

**III INMATE RIGHTS AND TREATMENT OF PRISONERS**  
**Table of Contents**

<b>PART ONE: UN GUIDELINES</b> .....	<b>3</b>	<b>14. Protection Against and Prevention of</b>	<b>37</b>
<b>A. GENERAL RIGHTS OF PRISONERS</b> .....	<b>3</b>	<b>Enforced Disappearance</b> .....	<b>37</b>
<b>1. Right to Humane Treatment</b> .....	<b>3</b>	<b>15. Administrative Safeguards Against</b>	<b>39</b>
<b>2. Right to Equality/Freedom from</b>		<b>Enforced Disappearances</b> .....	<b>39</b>
<b>Discrimination</b> .....	<b>4</b>	<b>16. Protection Against Summary Executions</b> .....	<b>41</b>
<b>3. Use of Least Restrictive Measures</b> .....	<b>6</b>	16.(a) <i>Prevention</i> .....	41
<b>4. Right to Life, Liberty, Security</b> .....	<b>6</b>	16.(b) <i>Investigation</i> .....	43
4.(a) <i>Inherent Right to Life</i> .....	6	16.(c) <i>Legal Proceedings</i> .....	45
4.(b) <i>Capital Punishment</i> .....	7	<b>17. Reintegration and Release</b> .....	<b>46</b>
<b>5. Protection Against Torture/Mistreatment</b> .....	<b>9</b>	<b>D. SPECIAL GROUP RIGHTS</b> .....	<b>46</b>
5.(a) <i>Definition</i> .....	9	<b>1. Insane and Mentally Disordered Prisoners –</b>	
5.(b) <i>Right to Protection Against Torture</i> .....	10	see II CASE MANAGEMENT and HEALTH	
5.(c) <i>Protection Against Using Statements</i>		<b>2. Detainees/Unconvicted Prisoners</b> .....	<b>46</b>
<i>Procured under Torture</i> .....	12	2.(a) <i>General Rights</i> .....	46
5.(d) <i>State Responsibility</i> .....	12	2.(b) <i>Separation from Convicted Prisoners</i> .....	47
5.(e) <i>Right to Make Complaints</i> .....	15	2.(c) <i>Special Provisions</i> .....	48
5.(f) <i>Right to Redress</i> .....	17	<b>3. Women’s Rights</b> .....	<b>49</b>
<b>6. Rights Governing Use of Force, Firearms</b>		<b>4. Treatment of Foreign Prisoners</b> .....	<b>50</b>
<b>and Physical Restraint –</b>		<b>5. Rights of Civil Prisoners</b> .....	<b>52</b>
see IV SECURITY		<b>6. Rights of Inmate’s Family</b> .....	<b>52</b>
<b>7. Limitations on Disciplinary Measures</b>		6.(a) <i>Rights of Family upon</i>	
see VI DISCIPLINE		<i>Disappearance/Injury/Death of</i>	
<b>B. RIGHTS BEFORE THE LAW</b> .....	<b>18</b>	<i>Inmate</i> .....	52
<b>1. General</b> .....	<b>18</b>	see also III INMATE RIGHTS AND	
<b>2. Rights upon Arrest</b> .....	<b>20</b>	TREATMENT OF PRISONERS	
<b>3. Interrogation</b> .....	<b>21</b>	6.(b) <i>Right of Inmate’s Family to Receive</i>	
<b>4. Right to Contact with the Outside World</b> .....	<b>22</b>	<i>Aid</i> .....	53
<b>5. Right to Legal Consultation and Recourse</b> .....	<b>23</b>	<b>E. JUVENILE JUSTICE</b> .....	<b>53</b>
<b>6. Right to a Prompt and Fair Trial</b> .....	<b>25</b>	<b>1. General Rights</b> .....	<b>53</b>
<b>7. Right to Compensation for Unlawful</b>		1.(a) <i>Application of the Standard Minimum</i>	
<b>Detention</b> .....	<b>28</b>	<i>Rules for the Treatment of Prisoners</i> .....	53
<b>C. RIGHTS DURING TERM OF</b>		1.(b) <i>Minimal Use of Institutionalisation</i> .....	54
<b>IMPRISONMENT</b> .....	<b>28</b>	1.(c) <i>Detention Pending Trial</i> .....	55
<b>1. Duties of Authorities and State Officials</b> .....	<b>28</b>	1.(d) <i>Right to Equal Treatment/Freedom</i>	
<b>2. Right to Information</b> .....	<b>29</b>	<i>from Discrimination</i> .....	57
<b>3. Right to Make Complaints</b> .....	<b>29</b>	1.(e) <i>Right to Life, Liberty and Security</i> .....	58
<b>4. Right to Independent Inspections</b> .....	<b>30</b>	1.(e)(i) <i>General</i> .....	58
<b>5. Right to Compensation upon Violation of</b>		1.(e)(ii) <i>Capital Punishment</i> .....	59
<b>Rights</b> .....	<b>30</b>	1.(f) <i>Limitation of Physical Restraint and</i>	
<b>6. Visitation and Correspondence</b> .....	<b>31</b>	<i>the Use of Force</i> .....	60
<b>7. Right to Privacy and Confidentiality</b> .....	<b>33</b>	1.(g) <i>Guiding Principles in Adjudication</i>	
<b>8. Language Rights</b> .....	<b>33</b>	<i>and Disposition</i> .....	60
<b>9. Religious Rights</b> .....	<b>34</b>	1.(h) <i>Admission and Registration</i> .....	62
<b>10. Education and Culture –</b>		see also I ADMINISTRATION	
see II CASE MANAGEMENT		<b>2. Rights under the Law</b> .....	<b>63</b>
<b>11. Recreation –</b>		2.(a) <i>General</i> .....	63
see II CASE MANAGEMENT		<b>3. Rights During Imprisonment</b> .....	<b>64</b>
<b>12. Accommodation</b> .....	<b>35</b>	3.(a) <i>Right to Separate Treatment</i> .....	64
<b>13. Health, Hygiene, Clothing and Nutrition –</b>		3.(b) <i>Right To Independent Inspections:</i>	
see V HEALTH		<i>Inspections of Juvenile Facilities</i> .....	65
		3.(c) <i>Physical Environment and</i>	
		<i>Accommodation</i> .....	67

3.(d) Education, Vocational Training and Work – see III CASE MANAGEMENT		1.(g) Visitor Identification/Admission .....	81
3.(e) Recreation – see II CASE MANAGEMENT and V HEALTH		1.(h) Sign .....	81
3.(f) Religion .....	67	1.(i) Notice to Visitors .....	81
3.(g) Health and Medical Care – see V HEALTH		1.(j) Minor or Major Threat .....	82
3.(h) Notification of Imprisonment, Transfer, Illness, Injury and Death .....	68	1.(k) Suspension .....	82
3.(i) Contacts with the Wider Community .....	69	1.(k)(i) General .....	82
3.(j) Inspections and Complaints .....	70	1.(k)(ii) Suspension Beyond One Year .....	83
3.(k) Privacy .....	71	1.(k)(iii) Written Notification .....	83
		1.(k)(iv) Appeal .....	83
		1.(l) Searches of Visitors – see IV SECURITY	
		1.(m) Visiting Area .....	84
<b>PART TWO: PROPOSED PRISON POLICY .....</b>	<b>73</b>	<b>2. Correspondence .....</b>	<b>84</b>
<b>A. RIGHTS BEFORE THE LAW .....</b>	<b>73</b>	2.(a) Definition .....	84
<b>1. Rights upon Arrest .....</b>	<b>73</b>	2.(b) Categories .....	84
<b>2. Interrogation .....</b>	<b>73</b>	2.(c) Copying .....	85
<b>3. Right to Legal Counsel .....</b>	<b>74</b>	2.(d) Reading and Viewing Material .....	85
<b>4. Appeal Procedures .....</b>	<b>74</b>	<b>3. Religious Rights .....</b>	<b>85</b>
4.(a) Filing of Appeal .....	74	3.(a) General .....	85
4.(b) Appeal Information .....	75	3.(b) Religious Objects .....	87
4.(c) Notification of Results of an Appeal .....	75	3.(b)(i) Headdress .....	87
		3.(b)(ii) Ceremonial Accouterments .....	87
		3.(c) Diet .....	88
		3.(d) Provision of Worship Space .....	88
<b>B. RIGHTS DURING TERM OF IMPRISONMENT .....</b>	<b>75</b>	<b>4. Medical Rights .....</b>	<b>88</b>
<b>1. Visits .....</b>	<b>75</b>	4.(a) Protection Against Harmful Medical Procedures .....	88
1.(a) General Comments .....	75	4.(a)(i) General .....	88
1.(b) Types of Visitors .....	75	4.(b) Substance Testing .....	88
1.(c) Visit Settings .....	76	4.(b)(i) Voluntary .....	88
1.(d) Hours of Operation .....	76	4.(b)(ii) Refusal .....	88
1.(e) Visiting Process .....	77	4.(c) Private Clinicians Visiting Inmates .....	89
1.(e)(i) Coordinator Responsibilities .....	77	4.(d) Inmate Fasting .....	89
1.(e)(ii) Visit Requests .....	77	4.(d)(i) Definition .....	89
1.(e)(iii) Screening .....	77	4.(d)(ii) Right to Fast .....	89
1.(e)(iv) Visit Restrictions .....	77	4.(e) Personal Hygiene .....	90
1.(f) Private Family Visits .....	78	<b>5. Accommodation .....</b>	<b>90</b>
1.(f)(i) Private Family Visits- Process .....	78	5.(a) General .....	90
1.(f)(ii) Private Family Visits- Criteria .....	79	5.(b) Inmates in Separate Living Units .....	91
1.(f)(iii) Frequency and Duration of Visits .....	79	5.(c) Privacy and Electronic Surveillance .....	91
1.(f)(iv) Number of Participants Allowed .....	79	<b>6. Searches .....</b>	<b>91</b>
1.(f)(v) Cancellation of Visit .....	79	<b>7. Grievance Procedure .....</b>	<b>92</b>
1.(f)(vi) Private Family Visits- Allowable Items .....	80		
1.(f)(vii) Private Family Visits- Regulations .....	80		

