, whereas the latter is experienced as a punitive measure undertaken in addition to the prison sentence and most often against the will of the prisoner concerned.

The transfer of prisoners is possible when both countries have signed the relevant prisoner transfer treaty. In order for a transfer to take place and for it to serve the purposes of social reintegration, the prisoner must express a desire to serve the sentence in his or her home country.⁵⁹ The requirement that prisoners must consent to the transfer ensures that transfers are not used as a method of expelling prisoners or as a means of disguised extradition.⁶⁰

A transfer will obviously alleviate all the additional difficulties foreign nationals face in prison, and assist with their social reintegration. This is particularly important in the case of women who may have family and children in their home countries, and will therefore suffer the sense of isolation associated with imprisonment more

⁵⁹ On 15 February 2007, the EU justice and home affairs ministers agreed to allow transferring convicted EU prisoners to serve their sentences in their home countries, without their consent, contravening this principle.

⁶⁰ Explanatory notes on the model agreement on the transfer of foreign prisoners, Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, UN Doc. A/CONF. 121/10, 25 April 1985, note 14.

intensely than their national counterparts. Transferring prisoners to serve their sentences in their own countries, if they so wish, should be considered as early as possible after a sentence has been passed. Prisoners should be given clear and full information about their right to request a transfer and the legal consequences of a transfer, to enable them to make an informed decision about their situation. Guidance on the issue of transfer of prisoners is provided by the Model Agreement on the Transfer of Foreign Prisoners adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.⁶¹

Rule 53 (2)

This rule takes into account the fact that the children of non-resident foreign national women are unlikely to have an appropriate carer in the country of imprisonment, and therefore requires that authorities consult with the woman prisoner in making arrangements for the transfer of the child back to the home country, if this would be in the best interest of the child. The mother should be enabled and encouraged to contact consular officials (where available) to discuss and facilitate appropriate arrangements for the child, including the possibility of the child's reunification with family members in the country of origin. In cases where the nationality of the child is in doubt, the assistance of consular officials and of the office of the UN High Commissioner for Refugees should also be sought.

Rule 54

Programmes that address both the gender specific needs of women members of minority groups or indigenous peoples, as well as their cultural, spiritual and religious requirements, are lacking in the large majority of prison systems. Prison authorities should work together with indigenous and minority community groups who work with women to develop programmes suitable to the needs of women minority or indigenous offenders. The provision of culturally relevant programmes is important both in itself and to ensure that these groups are not indirectly discriminated against in their consideration for early conditional release in some jurisdictions, due to their failure to fulfil a requisite number of prisoner programmes because of the unavailability of appropriate programmes.

Involving community organizations in programme design and delivery is valuable in maintaining links between prisoners and the outside world, easing resource pressures and improving prison atmosphere. In the case of minority groups and indigenous peoples, continuing contacts with the community is likely to be of particular importance, due to their sense of alienation and isolation within the system, and the higher level of distress experienced as a result of breaking ties with the community in some cultures.

Particular care should be taken in taking decisions on removal of children of indigenous women. Decisions about removal of indigenous children should include the recognition of the impact of past oppression and child removal policies on the children, their mother, their family and their community. If an indigenous child is removed, the child should be placed with members of its own family or its kinship within the community.

Rule 55

This Rule takes account of the fact that the reintegration and post-release support requirements of women from minority groups and indigenous peoples are likely to be different and possibly more intense in comparison to those who are from the majority group. Due to their particular economic and social marginalization and the discrimination they face in most societies, released minority and indigenous offenders are likely to need special help with housing, social welfare, employment and health care. Therefore, it is vital that prison authorities

⁶¹ See Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, 2006, V.65-91037.

coordinate with social services in the community with respect to preparation for release and post-release support. Prison authorities should try to ensure that any treatment undertaken for health problems, such as substance abuse or mental health, is continued and/or monitored after release. Where probation services exist they will have an important role to play in assisting in all these areas. It is particularly advisable to cooperate with organizations of civil society providing support to minority groups and indigenous peoples to facilitate culture and gender sensitive assistance to be provided to released women prisoners during the difficult period of transition from prison to liberty.