## III INMATE RIGHTS AND TREATMENT OF PRISONERS

### PART ONE: UN GUIDELINES

#### A. GENERAL RIGHTS OF PRISONERS

##### 1. Right to Humane Treatment

*Universal Declaration of Human Rights*<sup>1</sup>

*Article 4*

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

*International Covenant on Civil and Political Rights*<sup>2</sup>

*Article 10*

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

*Basic Principles for the Treatment of Prisoners*<sup>3</sup>

*Principle 1*

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>4</sup>

*Principle 1*

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

---

<sup>1</sup> General Assembly Resolution 217 (III) of 10 December 1948.

<sup>2</sup> General Assembly Resolution 2200 A (XXI) of 16 December 1966.

<sup>3</sup> General Assembly Resolution 45/111 of 14 December 1990.

<sup>4</sup> General Assembly Resolution 43/173 of 9 December 1988.

*Code of Conduct for Law Enforcement Officials**Article 2*

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

*Commentary*

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

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

**2. Right to Equality/Freedom from Discrimination***The Universal Declaration of Human Rights*<sup>5</sup>*Article 1*

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

*Article 2*

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

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person

---

<sup>5</sup> *Supra*, note 1

belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

*Basic Principles for the Treatment of Prisoners*<sup>6</sup>

*Principle 2*

There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*Principle 3*

It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>7</sup>

*Principle 5*

1. These principles shall be applied to all persons within the territory of a given state, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women (especially pregnant women and nursing mothers), children and juveniles, aged, sick or handicapped persons, shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

*Standard Minimum Rules for the Treatment of Prisoners*<sup>8</sup>

*Rule 6*

1. The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

---

<sup>6</sup> *Supra*, note 3

<sup>7</sup> *Supra*, note 4

<sup>8</sup> First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva 1955, approved by the Economic and Social Council Resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

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

### **3. Use of Least Restrictive Measures**

*Basic Principles for the Treatment of Prisoners*<sup>9</sup>

#### *Principle 5*

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights. Where the state concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants, shall retain the human rights and fundamental freedoms of all prisoners.

*Standard Minimum Rules for the Treatment of Prisoners*<sup>10</sup>

#### *Rule 57*

Imprisonment and other measures, which result in cutting off an offender from the outside world, are afflictive by the very fact of taking from the person the right of self-determination by depriving him/her of his/her liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

### **4. Right to Life, Liberty, Security**

#### **4.(a) Inherent Right to Life**

*The Universal Declaration of Human Rights*<sup>11</sup>

#### *Article 3*

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

---

<sup>9</sup> *Supra*, note 3

<sup>10</sup> *Supra*, note 6

<sup>11</sup> *Supra*, note 1

*International Covenant on Civil and Political Rights*<sup>12</sup>*Article 6*

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his/her life.

*Article 9*

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law.

*Article 11*

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

**4.(b) Capital Punishment***International Covenant on Civil and Political Rights*<sup>13</sup>*Article 6*

2. In countries that have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention for the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorise any state party to the present Covenant to derogate in any way from any obligation assumed under the provision of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

---

<sup>12</sup> *Supra*, note 2

<sup>13</sup> *Supra*, note 2

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any state party to the present Covenant.

*Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*<sup>14</sup>

1. In countries that have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission. It shall be understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.

4. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political rights. Those safeguards shall include the right of anyone suspected of or charged with a crime for which capital punishment may be imposed, to adequate legal assistance at all stages of the proceedings.

6. Anyone sentenced to death shall have the right to seek pardon or commutation of sentence. Pardon or commutation of sentence may be granted in all cases of capital punishment.

7. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction. Steps should be taken to ensure that such appeals become mandatory.

---

<sup>14</sup> Economic and Social Council Resolution 1984/150 of 25 May 1984.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to a pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

## **5. Protection Against Torture/Mistreatment**

### **5.(a) Definition**

*Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*<sup>15</sup>

#### *Article 1*

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

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

*Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*<sup>16</sup>

#### *Article 1*

1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her, or a third person, information or a confession, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

---

<sup>15</sup> General Assembly Resolution 3452 (XXX) of 9 December 1975.

<sup>16</sup> Adopted and opened for signature, ratification and accession by General Assembly Resolution 39146.

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

***5.(b) Right to Protection Against Torture***

*Universal Declaration of Human Rights*<sup>17</sup>

*Article 5*

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

*International Covenant on Civil and Political Rights*<sup>18</sup>

*Article 7*

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

*Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*<sup>19</sup>

*Article 2*

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

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>20</sup>

*Principle 6*

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, nor any

---

<sup>17</sup> *Supra*, note 1

<sup>18</sup> Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966, Entry into Force: 23 March 1976, in accordance with Article 49.

<sup>19</sup> *Supra*, note 8

<sup>20</sup> *Supra*, note 4

circumstance which may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>21</sup>

*Rule 87*

In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular as follows:

- (i) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever.

*Code of Conduct for Law Enforcement Officials*<sup>22</sup>

*Article 5*

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or an emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

*Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detained Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*<sup>23</sup>

*Principle 2*

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

---

<sup>21</sup> General Assembly Resolution 451113 of December 1990.

<sup>22</sup> *Supra*, note 5

<sup>23</sup> General Assembly Resolution 371194 of 18 December 1982.

**5.(c) Protection Against Using Statements Procured under Torture**

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

*Article 12*

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

*Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment for Punishment*<sup>24</sup>

*Article 15*

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

**5.(d) State Responsibility**

*Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*<sup>25</sup>

*Article 3*

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

*Article 4*

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

---

<sup>24</sup> *Supra*, note 9

<sup>25</sup> *Supra*, note 8

*Article 6*

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

*Article 7*

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

*Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment*<sup>26</sup>*Article 2*

1. Each state party shall take elective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

*Article 3*

1. No state party shall expel, return (“refouler”) or extradite a person to another state where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violation of human rights.

*Article 4*

1. Each state party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to act by any person which constitutes complicity or participation in torture.

---

<sup>26</sup> *Supra*, note 9

2. Each state party shall make these offences punishable by appropriate penalties which take into account their grave nature.

#### *Article 6*

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any state party in whose territory a person alleged to have committed any offence referred to in Article 4 is present, shall take him/her into custody or take other legal measures to ensure his/her presence. The custody and other legal measures shall be provided in the law of that state but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such state shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to Paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the state of which he/she is a national, or, if he/she is a stateless person, with the representative of the state where he/she usually resides.

4. When a state, pursuant to this Article, has taken a person into custody, it shall immediately notify the states referred to in Article 5, Paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his/her detention. The state which makes the preliminary inquiry contemplated in Paragraph 2 of this article shall promptly report its findings to the said states and shall indicate whether it intends to exercise jurisdiction.

#### *Article 7*

1. The state party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in Article 4 is found shall, in the cases contemplated in Article 5 if it does not extradite him/her, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that state. In the cases referred to in Article 5, Paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in Article 5, Paragraph 1.

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

*Article 10*

1. Each state party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention, or imprisonment.
2. Each state party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

*Article 11*

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

***5.(e) Right to Make Complaints****International Covenant on Civil and Political Rights*<sup>27</sup>*Article 2*

3. Each state party to the present Covenant undertakes:
  - (a) to ensure that any person whose rights or freedoms as herein recognised are violated shall have an elective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) to ensure that any person claiming such a remedy shall have his/her right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy;
  - (c) to ensure that the competent authorities shall enforce such remedies when granted.

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>28</sup>


---

<sup>27</sup> *Supra*, note 2

<sup>28</sup> *Supra*, note 4

*Principle 33*

1. A detained or imprisoned person or his/her counsel shall have the right to make a request or complaint regarding his/her treatment, particularly torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.
2. In those cases where neither the detained or imprisoned person nor his/her counsel has the possibility to exercise his/her rights under Paragraph 1 of the present Principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.
4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under Paragraph 1 of the present Principle shall suffer prejudice for making a request or complaint.

*Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*<sup>29</sup>*Article 8*

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

*Article 9*

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

*Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*<sup>30</sup>

---

<sup>29</sup> *Supra*, note 8

<sup>30</sup> *Supra*, note 9

*Article 13*

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

**5.(f) Right to Redress**

*Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*<sup>31</sup>

*Article 11*

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

*Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*<sup>32</sup>

*Article 14*

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

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

**6. Rights Governing Use of Force, Firearms and Physical Restraint**

see IV SECURITY

**7. Limitations on Disciplinary Measures**

see VI DISCIPLINE

---

<sup>31</sup> *Supra*, note 8

<sup>32</sup> *Supra*, note 9

## B. RIGHTS BEFORE THE LAW

### 1. General

*The Universal Declaration of Human Rights*<sup>33</sup>

*Article 6*

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

*Article 7*

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

*International Covenant on Civil and Political Rights*<sup>34</sup>

*Article 16*

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

*Article 26*

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

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>35</sup>

*Principle 2*

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

---

<sup>33</sup> *Supra*, note 1

<sup>34</sup> *Supra*, note 2

<sup>35</sup> *Supra*, note 4

*Principle 3*

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

*Principle 4*

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

*Principle 9*

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

*Principle 36*

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

*Declaration on the Protection of All Persons from Enforced Disappearance*<sup>36</sup>*Article 10*

1. Any person deprived of liberty shall be held in an officially recognised place of detention and in conformity with national law and be brought before a judicial authority promptly after detention.

---

<sup>36</sup> General Assembly Resolution 471133 of 18 December 1992.

## 2. Rights upon Arrest

*The Universal Declaration of Human Rights*<sup>37</sup>

*Article 9*

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

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>38</sup>

*Principle 10*

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

*Principle 12*

1. There shall be duly recorded:

- (i) The reasons for the arrest
- (ii) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his/her first appearance before a judicial or other authority
- (iii) The identity of the law enforcement officials concerned
- (iv) Precise information concerning the place of custody

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

*Principle 13*

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

*Principle 14*

A person who does not adequately understand or speak the language used by the authorities responsible for his/her arrest, detention or imprisonment is entitled to receive promptly in a language which he/she understands the information referred

---

<sup>37</sup> *Supra*, note 1

<sup>38</sup> *Supra*, note 4

to in Principle 10, Principle 11, Paragraph 2, Principle 12, Paragraph 1, and Principle 13. He/she is entitled to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his/her arrest.

### 3. Interrogation

*International Covenant on Civil and Political Rights*<sup>39</sup>

*Article 9*

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

*Article 14*

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

(a) to be informed promptly and in detail in a language which he/she understands, of the nature and cause of the charge against him/her.

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>40</sup>

*Principle 21*

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him/her to confess, to incriminate him/herself otherwise or to testify against any other person.

2. No detained person while being interrogated, shall be subject to violence, threats or methods of interrogation which impair his/her capacity of decision or judgment.

*Principle 23*

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

---

<sup>39</sup> *Supra*, note 2

<sup>40</sup> *Supra*, note 4

2. A detained or imprisoned person, or his/her counsel when provided by law, shall have access to the information described in Paragraph 1 of the present Principle.

#### **4. Right to Contact with the Outside World**

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>41</sup>

##### *Principle 15*

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

##### *Principle 16*

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

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

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

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

---

<sup>41</sup> *Supra*, note 4

## 5. Right to Legal Consultation and Recourse

*International Covenant on Civil and Political Rights*<sup>42</sup>

### *Article 14*

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

(b) to have adequate time and facilities for the preparation of his/her defence and to communicate with counsel of his/her own choosing.

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>43</sup>

### *Principle 17*

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

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

### *Principle 18*

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

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

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

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

---

<sup>42</sup> *Supra*, note 2

<sup>43</sup> *Supra*, note 4

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

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>44</sup>

*Principle 32*

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

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

*Standard Minimum Rules for the Treatment of Prisoners*<sup>45</sup>

*Rule 93*

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

---

<sup>44</sup> *Supra*, note

<sup>45</sup> *Supra*, note 6

## 6. Right to a Prompt and Fair Trial

*The Universal Declaration of Human Rights*<sup>46</sup>

### *Article 10*

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

### *Article 11*

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

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

*International Covenant on Civil and Political Rights*<sup>47</sup>

### *Article 9*

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power, and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

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

### *Article 14*

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him/her, or of his/her rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent independent and impartial tribunal established by law. The press and the public

---

<sup>46</sup> *Supra*, note 1

<sup>47</sup> *Supra*, note 2

may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. However, any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.
3. In the determination of any criminal charge against the accused, everyone shall be entitled to the following minimum guarantees, in full equality:

- (c) to be tried without delay;
- (d) to be tried in his/her presence and to defend him/herself in person or through legal assistance of his/her own choosing; to be informed, if he/she does not have legal assistance, of this right, and to have legal assistance assigned to him/her, in any case where the interests of justice so requires, and without payment by him/her in any such case if he/she does not have sufficient means to pay for it;
- (e) to examine, or have examined, the witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him;
- (f) to have the free assistance of an interpreter if he/she cannot understand or speak the language used in court;
- (g) not to be compelled to testify against him/herself or to confess guilt.

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

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>48</sup>

*Principle 11*

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend him/herself or to be assisted by counsel as prescribed by law.
2. A detained person and his/her counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

---

<sup>48</sup> *Supra*, note 4

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

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>49</sup>

*Principle 36*

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he/she has had all the guarantees necessary for his/her defence.

*Principle 37*

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

*Principle 38*

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

*Principle 39*

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

*General Clause*

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

---

<sup>49</sup> *Supra*, note 4

## 7. Right to Compensation for Unlawful Detention

*International Covenant on Civil and Political Rights*<sup>50</sup>

### *Article 9*

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

### *Article 14*

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

## C. RIGHTS DURING TERM OF IMPRISONMENT

### 1. Duties of Authorities and State Officials

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>51</sup>

#### *Principle 7*

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

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

---

<sup>50</sup> *Supra*, note 2

<sup>51</sup> *Supra*, note 4

## 2. Right to Information

*Universal Declaration of Human Rights*<sup>52</sup>

### *Article 19*

Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

*Standard Minimum Rules for the Treatment of Prisoners*<sup>53</sup>

### *Rule 35*

1. Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his/her category, the disciplinary requirements of the institution, the authorised methods of seeking information and making complaints, and all such other matters as are necessary to enable him/her to understand both his/her rights and obligations and to adapt him/herself to the life of the institution.

2. If a prisoner is illiterate, the aforesaid information shall be conveyed to him/her orally.

## 3. Right to Make Complaints

*Standard Minimum Rules for the Treatment of Prisoners*<sup>54</sup>

### *Rule 36*

1. Every prisoner shall have the opportunity each weekday of making requests or complaints to the prison warden or the officer authorised to represent him/her.

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

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

---

<sup>52</sup> *Supra*, note 1

<sup>53</sup> *Supra*, note 6

<sup>54</sup> *Supra*, note 6

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

#### **4. Right to Independent Inspections**

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>55</sup>

##### *Principle 29*

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

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

*Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*<sup>56</sup>

##### *Principle 7*

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

#### **5. Right to Compensation upon Violation of Rights**

*The Universal Declaration of Human Rights*<sup>57</sup>

##### *Article 8*

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

---

<sup>55</sup> *Supra*, note 4

<sup>56</sup> Recommended by Economic and Security Council Resolution 1989/65 of 24 May 1989.

<sup>57</sup> *Supra*, note 1

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>58</sup>

*Principle 35*

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.

**6. Visitation and Correspondence**

*International Covenant on Civil and Political Rights*<sup>59</sup>

*Article 17*

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

*Article 19*

2. Everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the prisoner's choice.

3. The exercise of the rights provided for in Paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) for respect of the rights or reputation of others; and
- (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.

---

<sup>58</sup> *Supra*, note 4

<sup>59</sup> *Supra*, note 2

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>60</sup>

*Principle 19*

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

*Standard Minimum Rules for the Treatment of Prisoners*<sup>61</sup>

*Rule 37*

Prisoners shall be allowed under necessary supervision to communicate with their families and reputable friends at regular intervals, both by correspondence and by receiving visits.