B. PRISONERS UNDER ARREST OR AWAITING TRIAL

Rule 56

Women under arrest or awaiting trial have specific safety requirements, due to their especially vulnerable status. Women are at risk of abuse particularly during this period, when sexual abuse and other forms of violence may be used, *inter alia*, as a means of coercion to extract confessions. Therefore it is vital that prison authorities ensure that policies and rules aiming to safeguard prisoners against abuse are applied vigorously during women's pre-trial detention period.

PART III

NON-CUSTODIAL MEASURES

Rule 57-58

A considerable proportion of women offenders do not necessarily pose a risk to society and their imprisonment may not help, but hinder their social reintegration. Many are in prison as a direct or indirect result of the multiple layers of discrimination and deprivation, often experienced at the hands of their husbands or partners, their family and the community.⁶² Accordingly, women offenders should be treated fairly in the criminal justice system, taking into account their backgrounds and reasons that have led to the offence committed, as well as receiving care, assistance and treatment in the community, to help them overcome the underlying factors leading to criminal behaviour. By keeping women out of prison, where imprisonment is not necessary or justified, their children may be saved from the enduring adverse effects of their mothers' imprisonment, including their possible institutionalization and own future incarceration.

Since a large proportion of women have mental health-care needs, are drug and/or alcohol dependent, suffer from the trauma of domestic violence or sexual abuse, diverting them to a suitable gender appropriate treatment programme would address their needs much more effectively than the harsh environment of prisons.⁶³

⁶² Recognising the discrimination faced by women in all spheres of life, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979, and entered into force as an international treaty on 3 September 1981. In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made on the basis of sex...in the political, economic, social, cultural, civil or any other field". The Convention covers the elimination of discrimination against women in political, public, economic and social life, in access to education, employment, healthcare, including provision for reproductive healthcare, among others, and gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (Article 3).

⁶³ Bloom B., Owen, B. Owen & S. Covington, *Gender Responsive Strategies: Research Practice & Guiding Principles for Female Offenders*. National Institute of Justice, US Dept. of Justice, USA, 2003.

The impact of being held in pre-trial detention, even for short periods, can be severe if the prisoner is the sole carer of the children. Even a short period in prison may have damaging, long-term consequences for the children concerned and should be avoided, unless unavoidable for the purposes of justice, in line with Article 9 (3) of the ICCPR as well as with Rule 6 of the Tokyo Rules, and Principle 39 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, which limit the use of pre-trial detention.

Research has indicated that restorative justice can be effective in the social reintegration of women in some cultures. The United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters⁶⁴ should provide additional guidance to member States in developing appropriate responses to women in the criminal justice system, where appropriate.

In order to fulfil the provisions of these Rules, judicial authorities need to have the necessary information available in order to take appropriate decisions. They may be required, for example, to consider reports compiled by social services on the probable impact of the mother's detention on the children and other family members, and the arrangements for the children's care, in the absence of the mother.

In addition, States need to give due attention to strengthening administrative and financial capacity with a view to establishing a national system of non-custodial measures, creating structures and mechanisms to implement alternatives to imprisonment, where possible, including restorative justice and alternative conflict resolution.

Rule 59

In some countries detention may be used as a form of protection for victims of rape, to protect the victim as well as to ensure that she will testify against her rapist in court. This practice is unacceptable, further victimising women and putting them at risk of further abuse. Most importantly, this practice deters women from reporting rape and sexual abuse, thereby allowing perpetrators to escape justice.

In relation to the detention of women for purposes of protection, specifically, the 2003 report of the Working Group on Arbitrary Detention to the Commission on Human Rights stated: "In its annual report for 2001 (E/CN.4/2002/77 and Add. 1 and 2), the Working Group had recommended, with regard to the detention of women who have been the victims of violence or trafficking, that recourse to deprivation of liberty in order to protect victims should be reconsidered and, in any event, must be supervised by a judicial authority, and that such a measure must be used only as a last resort and when the victims themselves desire it."⁶⁵

A number of other forms of custody, to "protect" women or to protect others' security are used in other countries, which are covered by this rule. Although in exceptional cases such custody may be justified for limited periods due to the lack of more appropriate alternatives, every effort needs to be made for the development of protection means which do not involve imprisonment, to enable authorities not to have to resort to this unacceptable and discriminatory practice. Where such detention is used, it should always be subject to supervision by an independent judicial authority and the women involved should be provided access to legal counsel in making such decisions.

⁶⁴ Endorsed by the UN Economic and Social Council in 2002.

⁶⁵ Report of the Working Group on Arbitrary Detention, Chairperson-Rapporteur, Louis Joinet, Commission on Human Rights, 16 December 2002, UN Doc. E/CN.4/2003/8, para. 65.

In this context, note should also be taken of the UN Declaration on the Elimination of Violence against Women, Article 4, which provides:

“States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;”

Rule 60

This Rule recognizes the absence of gender specific alternatives to prison in most societies, which hinders the effective implementation of non-custodial sanctions and measures in the case of many women offenders, underlining the need to develop gender sensitive alternatives to prison, tailored to meet the specific requirements of women offenders, in order to reduce re-offending.

Rule 61

This rule takes account of the typical background of many women offenders. A significant proportion of women who commit violent offences commit them against their husbands or partners in response to systematic abuse. A large number of women offenders worldwide are imprisoned for minor drug related offences, often as a result of manipulation, coercion and poverty. If involved in drug trafficking, women are often minor players, their criminal offences often being an outgrowth of their own addiction or due to poverty and other pressures. A significant number of women are used as drug couriers to smuggle drugs across borders for small sums of money. They come from poor countries and sometimes do not understand the risks involved and implications of the acts they agree to perform.

Many offenders charged with drug offences could be dealt with more effectively by alternatives to imprisonment targeted specifically at the drug problem, rather than imprisonment. The major international instruments, including the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances⁶⁶ and the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations⁶⁷ recognize this paradox. While their primary focus is combating drug trafficking, they call on governments to take multidisciplinary initiatives, of which alternatives to imprisonment are a key part.

Rule 61 therefore calls specifically for provisions to allow judges to take account of the circumstances of the offence committed, as well as the caring responsibilities of the women involved, in decision-making and calls on Member States to consider removing mandatory sentencing policies in order for the judicial authorities to be in a position to use their discretion during sentencing.

⁶⁶ UN Doc. E/CONF.82.15.

⁶⁷ A/RES/S-20/3 of 8 September 1998.

The Human Rights Committee of the UN has expressed specific concern that mandatory sentencing can lead to the imposition of punishments that are disproportionate to the seriousness of the crimes committed, raising issues of compliance with various articles of the ICCPR.⁶⁸ In addition, many studies have found that mandatory sentences are not an effective sentencing tool; that is, they constrain judicial discretion without offering any increased crime prevention benefits.

Rule 62

This Rule takes account of the lack of adequate drug treatment programmes in most communities, which are designed specifically for women and the challenges women face in accessing such treatment, including due to the lack of childcare facilities in the community. A study conducted by UNODC, found that comprehensive programming that acknowledges gender differences, which provides women-only services and gives attention to pre-natal and childcare, parenting skills, relationships, mental health problems and practical needs could improve treatment outcomes. Programmes also needed to address trauma and concurrent disorders, due to high rates of trauma and concurrent mental health problems among women.⁶⁹ The study also noted that pregnant and parenting women have unique needs that require approaches that are non-judgmental, comprehensive and coordinated.⁷⁰

Rule 63

This Rule is based on the premise that imprisonment is particularly harmful to the social reintegration of women, as well as to their children and other members of their families. Therefore, prison authorities are encouraged to make maximum possible use of post-sentencing dispositions, such as early conditional release, in the case of women, and especially women who have caring responsibilities or who have special support needs (such as treatment/continuum of care in the community), in order to assist with their social reintegration to the maximum possible extent. Additional measures that can be taken by authorities, is to consider women prisoners for pardoning, as a priority, taking into account their caring responsibilities, when appropriate.