*Rule 38*

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

*Rule 39*

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

---

<sup>60</sup> *Supra*, note 4

<sup>61</sup> *Supra*, note 6

## 7. Right to Privacy and Confidentiality

*The Universal Declaration of Human Rights*<sup>62</sup>

*Article 12*

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

*Code of Conduct for Law Enforcement Officials*<sup>63</sup>

*Article 4*

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

*Commentary:*

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or are potentially harmful to the interests, and especially the reputation of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

## 8. Language Rights

*Standard Minimum Rules for the Treatment of Prisoners*<sup>64</sup>

*Rule 51*

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

---

<sup>62</sup> *Supra*, note 1

<sup>63</sup> *Supra*, note 5

<sup>64</sup> *Supra*, note 6

## 9. Religious Rights

### *International Covenant on Civil and Political Rights*<sup>65</sup>

#### *Article 18*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his/her choice, and freedom, either individually or in community with others and in public or private, and to manifest religion or belief in worship, observance, practice and aching.

2. No one shall be subject to coercion which would impair the prisoner's freedom to have or to adopt a religion or belief of his/her choice.

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

4. The states' parties to the present Covenant undertake to have respect of the liberty of parents and, where applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### *Article 27*

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

### *Standard Minimum Rules for the Treatment of Prisoners*<sup>66</sup>

#### *Rule 6*

1. The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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

---

<sup>65</sup> *Supra*, note 2

<sup>66</sup> *Supra*, note 6

*Rule 41*

1. If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.
2. A qualified representative appointed or approved under Paragraph 1 shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his/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/her attitude shall be fully respected.

*Rule 42*

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

**10. Education and Culture**

see II CASE MANAGEMENT

**11. Recreation**

see V HEALTH

**12. Accommodation**

*Standard Minimum Rules for the Treatment of Prisoners*<sup>67</sup>

*Rule 9*

1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by him/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, prisoners carefully selected as being suitable to associate with one another in those conditions shall occupy them. There shall be regular supervision by night, in keeping with the nature of the institution.

---

<sup>67</sup> *Supra*, note 6

*Rule 10*

All accommodation provided for the use of prisoners, and in particular all sleeping accommodations, 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 11*

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

(a) the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation; and

(b) artificial light shall be provided sufficient for the prisoner to read or work without injury to eyesight.

*Rule 12*

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

*Rule 13*

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

*Rule 14*

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

**13. Health, Hygiene, Clothing and Nutrition**

see V HEALTH

## 14. Protection Against and Prevention of Enforced Disappearance

### *Declaration on the Protection of All Persons from Enforced Disappearance*<sup>68</sup>

#### *Article 1*

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purpose of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

#### *Article 2*

1. No state shall practice, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearances.

#### *Article 3*

Each state shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

#### *Article 4*

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

---

<sup>68</sup> General Assembly Resolution 47/133 of 18 December 1992.

*Article 6*

1. No order or instruction of any public authority, civilian, military or other may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.

*Article 7*

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

*Article 8*

1. No state shall expel, return (“refouler”) or extradite a person to another state where there are substantial grounds to believe that he/she would be in danger of an enforced disappearance.

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

*Article 9*

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty, is required to prevent enforced disappearances under all circumstances, including those referred to in Article 7 above.

*Article 10*

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each state shall take steps to maintain similar centralised registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to another competent authority entitled under the law of the state concerned or

any international legal instrument to which a state concerned is a party, seeking to trace the whereabouts of a detained person.

### 15. Administrative Safeguards Against Enforced Disappearances

*Declaration on the Protection of All Persons from Enforced Disappearance*<sup>69</sup>

#### *Article 12*

1. Each state shall establish rules under its national law indicating those officials authorised to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.
2. Each state shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorised by law to use force and firearms.

#### *Article 13*

1. Each state shall ensure that any person having knowledge or legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent state authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the state shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.
2. Each state shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.
3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill treatment, intimidation or reprisal.
4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

---

<sup>69</sup> *Supra*, note

5. Steps shall be taken to ensure that any ill treatment, intimidation or reprisal, or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclear.

#### *Article 14*

Any person alleged to have perpetrated an act of enforced disappearance in a particular state shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that state for the purpose of prosecution and trial unless he/she has been extradited to another state wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All states should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.

#### *Article 15*

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in Article 4, Paragraph 1 above, regardless of the motives, shall be taken into account when the competent authorities of the state decide whether or not to grant asylum.

#### *Article 16*

1. Persons alleged to have committed any of the acts referred to in Article 4, Paragraph 1 above, shall be suspended from any official duties during the investigation referred to in Article 13 above.

2. They shall be tried only by the competent ordinary courts in each state, and not by any other special tribunal, in particular military courts.

3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.

4. The persons presumed responsible for such acts shall be guaranteed fair treatment and other relevant international agreements in force at all stages of the investigation and eventual prosecution at trial.

*Article 17*

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared, and these facts remain unclear.
2. When the remedies provided for in Article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.
3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

*Article 18*

1. Persons who have or are alleged to have committed offences referred to in Article 4, Paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.
2. In the exercises of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

*Article 19*

The victims of acts of enforced disappearance and their families shall obtain redress and shall have the right to adequate compensation, including the means for a rehabilitation as complete as possible. In the event of the death of the victim as a result of an act of enforced disappearance, his/her dependants shall also be entitled to compensation.

**16. Protection Against Summary Executions*****16.(a) Prevention***

*Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*<sup>70</sup>

*Principle 1*

Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognised as offences

---

<sup>70</sup> Recommended by Economic and Security Council Resolution 1989/65 of 24 May 1989.

under their criminal laws, and are punishable by appropriate penalties that take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency, may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

*Principle 2*

In order to prevent extra-legal, arbitrary and summary executions, governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorised by law to use force and firearms.

*Principle 3*

Governments shall prohibit orders from superior officers or public authorities authorising or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasise the above provisions.

*Principle 6*

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

*Principle 7*

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

*Principle 8*

Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved

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

### ***16.(b) Investigation***

#### *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*<sup>71</sup>

##### *Principle 9*

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

##### *Principle 10*

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

##### *Principle 11*

In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter, or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a

---

<sup>71</sup> *Supra*, note

commission shall be chosen for their recognised impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

*Principle 12*

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

*Principle 13*

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

*Principle 14*

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

*Principle 15*

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

*Principle 16*

Families of the deceased, and their legal representatives shall be informed of and have access to any hearing as well as to all information relevant to the investigation. They shall also be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

*Principle 17*

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

**16.(c) Legal Proceedings***Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*<sup>72</sup>*Principle 18*

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

*Principle 19*

Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a

---

<sup>72</sup> *Supra*, note

reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

*Principle 20*

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

## **17. Reintegration and Release**

*Declaration on the Protection of All Persons from Enforced Disappearance*<sup>73</sup>

*Article 11*

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability to fully exercise their rights are assured.

## **D. SPECIAL GROUP RIGHTS**

### **1. Insane and Mentally Disordered Prisoners**

see II CASE MANAGEMENT and V HEALTH

### **2. Detainees/Unconvicted Prisoners**

#### **2.(a) General Rights**

*Standard Minimum Rules for the Treatment of Prisoners*

*Rule 84*

1. Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as “untried prisoners” hereinafter in these rules.
2. Unconvicted prisoners are presumed to be innocent and shall be treated as such.

---

<sup>73</sup> *Supra*, note 14

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 95*

Without prejudice to the provisions of Article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under Part I and Part II, Section C. Relevant provisions of the benefit of this special group of persons in custody shall exist, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

**2.(b) Separation from Convicted Prisoners**

*International Covenant on Civil and Political Rights*<sup>74</sup>

*Article 10*

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

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

*Standard Minimum Rules for the Treatment of Prisoners*<sup>76</sup>

*Rule 85*

1. Untried prisoners shall be kept separate from convicted prisoners.

2. Untried youth prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

*Rule 86*

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

---

<sup>74</sup> *Supra*, note 2

<sup>75</sup> *Supra*, note 2

<sup>76</sup> *Supra*, note 6

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>77</sup>

*Principle 8*

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

**2.(c) Special Provisions**

*Standard Minimum Rules for the Treatment of Prisoners*<sup>78</sup>

*Rule 87*

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

*Rule 88*

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

*Rule 89*

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

*Rule 90*

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

---

<sup>77</sup> *Supra*, note 4

<sup>78</sup> *Supra*, note 6

*Rule 91*

An untried prisoner shall be allowed visits and treatment by his/her own doctor or dentist if there is reasonable ground for his/her application and he/she is able to pay any expenses incurred.

*Rule 92*

An untried prisoner shall be allowed to immediately inform his/her family of his/her detention. He/she shall be given all reasonable facilities for communicating with his/her family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

*Rule 93*

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

**3. Women's Rights***Standard Minimum Rules for the Treatment of Prisoners*<sup>79</sup>*Rule 8*

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

- (a) men and women shall so far as possible be detained in separate institutions or parts of institutions. In an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate.

*Rule 23*

1. In women's institutions there shall be special accommodations for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made

---

<sup>79</sup> *Supra*, note 6

wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

2. Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

*Rule 53*

1. In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of that entire section of the institution.

2. No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

3. Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

#### **4. Treatment of Foreign Prisoners**

*The Universal Declaration of Human Rights*<sup>80</sup>

*Article 14*

1. Everyone has the right to seek and to enjoy asylum from persecution in other countries.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>81</sup>

*Principle 16*

2. If a detained or imprisoned person is a foreigner, he/she shall also be promptly informed of his/her right to communicate by appropriate means. This includes a consular post or the diplomatic mission of the state of which he/she is a national or which is otherwise entitled to receive such communication in accordance with

---

<sup>80</sup> *Supra*, note 1

<sup>81</sup> *Supra*, note 4

international law or with the representative of the competent international organisation, if he/she is a refugee, or is otherwise under the protection of an intergovernmental organisation.

*Model Agreement on the Transfer of Foreign Prisoners*<sup>82</sup>

Annex II Recommendations on the treatment of foreign prisoners

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his/her nationality alone.
2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.
3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorised exits from prison according to the same principles as nationals.
4. Foreign prisoners should be informed promptly after reception into a prison, in a language that they understand, the main features of the prison regime, including relevant rules and regulations.
5. The religious precepts and customs of foreign prisoners should be respected.
6. Foreign prisoners should be informed without delay of their rights to request contacts with their consular authorities, as well as of any other relevant information regarding their statuses. If foreign prisoners wish to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly.
7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or program staff and in such matters as complaints, special accommodation, special diets and religious representation and counselling.
8. Foreign prisoner contacts with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organisations, such as the International Committee of the Red Cross, should be given the opportunity to assist foreign prisoners.
9. The conclusion of bilateral and multilateral agreements on the supervision of, and assistance to, offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign officials.

---

<sup>82</sup> The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

## 5. Rights of Civil Prisoners

*Standard Minimum Rules for the Treatment of Prisoners*<sup>83</sup>

### *Article 8*

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

(c) persons imprisoned for debt and other civil offences shall be kept separate from persons imprisoned by reason of a criminal offence.

### *Article 94*

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

*International Covenant on Civil and Political Rights*<sup>84</sup>

### *Article 11*

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

## 6. Rights of Inmate's Family

### **6.(a) Rights of Family upon Disappearance/Injury/Death of Inmate**

see also C. 21- Rights Protecting Against Summary Executions and for Juveniles see 3.(e) Notification of Illness, Injury and Death in III INMATE RIGHTS AND TREATMENT OF PRISONERS

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>85</sup>

---

<sup>83</sup> *Supra*, note 6

<sup>84</sup> *Supra*, note 2

<sup>85</sup> *Supra*, note 4

*Principle 34*

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

**6.(b) Right of Inmate's Family to Receive Aid**

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>86</sup>

*Principle 31*

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

**E. JUVENILE JUSTICE****1. General Rights****1.(a) Application of the Standard Minimum Rules for the Treatment of Prisoners**

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*<sup>87</sup>

*Rule 27*

1. The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

---

<sup>86</sup> *Supra*, note 4

<sup>87</sup> *Supra*, note 17

2. Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to age, sex and personality.

***1.(b) Minimal Use of Institutionalisation***

*Standard Minimum Rules for the Treatment of Prisoners*<sup>88</sup>

*Rule 5*

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.

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>89</sup>

*Rule 1*

The juvenile justice system should uphold the rights and safety and should promote the physical and mental well being of juveniles. Imprisonment should be used as a last resort.

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*<sup>90</sup>

*Rule 18*

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

*Commentary*

Rule 18.2 points to the importance of the family, which, according to Article 10, Paragraph 1 of the International Covenant on Economic, Social and Cultural Rights, is “the natural and fundamental group unit of society”. Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the

---

<sup>88</sup> *Supra*, note 6

<sup>89</sup> *Supra*, note 11

<sup>90</sup> General Assembly Resolution 40133 of 29 November 1985.

facts of the case clearly warrant this grave step (for example: child abuse).

*Rule 19*

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

*Commentary*

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

Rule 19 aims at restricting institutionalisation in two regards: in quantity (“last resort”) and in time (“minimum necessary period”). Rule 19 reflects one of the basic guiding principles of Resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The Rule, therefore, makes the appeal that if a juvenile must be institutionalised, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to “open” over “closed” institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

***1.(c) Detention Pending Trial***

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*<sup>91</sup>

*Rule 13*

1. Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

---

<sup>91</sup> *Supra*, note 17

2. Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.
3. Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.
4. Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
5. While in custody, juveniles shall receive care, protection and all necessary individual assistance- social, educational, vocational, psychological, medical and physical, that they may require in view of their age, sex and personality.

*Commentary*

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

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially Article 9 and Article 10, Paragraphs 2.(b) and 3.

Rule 13.4 does not prevent states from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>92</sup>

*Rule 17*

Juveniles who are detained under arrest or awaiting trial (‘untried’) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply appropriate measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest

---

<sup>92</sup> *Supra*, note 11

possible duration of detention. Untried detainees should be separated from convicted juveniles.

*Rule 18*

The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with 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:

1. Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications.
2. Juveniles should be provided, where possible, with opportunities to pursue work, and 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.
3. Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

***1.(d) Right to Equal Treatment/Freedom from Discrimination***

*International Covenant on Civil and Political Rights*<sup>93</sup>

*Article 24*

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, nation or social origin, property or birth, the right to such measures of protection as are required by his/her status as a minor, on the part of his/her family, society, and the state.

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*

*Rule 4*

The rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin,

---

<sup>93</sup> *Supra*, note 2

and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*<sup>94</sup>

*Rule 2*

1. The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

***1.(e) Right to Life, Liberty and Security***

**1.(e)(i) General**

*United Nations Rules for the Protection of Juveniles Deprived of their Liberty*<sup>95</sup>

*Rule 2*

Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”). Deprivation of a juvenile’s liberty should be a disposition of last resort, for the minimum necessary period and should be limited to exceptional cases. The judicial authority, without precluding the possibility of his or her early release, should determine the length of the sanction.

*Rule 11*

For the purposes of the Rules, the following definitions should apply:

1. A juvenile is every person under the age of 18. Law should determine the age below which it should not be permitted to deprive a child of his or her liberty.
2. The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

---

<sup>94</sup> *Supra*, note 17

<sup>95</sup> *Supra*, note 11

*Rule 12*

The deprivation of liberty should be effected in conditions and circumstances that ensure respect of the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programs which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

*Rule 13*

Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

*Rule 14*

The competent authority shall ensure the protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures. The objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorised to visit the juveniles and not belonging to the detention facility.

1.(e)(ii) Capital Punishment

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*<sup>96</sup>

*Rule 17*

2. Capital punishment shall not be imposed for any crime committed by juveniles.
3. Juveniles shall not be subject to capital punishment.

*Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*<sup>97</sup>

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.

---

<sup>96</sup> *Supra*, note 17

<sup>97</sup> *Supra*, note 7

***1.(f) Limitation of Physical Restraint and the Use of Force***

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>98</sup>

***Rule 63***

Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in Rule 64 below.

***Rule 64***

Instruments of restraint and force can only be used in exceptional cases when all other control methods have been exhausted and failed, and only as explicitly authorised and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the prison warden of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the prison warden should at once consult medical and other relevant personnel and report to the higher administrative authority.

***Rule 65***

The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

***1.(g) Guiding Principles in Adjudication and Disposition***

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*<sup>99</sup>

***Rule 17***

1. The disposition of the competent authority shall be guided by the following principles:

1. The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society.

---

<sup>98</sup> *Supra*, note 11

<sup>99</sup> *Supra*, note 17

2. Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.

3. Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.

4. The well-being of the juvenile shall be the guiding factor in the consideration of his or her case.

4. The competent authority shall have the power to discontinue the proceedings at any time.

*Rule 20*

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

*Commentary*

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

*International Covenant on Civil and Political Rights*<sup>100</sup>

*Article 10*

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

*Article 14*

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

---

<sup>100</sup> *Supra*, note 2

***1.(h) Admission and Registration***

see also I ADMINISTRATION

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>101</sup>

***Rule 6***

The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

***Rule 22***

The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

***Rule 24***

On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, the address of the authorities competent to receive complaints, and the address of public or private agencies and organisations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

***Rule 25***

All juveniles should be helped to understand the regulations governing the internal organisation of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorised methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to fully understand their rights and obligations during detention.

---

<sup>101</sup> *Supra*, note 11

## 2. Rights under the Law

### 2.(a) General

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*<sup>102</sup>

#### *Rule 7*

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

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*<sup>103</sup>

#### *Rule 15*

1. Throughout the proceedings, the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

2. The parents or guardians shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

#### *Commentary*

Rule 15.1 uses terminology similar to that found in Rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in Rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile- a function extending throughout the procedure.

The competent authority’s search for an adequate disposition of the case may profit, in particular, from the cooperation of the legal representatives of the juvenile (or, for that matter, some other personal

---

<sup>102</sup> *Supra*, note 17

<sup>103</sup> *Supra*, note 17

assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role; for instance, if they display a hostile attitude towards the juvenile, the possibility of their exclusion must be provided for.