Rule 64

Prisons are not designed for pregnant women and women with small children. Every effort needs to be made to keep such women out of prison, where possible and appropriate, while taking into account the gravity of the offence committed and the risk posed by the offender to the public. Recognizing this reality, the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders determined that “the use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories.”⁷¹ The African Charter on the Rights and Welfare of the Child, 1999, Article 30: Children of Imprisoned Mothers, provides that States Parties to the Charter “should undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and should in particular: (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers; (b) establish and promote measures alternative to

⁶⁸ Concluding observations of the Human Rights Committee: Australia. 24/07/2000. A/55/40, paras.498-528. (Concluding Observations/Comments).

⁶⁹ UNODC Drug Abuse Treatment Toolkit, Substance Abuse Treatment and Care for Women: Case Studies and Lessons Learned, United Nations, New York, 2004, p. 90.

⁷⁰ UNODC Drug Abuse Treatment Toolkit, Substance Abuse Treatment and Care for Women: Case Studies and Lessons Learned, United Nations, New York, 2004, p. 92.

⁷¹ Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Resolution 19 “Management of criminal justice and development of sentencing policies”, Report of the 8th UN Congress on the Prevention of Crime and Treatment of Offenders, 1990, UN Doc. A/CONF.144/28/Rev.1.

institutional confinement for the treatment of such mothers. The Council of Europe, Parliamentary Assembly Recommendation 1469 (2000), on Mothers and babies in prison, adopted on 30 June 2000, also recommended the development and use of community-based penalties for mothers of young children and the avoidance of the use of prison custody. Most recently, in its Resolution 10/2, dated 25 March 2009, entitled “Human rights in the administration of justice, in particular juvenile justice”, the Human Rights Council emphasized that, when sentencing or deciding on pretrial measures for a pregnant woman or a child’s sole or primary carer, priority should be given to non-custodial measures, bearing in mind the gravity of the offence and after taking into account the best interest of the child.

Taking into account the provisions of the Tokyo Rules 3.3, which provide that “[d]iscretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law”, Member States are urged to take legislative measures to implement the measures referred to in this rule, as necessary.

Rule 65

This Rule is based on the principle expressed in Article 37 (b) of the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). All children, and female children in particular, are extremely vulnerable in detention. Imprisonment is likely to have a very harmful impact on children’s psychological and intellectual development, which is why international standards are unanimous in calling for the reduction of the imprisonment of children in conflict with the law to the absolute minimum.

Rules 66

Foreigners are vastly overrepresented in the criminal justice system of many countries, particularly those with a large migrant labour force. The rise in their numbers can partly be attributed to the increasingly punitive measures being adopted against “aliens” in many countries. Trafficked women find themselves behind bars, having been convicted of crimes against public morality, prostitution or breaking immigration rules, although they themselves are the victims of poverty, false promises, coercion and exploitation.

Trafficked persons are sometimes treated as criminals rather than as victims, whether in States of destination, transit or origin. In States of destination, they may be prosecuted and detained because of irregular migration or labour status. Alternatively, immigration authorities may simply deport them to the State of origin if their immigration status is irregular. Trafficked persons returning to their State of origin may also be subjected to prosecution for using false documents, having left the State illegally, or for having worked in the sex industry. Criminalization limits the trafficking victims’ access to justice and protection and decreases the likelihood that they will report their victimization to the authorities. Given the victims’ existing fears for their personal safety and of reprisals by the traffickers, the added fear of prosecution and punishment can only further prevent victims from seeking protection, assistance and justice.⁷²

UNODC, as the custodian of the UN standards and norms relating to criminal justice and crime prevention, and based on its mandate to operationalise such standards and norms, should advocate for the ratification of these Conventions.

⁷² Toolkit to Combat Trafficking in Persons, Global Programme Against Trafficking in Human Beings, UNODC, 2006, p. 103.

PART IV

RESEARCH, PLANNING, EVALUATION AND PUBLIC AWARENESS-RAISING

Rules 67-68

These Rules recognize the limited information available on women in the criminal justice system worldwide, which hinders the development of effective policies and implementation of programmes to respond to women offenders' needs fairly and effectively. The utilization of research as a basis for an informed policy formulation in responding to the gender specific circumstances and needs of woman offenders is an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and effectiveness of the criminal justice system in both delivering justice and enabling the social reintegration of woman offenders, and avoiding as far as possible the negative impact of women's confrontation with the criminal justice system on their children. The research should be based on accurate data collection, and where this poses challenges, should seek means to improve data collection methods, as well as harmonisation of data collection. Access to information should also be improved based on principles of transparency and in order to make the widest possible use of available data.