### 3. Rights During Imprisonment

#### 3.(a) *Right to Separate Treatment*

*International Covenant on Civil and Political Rights*<sup>104</sup>

##### *Article 10*

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

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

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*<sup>105</sup>

##### *Rule 13*

4. Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

##### *Rule 26*

3. Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution which holds adults.

4. Young female offenders placed in an institution deserve special attention for their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

---

<sup>104</sup> *Supra*, note 2

<sup>105</sup> *Supra*, note 17

*Commentary*

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in Rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its Resolution 4. The Rule does not prevent states from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (see also Rule 13.4)

*Commentary*

Rule 26.4 addresses the fact that female offenders normally receive less attention than male counterparts as pointed out by the Sixth Congress. In particular, Resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, *inter alia*, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination Against Women.

*Standard Minimum Rules for the Treatment of Prisoners*<sup>106</sup>

8.(d) Young prisoners shall be kept separate from adults.

***3.(b) Right To Independent Inspections: Inspections of Juvenile Facilities****United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>107</sup>*Rule 72*

Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility, should be empowered to conduct inspections on a regular basis, undertake unannounced inspections on their own initiative, and enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

---

<sup>106</sup> *Supra*, note 6

<sup>107</sup> *Supra* note

*Rule 73*

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

*Rule 74*

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

*Rule 75*

Every juvenile should have the opportunity to make requests or complaints to the facility director and to his/her authorised representative.

*Rule 76*

Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

*Rule 77*

Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

*Rule 78*

Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organisations that provide legal counsel or which are competent to receive complaints.

**3.(c) Physical Environment and Accommodation***Rule 31*

Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

*Rule 35*

The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognised and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in sole custody. The juvenile thereof should sign an inventory. Steps should be taken to keep effects in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorised to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer would decide what use should be made of it.

*Rule 36*

To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

**3.(d) Education, Vocational Training and Work**

see II CASE MANAGEMENT

**3.(e) Recreation**

see II CASE MANAGEMENT and V HEALTH

**3.(f) Religion**

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>108</sup>

*Rule 48*

Every juvenile should be allowed to satisfy the needs of his/her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his/her own services and having possession of

---

<sup>108</sup> *Supra*, note 11

the necessary books or items of religious observance and instruction of his/her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his/her choice, as well as the right not to participate in religious services and to freely decline religious education, counselling or indoctrination.

**3.(g) *Health and Medical Care***

see V HEALTH

**3.(h) *Notification of Imprisonment, Transfer, Illness, Injury and Death***

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>109</sup>

*Rule 56*

The family or guardian of a juvenile and any other person designated by the juvenile has the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The prison warden should immediately notify the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than forty-eight hours. Notification should also be given to the consular authorities of the state to which the foreign juvenile is a citizen.

*Rule 57*

Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the cause of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

*Rule 58*

A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member. He/she should be provided

---

<sup>109</sup> *Supra*, note 11

with the opportunity to attend the funeral of the deceased or go to the bedside of the critically ill relative.

*Standard Minimum Rules for the Treatment of Prisoners*<sup>110</sup>

*Rule 44*

1. Upon the death or serious illness of, or serious injury to, a prisoner or his/her removal to an institution for the treatment of mental affections, the prison warden shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person designated by the prisoner.
2. A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorised, whenever circumstances allow, to go to his/her bedside either under escort or alone.
3. Every prisoner shall have the right to immediately inform his/her family of his/her imprisonment or transfer to another institution.

**3.(i) *Contacts with the Wider Community***

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*<sup>111</sup>

*Rule 26*

5. In the interest and well-being of the institutionalised juvenile, the parents or guardians shall have a right of access.

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>112</sup>

*Rule 59*

Every means should be provided to ensure that juveniles have adequate communication with the outside world. This is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organisations, to leave detention facilities for a visit to their homes and families and to receive special permission to leave the detention facility for educational, vocational or

---

<sup>110</sup> *Supra*, note 6

<sup>111</sup> *Supra*, note 17

<sup>112</sup> *Supra*, note 11

other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

*Rule 60*

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

*Rule 61*

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

*Rule 62*

Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programs and motion pictures, and through the visits of the representatives of any lawful club or organisation in which the juvenile is interested.

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>113</sup>

*Principle 16*

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

**3.(j) Inspections and Complaints**

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>114</sup>

*Rule 75*

Every juvenile should have the opportunity to make requests or complaints to the prison warden and to his or her authorised representative.

---

<sup>113</sup> *Supra*, note 4

<sup>114</sup> *Supra*, note 11

*Rule 76*

Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

*Rule 77*

Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

*Rule 78*

Every juvenile should have the right to request assistance from a family member, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organisations that provide legal counsel or which are competent to receive complaints.

**3.(k) Privacy**

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*<sup>115</sup>

*Rule 19*

All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file. The file should be kept up-to-date, accessible only to authorised persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to, and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

*Rule 87*

(e) All personnel should respect the right of the juvenile's privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity.

---

<sup>115</sup> *Supra*, note 11

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*<sup>116</sup>

*Rule 8*

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

*Commentary*

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

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle.

*Rule 21*

1. Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorised persons.

---

<sup>116</sup> *Supra*, note 17

## **PART TWO: PROPOSED PRISON POLICY**

### **A. RIGHTS BEFORE THE LAW**

#### **1. Rights upon Arrest**

Everyone has the right on arrest or detention

- (a) to be informed promptly of the reason;
- (b) to retain and instruct counsel without delay and to be informed of that right; and
- (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful,

subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

There may be circumstances requiring prison officers to inform individuals of their rights on arrest or detention, as follows:

- (i) The arrest, following pursuit, and return to custody of inmates who have escaped from a prison or escort
- (ii) The arrest and return to custody of inmates on temporary absence who have breached one or more conditions
- (iii) The arrest of persons who are not inmates (e.g. visitors), who are believed to be committing a criminal offence in a prison, or are aiding the escape of an inmate from a prison or escort

Upon the arrest of an inmate or other person in the above, or similar, circumstances, the prison officer shall inform the inmate or other person of:

- (a) the reason for the arrest (for example “I am arresting you for escaping lawful custody”), and
- (b) the right to retain and instruct counsel without delay.

Correctional officers shall be issued cards indicating standard wording for the rights that must be read to the inmate or other person upon arrest.

#### **2. Interrogation**

Correctional officers in their capacity as peace officers, are “persons in authority” the purpose of determining whether a statement is obtained “voluntarily” from the accused, and is admissible as evidence.

Where an inmate “volunteers” or discloses information concerning involvement in a criminal offence, the correctional officer should read the official “warning” to the inmate at the earliest stage of the conversation. The officer during or immediately following the conversation should record personal notes of the contents of the conversation.

### **3. Right to Legal Counsel**

Correctional officers shall ensure that the inmate, or other person arrested, is given opportunity to contact a lawyer at the earliest practical opportunity after the arrest, should the inmate or other person wish to exercise that right.

Where persons other than the inmates are arrested, the police shall be notified immediately.

Each prison warden shall ensure that a list of the names and phone numbers of legal aid duty lawyers is available to assist staff in complying with requests by arrested persons to contact duty counsel.

The prison warden shall support efforts by inmates to gain access to courts for any reasonable purpose.

#### *Discussion:*

The prison service has an obligation to ensure that all inmates are provided with access to court to plead any issue. Issues include a challenge of the legality of their confinement or conviction, an application seeking redress of illegal conditions of treatment while under correctional control, or the pursuit of remedies in connection with civil legal problems.

All prisons shall establish, maintain, and/or grant inmate access to a basic legal library.

Inmates shall have the right to consult with legal counsel in private during reasonable hours.

### **4. Appeal Procedures**

#### ***4.(a) Filing of Appeal***

An inmate convicted of either an indictable or summary offence may appeal his/her conviction and/or sentence within thirty days.

Forms requiring submittal to the court of appeal should be made available to offenders in the correctional records office.

#### ***4.(b) Appeal Information***

The prison warden shall ensure that, upon admission, every sentenced inmate receives a copy of the form regarding appeal information. This form should be signed by the inmate and witnessed by an officer at the prison.

#### ***4.(c) Notification of Results of an Appeal***

When an appeal is heard, it can sometimes take several weeks to receive the appeal court order. To inform the prison of the results of the appeal, the court of appeal will issue a letter to the concerned prison after the case has been heard, noting the results of the appeal. This letter is for information purposes only and cannot be used as the formal document to recalculate sentences and/or receive or release inmates. The actual court order is required for these purposes.

## **B. RIGHTS DURING TERM OF IMPRISONMENT**

### **1. Visits**

#### ***1.(a) General Comments***

Visits provide an opportunity for inmates to maintain contact with family and friends. Private family visits provide a further mechanism for inmates to maintain and strengthen family relationships particularly between incarcerated parents and their children.

#### ***1.(b) Types of Visitors***

There are three different categories of visitors.

1. Professional (e.g. lawyers, doctors, chaplains, police officers, probation and parole officers, etc.)

Visits made to an inmate by this category of visitor are usually on a one-to-one basis and require privacy of communication.