Rule 69

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

Rule 70

This Rule recognizes the limited nature of reliable data and public awareness on women offenders worldwide, the impact of imprisonment on their children, as well as the important role played by information sharing on research outcomes and good practices in the effectiveness of the delivery of justice to women offenders. It also recognizes the key role played by the media in disseminating information on matters relating to women prisoners and offenders. It also recognizes the importance of making available to the media and to those with a professional responsibility in matters concerning women reliable and up-to-date data, in order to enhance and improve the effective implementation of relevant policies and programmes, while receiving public support for them.

The rule also recognises the urgent need to train relevant criminal justice officials in the provisions of these rules and sensitise them to the situation and needs of women in the criminal justice system. Criminal justice officials should be regularly informed of the outcomes of new research in order to keep them abreast of new findings and developments so that they can make informed decisions in their dealings with women offenders.



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Alternatives to imprisonment
and restorative justice



UNODC

United Nations Office on Drugs and Crime

United Nations Standard Minimum Rules for
Non-custodial Measures

The TOKYO RULES*



III. Alternatives to imprisonment and restorative justice

12. United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)*

1. GENERAL PRINCIPLES

1. Fundamental aims

1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

2. The scope of non-custodial measures

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of

*General Assembly resolution 45/110, annex.

the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.

2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

2.5 Consideration shall be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.

2.7 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.

3. Legal safeguards

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, background of the offender, the purposes of sentencing and the rights of victims.

3.3 Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.

3.4 Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.

3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender.

3.6 The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.

3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

3.9 The dignity of the offender subject to non-custodial measures shall be protected at all times.

3.10 In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.

3.11 In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family.

3.12 The offender's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons.

4. Saving clause

4.1 Nothing in the present Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners,¹ the

¹*First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A; and Economic and Social Council resolution 2076 (LXII).

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),² the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment³ or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

II. PRE-TRIAL STAGE

5. *Pre-trial dispositions*

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

6. *Avoidance of pre-trial detention*

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 6.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

²Resolution 40/33, annex.

³Resolution 43/173, annex.

III. TRIAL AND SENTENCING STAGE

7. *Social inquiry reports*

7.1 If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

8. *Sentencing dispositions*

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

- (a) Verbal sanctions, such as admonition, reprimand and warning;
- (b) Conditional discharge;
- (c) Status penalties;
- (d) Economic sanctions and monetary penalties, such as fines and day-fines;
- (e) Confiscation or an expropriation order;
- (f) Restitution to the victim or a compensation order;
- (g) Suspended or deferred sentence;
- (h) Probation and judicial supervision;
- (i) A community service order;
- (j) Referral to an attendance centre;
- (k) House arrest;
- (l) Any other mode of non-institutional treatment;
- (m) Some combination of the measures listed above.

IV. POST-SENTENCING STAGE

9. Post-sentencing dispositions

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

- (a) Furlough and halfway houses;
- (b) Work or education release;
- (c) Various forms of parole;
- (d) Remission;
- (e) Pardon.

9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES

10. Supervision

10.1 The purpose of supervision is to reduce reoffending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.

10.2 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

10.3 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the offender to work on his or her offending. Supervision and treatment should be periodically reviewed and adjusted as necessary.

10.4 Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

11. Duration

11.1 The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.

11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it.

12. Conditions

12.1 If the competent authority shall determine the conditions to be observed by the offender, it should take into account both the needs of society and the needs and rights of the offender and the victim.

12.2 The conditions to be observed shall be practical, precise and as few as possible, and shall be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and at increasing the offender's chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.

12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the offender.

13. Treatment process

13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.

13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.

13.5 Caseload assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

13.6 For each offender, a case record shall be established and maintained by the competent authority.

14. Discipline and breach of conditions

14.1 A breach of the conditions to be observed by the offender may result in a modification or revocation of the non-custodial measure.

14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the offender.

14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.

14.5 The power to arrest and detain the offender under supervision in cases where there is a breach of the conditions shall be prescribed by law.

14.6 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a judicial or other competent independent authority.

VI. STAFF

15. Recruitment

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the offenders to be supervised.

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

16. Staff training

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to cooperate in and coordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

VII. VOLUNTEERS AND OTHER COMMUNITY RESOURCES

17. Public participation

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

18. Public understanding and cooperation

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote non-custodial measures.

18.2 Conferences, seminars, symposiums and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

19. Volunteers

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

19.2 Volunteers should encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance according to their capacity and the offenders' needs.

19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for authorized expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

VIII. RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

20. Research and planning

20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of offenders.

20.2 Research on the problems that confront clients, practitioners, the community and policymakers should be carried out on a regular basis.

20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.

21. Policy formulation and programme development

21.1 Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.

21.2 Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively.

21.3 Periodic reviews should be concluded to assess the objectives, functioning and effectiveness of non-custodial measures.

22. Linkages with relevant agencies and activities

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

23. International cooperation

23.1 Efforts shall be made to promote scientific cooperation between countries in the field of non-institutional treatment. Research, training, technical

assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released.⁴

⁴Resolution 45/119, annex.

**13. Kadoma Declaration on Community Service and
recommendations of the seminar entitled "Criminal justice:
the challenge of prison overcrowding", held in San José
from 3 to 7 February 1997***

Kadoma Declaration on Community Service

Recalling the Kampala Declaration on Prison Conditions in Africa, adopted at the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, which takes into account the limited effectiveness of imprisonment, especially for those serving short sentences, and the cost of imprisonment to the whole of society,

Noting the growing interest in many countries in measures that replace custodial sentences and the promising developments across the world in this regard,

Noting with appreciation that the importance of the Kampala Declaration was recognized by the Economic and Social Council in its resolution 1997/36 of 21 July 1997 on international cooperation for the improvement of prison conditions, to which the Declaration was annexed,

*Economic and Social Council resolution 1998/23, annexes I and II, respectively.

Bearing in mind the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)¹ and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),²

Considering that, in many countries in Africa, the level of overcrowding is inhuman,

Recalling that the African Charter on Human and Peoples Rights³ reaffirms the dignity inherent in a human being and the prohibition of degrading punishment and treatment,

Welcoming the success of the Zimbabwe community service scheme and its adoption by the Government of Zimbabwe following a three-year trial period,

Noting with appreciation that other African countries, including French-speaking and Portuguese-speaking countries, are interested in introducing community service as a penal sanction in their criminal justice systems,

The participants at the International Conference on Community Service Orders in Africa, held at Kadoma, Zimbabwe, from 24 to 28 November 1997, make the following Declaration:

1. The use of prison should be strictly limited to being a measure of last resort. Prisons represent a waste of scarce resources and human potential. The majority of prisoners who occupy them pose no actual threat to society.
2. The overcrowding in our prisons requires positive action through, inter alia, the introduction of community service.
3. Community service is in conformity with African traditions of dealing with offenders and with healing the damage caused by crime within the community. Furthermore, it is a positive and cost-effective measure to be preferred, whenever possible, to a sentence of imprisonment.
4. Community service should be effectively implemented and supervised and should involve a programme of work in which the offender is required to carry out a number of hours of voluntary work for the benefit of the community in his or her own time.
5. Governments, donors and civil society organizations are invited to support research, pilot schemes and other initiatives in this important area.

¹General Assembly resolution 45/110, annex.

²General Assembly resolution 40/33, annex.

³United Nations, *Treaty Series*, vol. 1520, No. 26363.

6. Countries that already have community service should take into account lessons learned from elsewhere and review their own schemes accordingly.

7. There should be promotion of community support through sensitization campaigns targeting public opinion and the development of statistical databases to measure the effectiveness of community service.

8. We encourage those countries that have not yet done so to develop non-custodial sentencing alternatives and to this end we commit ourselves to cooperating with and coordinating our action through other national committees on community service and/or interested groups, in order to better promote the scheme.