These visitors may visit an inmate at any reasonable time and inmates are not limited as to the number of these visits they may receive during their stay in custody.

2. Program (e.g. volunteers, private agencies, community groups, etc.)

Subject to approval of the prison warden or delegate, visits made by these visitors are usually for the purposes of providing an activity, program, or service to a number of inmates.

The setting for, and supervision of, these visits is usually determined by the type of activity, program or service involved and by the type of inmate participating in the activity, program, or service.

### 3. Family, Friends, Relatives

These visitors usually visit one inmate at a time during the visiting hours set by the prison for this purpose. An inmate is entitled to a minimum of two hours of these visits per week.

#### *1.(c) Visit Settings*

The setting for visits is determined mostly by the prison's physical plant, availability of staff supervision, and by the type of inmate and visitor involved in the visit. In all settings, inmates and visitors shall be expected to behave in a manner acceptable in a public place.

Generally there are four types of visit settings.

#### 1. Official

These settings are used in the case of professional visits which require privacy because of the confidentiality of the information to be discussed during the visit.

#### 2. Closed

In these settings there is a barrier (e.g. a glass partition) between the inmate and visitor which prohibits physical contact, but does not impair vision or oral communication.

#### 3. Open

In these settings there is no barrier between the inmate and the visitor and hence allows for physical contact.

#### 4. Private Family Visits

In these settings, inmates are permitted access to a self-contained area (i.e. cottage, trailer, apartment, etc.) that permits overnight visits involving family members.

#### *1.(d) Hours of Operation*

Visiting hours shall be as follows:

Monday to Friday, 1830-2130 hours

Weekends and Statutory Holidays EXCEPT Christmas Day: 1000-1500 hours

### *1.(e) Visiting Process*

#### 1.(e)(i) Coordinator Responsibilities

The coordinator shall be responsible for:

- (i) Scheduling visits
- (ii) Explaining the rules and regulations to inmates
- (iii) Handling all paperwork associated with the visit
- (iv) Arranging a cleaning schedule for the unit

#### 1.(e)(ii) Visit Requests

Visit requests by inmates and visitors shall be made for each visit in the manner prescribed by the prison warden.

Only the inmate shall initiate requests for private family visits.

#### 1.(e)(iii) Screening

Upon receipt, all visit requests may be screened to determine whether or not the visit should be granted and to determine under what conditions (i.e. time, setting, and supervision) the visit should occur.

Processing visit requests shall not be delayed beyond the reasonable time to come to a decision on the request.

If the request is granted, the visit(s) shall commence without undue delay.

For the purposes of private family visits, all applicant visitors shall be subject to a community assessment check. The community assessment shall address, in addition to general suitability, any medication or special dietary needs of the visitor.

The prison warden shall establish a decision-making process with respect to applications for private family visits, which may include the use of a review panel. Private family visits will be scheduled according to facility availability in accordance with the established policy for frequency of such visits.

#### 1.(e)(iv) Visit Restrictions

Restrictions on visiting shall not be imposed arbitrarily, nor without “good cause”. Reasons constituting “good cause” for denying, terminating, restricting, or revoking visits include any of the following:

1. Where, on reasonable and probable grounds it is believed that:

- (a) the safety of the inmates(s) and/or the visitor(s) and/or security of the prison would be, or is jeopardized by the visit, and/or
  - (b) the visit would impede carrying out the court's order of custody with regard to one or more of the inmates accommodated in the prison, and the ways and means available within the prison to control the time, setting and supervision of the visit would not reduce the risk posed by the visit to a tolerable level.
2. Where as a result of an infraction that is found to have occurred as a direct result of a visit, the disciplinary panel imposes as a disposition the temporary or permanent loss of visiting privileges.
  3. Where the visitor is under the age of eighteen and
    - (a) is not in the company of a parent or guardian, or
    - (b) does not have written consent of a parent or guardian to visit.
  4. Where the visitor is apparently under the influence of drugs or alcohol.
  5. Where the inmate does not wish to see the visitor.
  6. In the case of private family visits, visitors shall be limited to the inmate's legally married spouse, established common-law partner, children, siblings, grandparents, in-laws or other persons authorised by the prison warden.

### ***1.(f) Private Family Visits***

#### **1.(f)(i) Private Family Visits- Process**

Inmates applying for a private family visit shall use the prescribed private family visit application form.

An institutional report addressing the inmate's behavior and appropriateness for a private family visit shall be prepared by the case manager.

The completed application, along with the institutional report and the signed visitor form, shall be forwarded to the prison warden or designate for decision.

The inmate shall be notified of the decision in writing.

Each centre having a private family visit unit shall establish local policy and procedures that address all issues related to private family visits, including:

- (i) Numbers of visitors
- (ii) Frequency of availability of the private family visit unit
- (iii) Duration of the visits

- (iv) Local specific concerns- i.e. smoking etc.
- (v) Local rules- i.e. grounds access etc.
- (vi) Food services issues- i.e. cooking arrangements, provisions of staples etc.
- (vii) Per diem costs if applicable
- (viii) Medications - visitors, inmates
- (ix) Counts
- (x) Inmate-staff communication system
- (xi) Emergency procedures
- (xii) Cleaning and servicing of P.F.V. unit
- (xiii) Security issues- frisking of visitors and inmates
- (xiv) Rules and regulations

#### 1.(f)(ii) Private Family Visits- Criteria

An inmate applying for a private family visit shall meet the following criteria:

- (i) Has served a minimum of six months, in their current period of incarceration
- (ii) Has established a positive record of work performance and/or program participation during his/her current period of incarceration
- (iii) Has not been found guilty of any disciplinary infraction for a minimum period of three months immediately prior to the application
- (iv) Does not meet, or appear to meet, the criteria for an unescorted temporary absence
- (v) Granting the private family visit would not be in violation of any existing court order
- (vi) Has not been granted a private family visit in the past eight weeks

#### 1.(f)(iii) Frequency and Duration of Visits

If space is available in the private family visiting unit, each inmate eligible for the program will be allowed the following:

- (i) A maximum of seventy-two hours every two months
- (ii) The minimum duration of each visit will be twenty-four hours

No back to back visits will be allowed.

#### 1.(f)(iv) Number of Participants Allowed

The maximum number of participants, including the inmate, will be three adults and four children.

#### 1.(f)(v) Cancellation of Visit

If the inmate has to cancel the visit, he/she will be placed back on the waiting list and the cancelled visit will be offered to the next applicant on the list.

1.(f)(vi) Private Family Visits- Allowable Items

Visitors attending a prison for the purpose of participating in a private family visit shall be permitted to bring:

1. Personal hygiene items including contraceptives.
2. Prescription medicines- provided that there is on file a physician's letter confirming the medication, the original container is used and that the visitor's name and the dosage are specified on the label. Only the amount required to cover the time of the visit will be permitted.
3. Where children are included, the necessary care items to meet the child's needs, including appropriate food supplies.
4. All necessary food supplies to cover the duration of the visit. In prisons where the food and/or staples are provided, a per diem rate shall be established and applied as necessary. To reduce the possibility of contraband being brought in, all food products shall be brought in unopened in the original sealed containers.
5. Any other items as authorised by the prison warden.

1.(f)(vii) Private Family Visits- Regulations

Visitors shall be responsible for arriving at the scheduled visit time.

The officer in charge of the prison may authorise changes in arrival times, departure times and duration of participation by visitors as each situation may warrant.

Inmates shall be responsible for food expenses incurred during the visit. If the visitors wish to pay for their food for the visit, money to pay for this shall be deposited into the inmates savings account at least twenty days in advance of the visit.

The inmate shall then submit a transfer of funds to have this money transferred to his/her current account in order to pay for the visit.

Inmates and their visitors must remain in the private family visiting area for the duration of the visit, unless they have authority from staff to leave the private family visiting unit for a specific reason.

Supervision of children shall be the responsibility of the inmate and his/her visitors at all times during the visit.

Inmates shall be responsible for any damage that occurs in the private family visits unit.

Failure to leave the private family visit unit in a neat and clean condition may result in the suspension of private family visits.

Staff will visit the private family visits unit twice each day, once in conjunction with the noon count and once during the evening shift, to ensure the security and safety of all its occupants.

In the case of any disturbance in the private family visiting unit area, the visit may be terminated at the discretion of the officer in charge of the prison/shift.

Alcohol is not allowed under any condition.

In the case of fire, participants in the private family visit unit will follow procedures posted in that unit.

Once evacuated from the unit they shall proceed to the outside of the prison.

#### ***1.(g) Visitor Identification/Admission***

All visitors shall be required to provide proof of identity before being admitted to the prison.

A visitor's registry shall be kept in all centres and shall record the name, address, identity and the relationship to the inmate of every visitor, along with the nature, date and duration of the visit.

Any visitor who refuses to comply with these requirements shall be denied entry to the prison.