9. We adopt the Plan of Action attached hereto.

Appendix

Plan of action for the Kadoma Declaration on Community Service

Further to the Kadoma Declaration on Community Service, adopted by the participants at the Kadoma Conference on Community Service Orders in Africa, held at Kadoma, Zimbabwe, from 24 to 28 November 1997, the participants adopt the following Plan of Action:

1. Network

Establish a network of national committees on community service and other interested groups to provide mutual support and encouragement through:

- The provision of resource persons to assist at seminars in the subregion and elsewhere;
- The sharing of documentation (legislation, guidelines, administrative forms) and ideas;
- Coordination and support of new projects;
- Cooperation and assistance in administering the scheme;
- Assistance in staff training;
- Exchange visits.

2. Community service directory

Compile a community service directory. To this end, a home page will be established on the Internet informing interested persons of developments in this area and a book will be produced that includes:

- The contact points and addresses of all national committees on community service and those contacts engaged in community service schemes;

- A list of experts and resource persons;
- Contacts in interested countries;
- Interested groups and organizations around the world;
- Donor contacts and government contacts.

The book will be distributed in different languages, including French and English.

3. Newsletter

Issue a newsletter:

- To be produced by each national committee on community service at regular intervals and circulated to the network;
- To include initiatives undertaken, problems encountered, solutions found, reports on workshops, a calendar of events, requests for support (for example, resource persons), statistics and other information;
- To be disseminated through the Internet or the mail, or both.

4. Research and data-gathering

Set up mechanisms for research and data-gathering whereby:

- Research findings and data gathered will be shared through the newsletter or via the Internet;
- Research projects will be identified (for example, on cost-benefit analyses) and funding application supported by the network;
- Joint research projects on the benefits, problems and effectiveness of community service where the scheme is applied will be undertaken regionally and internationally.

Recommendations of the seminar entitled “Criminal justice: the challenge of prison overcrowding”, held in San José from 3 to 7 February 1997

1. The Secretary-General should take measures to ensure that assistance is offered to States requesting it, either by drawing on existing resources or by creating a special budget heading, with a view to improving the physical conditions of prisons.

2. The Secretary-General should take measures to ensure that the relevant entities are furnished with the necessary resources to provide training for the administrative and operational personnel of the prisons of Member States requesting such training, priority being accorded to the most overcrowded prisons.

3. Measures should be taken to ensure that international and regional financial institutions, such as the World Bank and the Inter-American Development Bank, adopt initiatives aimed at reducing prison overcrowding, including the provision of assistance for programmes of prison construction and the renovation of infrastructure.

4. The World Health Organization and regional bodies should be requested to incorporate, in their programmes of assistance, initiatives aimed at improving prison hospital facilities and the medical and hospital services offered to prisoners in States requesting such assistance.

5. Member States should urge the Secretary-General to promote and adopt, jointly with requesting Member States, measures to privatize individual prisons in such a way that they provide for security, the well-being and social reintegration of prisoners, profitable industrial use of prison labour and employment opportunities for prisoners after their release.

6. Member States should seek to establish in prisons human rights committees and work panels as alternative conflict-resolution mechanisms.

7. Member States should explore the possibility of adopting strategies to involve private enterprise in prison social rehabilitation programmes by creating enterprises and micro-enterprises to encourage investment in the vocational training of prisoners, employment creation within prisons and the reintegration of former prisoners into the labour force, thereby ensuring full application of the principles of social reintegration and rehabilitation of former prisoners within the productive mainstream of countries.

8. Member States should take measures to ensure the marketing of prison production through promotional and marketing programmes and to progressively set up workshops in prisons.

14. Basic principles on the use of restorative justice programmes in criminal matters*

Preamble

Recalling that there has been, worldwide, a significant growth of restorative justice initiatives,

Recognizing that those initiatives often draw upon traditional and indigenous forms of justice which view crime as fundamentally harmful to people,

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

Emphasizing that restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities,

Stressing that this approach enables those affected by crime to share openly their feelings and experiences, and aims at addressing their needs,

Aware that this approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community well-being and to prevent crime,

Noting that restorative justice gives rise to a range of measures that are flexible in their adaptation to established criminal justice systems and that complement those systems, taking into account legal, social and cultural circumstances,

Recognizing that the use of restorative justice does not prejudice the right of States to prosecute alleged offenders,

I. USE OF TERMS

1. "Restorative justice programme" means any programme that uses restorative processes and seeks to achieve restorative outcomes.

2. "Restorative process" means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

3. "Restorative outcome" means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

4. "Parties" means the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative process.

5. "Facilitator" means a person whose role is to facilitate, in a fair and impartial manner, the participation of the parties in a restorative process.

II. USE OF RESTORATIVE JUSTICE PROGRAMMES

6. Restorative justice programmes may be used at any stage of the criminal justice system, subject to national law.

7. Restorative processes should be used only where there is sufficient evidence to charge the offender and with the free and voluntary consent of the victim and the offender. The victim and the offender should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily and should contain only reasonable and proportionate obligations.

8. The victim and the offender should normally agree on the basic facts of a case as the basis for their participation in a restorative process. Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings.

9. Disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring a case to, and in conducting, a restorative process.

10. The safety of the parties shall be considered in referring any case to, and in conducting, a restorative process.

11. Where restorative processes are not suitable or possible, the case should be referred to the criminal justice authorities and a decision should be taken as to how to proceed without delay. In such cases, criminal justice officials should endeavour to encourage the offender to take responsibility vis-à-vis the victim and affected communities, and support the reintegration of the victim and the offender into the community.

III. OPERATION OF RESTORATIVE JUSTICE PROGRAMMES

12. Member States should consider establishing guidelines and standards, with legislative authority when necessary, that govern the use of restorative justice programmes. Such guidelines and standards should respect the basic principles set forth in the present instrument and should address, inter alia:

(a) The conditions for the referral of cases to restorative justice programmes;

(b) The handling of cases following a restorative process;

- (c) The qualifications, training and assessment of facilitators;
- (d) The administration of restorative justice programmes;
- (e) Standards of competence and rules of conduct governing the operation of restorative justice programmes.

13. Fundamental procedural safeguards guaranteeing fairness to the offender and the victim should be applied to restorative justice programmes and in particular to restorative processes:

(a) Subject to national law, the victim and the offender should have the right to consult with legal counsel concerning the restorative process and, where necessary, to translation and/or interpretation. Minors should, in addition, have the right to the assistance of a parent or guardian;

(b) Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision;

(c) Neither the victim nor the offender should be coerced, or induced by unfair means, to participate in restorative processes or to accept restorative outcomes.

14. Discussions in restorative processes that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties or as required by national law.

15. The results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements. Where that occurs, the outcome should have the same status as any other judicial decision or judgement and should preclude prosecution in respect of the same facts.

16. Where no agreement is reached among the parties, the case should be referred back to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to reach an agreement alone shall not be used in subsequent criminal justice proceedings.

17. Failure to implement an agreement made in the course of a restorative process should be referred back to the restorative programme or, where required by national law, to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to implement an agreement, other than a judicial decision or judgement, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

18. Facilitators should perform their duties in an impartial manner, with due respect to the dignity of the parties. In that capacity, facilitators should ensure that the parties act with respect towards each other and enable the parties to find a relevant solution among themselves.

19. Facilitators shall possess a good understanding of local cultures and communities and, where appropriate, receive initial training before taking up facilitation duties.

IV. CONTINUING DEVELOPMENT OF RESTORATIVE JUSTICE PROGRAMMES

20. Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and at the promotion of a culture favourable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities.

21. There should be regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding and enhance the effectiveness of restorative processes and outcomes, to increase the extent to which restorative programmes are used, and to explore ways in which restorative approaches might be incorporated into criminal justice practices.

22. Member States, in cooperation with civil society where appropriate, should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to the criminal justice process and provide positive outcomes for all parties. Restorative justice processes may need to undergo change in concrete form over time. Member States should therefore encourage regular evaluation and modification of such programmes. The results of research and evaluation should guide further policy and programme development.

V. SAVING CLAUSE

23. Nothing in these basic principles shall affect any rights of an offender or a victim which are established in national law or applicable international law.



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