Inmate visitors will report to the main gate and sign in prior to proceeding into the prison. The main gate staff will check to ensure that the visitor is not under the influence of alcohol, etc., and then advise the visits staff of the visitor. The visitor will then proceed to report to the visits staff. The visitor must sign out through the main gate.

#### ***1.(h) Sign***

The prison warden must ensure that all visitors entering the centre are aware of the director's authority to regulate visits. Accordingly, the prison warden shall ensure a sign is posted in a place clearly visible to all visitors entering the centre.

#### ***1.(i) Notice to Visitors***

The prison warden is authorised to terminate a visit and/or suspend further visits by any person:

- (a) who brings or assists in bringing contraband to or from the prison, or

(b) whose conduct causes concern for the safety of inmates or the security of the prison.

***1.(j) Minor or Major Threat***

A threat by an inmate or visitor to the security of the centre will be in the category of:

1. A minor or lesser threat- (e.g. the visitor indulges in vulgarity or profanity or is quarrelsome)
2. A major or serious threat- (e.g. the visitor is in possession of contraband that constitutes the commission of an offence)

***1.(k) Suspension***

**1.(k)(i) General**

The prison warden, according to the judgement of the threat as minor or major:

1. May impose in the case of a minor threat, if a verbal warning has been ineffective, one of the following:

- (i) Arising out of a regular visit:
  - (a) on the first incident, up to fifteen days suspension of visits; and
  - (b) on subsequent incidents, up to thirty days suspension of visits.
- (ii) Arising out of a private family visit:
  - (a) on the first incident, suspension of the next eligible private family visiting opportunity; and
  - (b) on subsequent incidents, suspension of up to three of the next eligible private family visit opportunities.

2. May impose in the case of a major threat, except in the case of an incident arising from a private family visit, one of the following:

- (i) On the first incident a minimum sixty-day suspension of visits
- (ii) On subsequent incidents, up to one year suspension of visits

3. May impose, in the case of a major threat resulting from a private family visit:

- (i) On the first incident, a suspension of private family visits for a period of up to one year
- (ii) On a second incident, a suspension of private family visits for a period of up to  
to  
two years
- (iii) On any subsequent incident, and indefinite suspension of private family visits

It should be noted that suspensions of private family visits apply with respect to the visitor involved, i.e. suspension of visits with the spouse does not preclude visits with parents, children, etc.

In addition to any suspension of private family visits, the prison warden may impose any additional suspension of regular visits pursuant to 1 and 2 above.

The prison warden, in exercising this discretion, should be guided by such factors as the nature of the evidence, the operational needs of the prison, and the past conduct or cooperation of the visitor.

The reasons for this decision should be conveyed clearly to the visitor, and it is important that the prison warden keep a written record of the evidence and the factors upon which the decision is based. Reference to this information may be necessary in the event that the decision is appealed.

#### 1.(k)(ii) Suspension Beyond One Year

In the event that the prison warden determines that it is both appropriate and necessary to suspend beyond one year the visiting privileges of any person, the approval of the district or regional is required prior to imposing such a suspension.

#### 1.(k)(iii) Written Notification

Upon reaching the decision to terminate a visit or to suspend a person's visiting privileges for any period, the prison warden shall:

- (a) communicate the decision and the justification for it, in writing, to the visitor and to the inmate concerned (and, by copy), to the commissioner or person at the next appropriate level, and
- (b) inform the visitor and inmate of the existence of the procedure (as outlined below) for appealing a decision to suspend a person's visiting privileges.

#### 1.(k)(iv) Appeal

Persons wishing to appeal a decision to suspend visiting privileges may do so either by:

- (a) requesting the prison warden to reconsider the decision, in which case the prison warden shall respond in writing within ten working days; or
- (b) contacting the prison warden (or person at the next appropriate level) to review the decision and respond in writing within ten working days.

#### ***1.(l) Searches of Visitors***

see IV SECURITY

### *1.(m) Visiting Area*

Every prison shall identify an open, indoor visiting area sufficient to accommodate 25% of the inmates at any one time, plus two visitors per inmate.

#### *Discussion:*

In open visits, privacy of conversation should be a primary consideration in identifying a visiting area. The provision of sufficient space and minimal interruption or intrusion on orderly social interaction should be the objectives of supervisors on these occasions.

Secure custody centres shall incorporate an indoor visiting area that provides for both secure and open visiting. The open visiting area shall be capable of accommodating a minimum of 10% of the inmate population plus two visitors per inmate simultaneously.

## **2. Correspondence**

### *2.(a) Definition*

Correspondence means written letters, business/legal letters.

### *2.(b) Categories*

There shall be two categories of correspondence:

1. General correspondence
2. Confidential correspondence

General correspondence is that which is personal in nature and shall be opened to search for contraband (incoming and outgoing).

Mail that is not defined as “privileged”, correspondence to and from inmates shall only be subject to search and examination where, in the opinion of the prison warden, the contents of that mail could potentially affect the management, good order and discipline of the prison.

Privileged/confidential correspondence is that which is legal or otherwise privileged (i.e. member of parliament) and if clearly identified, shall be delivered unopened.

Inmates shall be entitled to unlimited incoming and outgoing correspondence.

*Discussion:*

Mail is subject to search for money, drugs and/or other contraband. Non-privileged correspondence is subject to examination for the protection of the inmates (problems at home, for instance) and the maintenance of the security of the prison.

**2.(c) Copying**

Confidential correspondence shall not be copied in any form if such action would likely result in general distribution.

**2.(d) Reading and Viewing Material**

Inmates are permitted to receive books or periodicals sent directly from the publisher.

It is the responsibility of prison warden to ensure that reading and viewing material made available to inmates does not contain subject matter considered likely to encourage harmful or criminal behaviour.

Reading and viewing material made available to inmates shall not contain subject matter that:

- (a) has been declared obscene by the courts, or
- (b) is concerned with:
  - (i) Explicitly depicted or described sexual acts where the content of the reading or viewing material is entirely or primarily concerned with sex
  - (ii) Bestiality
  - (iii) Necrophilia
  - (iv) Sexual acts coupled with violence (e.g. rape, stabbing, burning, beating, gagging, binding, torture, dismemberment, mutilation, or death)
  - (v) Sexual acts coupled with excretory functions
  - (vi) Sexual acts involving children (e.g. pedophilia and incest)
  - (vii) Other, non-sexual themes of explicitly depicted violence, where the contents of the reading or viewing material is entirely or primarily concerned with violence
  - (viii) Information pertaining to the construction of weapons and methods of escape which represents inherent danger to the security of the prison

**3. Religious Rights**

**3.(a) General**

Notwithstanding the varying degrees of custody, security and supervision, the prison service strives to treat all inmates with respect and dignity. While it is not expected that an inmate should be afforded any preferential treatment on the basis of race, religion or

ethnic background, it is expected that the prison's service will, subject only to precautions necessary for the maintenance of safety and security, demonstrate respect for the unique values, beliefs and customs of inmates.

In making assessments regarding an offender's suitability to participate in any program of confinement or conditional release, the decision-making person or group shall not impose, as a condition of confinement and/or conditional release, adherence to the active practice of any religion.

*Discussion:*

The intent of the standard is to see that the practice of, or the adherence to, any beliefs or religion by the person receiving 'service' from the prison's service is a product of a freely-made decision rather than a coerced decision.

Correctional staff, in the course of accompanying any offender at a service of worship or being present when an offender is receiving counsel, shall respect the sensitivity of the offender's religion or beliefs.

A person receiving any service shall have the right to follow any practice or observation prescribed by his/her religion or beliefs at such times as required by his/her religion or beliefs:

- (a) if the religion or belief meets the criteria provided for recognition and established through standards;
- (b) if the religion or belief does not violate the good order and security of the institution; and
- (c) if the observation of the standard does not violate the spirit or intent of any court order.

5. An incarcerated person has the right, at his/her initiative, to receive any religious publication produced by any organisation meeting the criteria provided for recognition and published through these standards.

*Discussion:*

The retention of this material in a person's "living space" will be in keeping with the prison's regulations. Such regulations will vary with the physical plant, level of security and safety considerations.

6. The following criteria should not be considered as indicative of a lack of religious support for the practice in question:

- (i) The belief is held by a small number of individuals
- (ii) The belief is of recent origin

- (iii) The belief is not based on the concept of a supreme being or the equivalent
- (iv) The belief is unpopular or controversial

### **3.(b) Religious Objects**

An incarcerated person has the right to possess and wear religious medals, symbol or articles representative of religions meeting the criteria as outlined for recognition and established through standards, unless these medals, symbols or articles constitute, in the opinion of the prison warden, a threat to the safety, security or good order of the institution.

The prison warden may permit the introduction and use of religious objects for ceremonial purposes, where it is clearly established that such objects do not present a security threat. Generally accepted objects used in such ceremonies include:

- (i) Ceremonial herbs
- (ii) Ceremonial pipes (only used by recognised pipe carriers)
- (iii) Ceremonial blankets
- (iv) Feathers
- (v) Sea shells
- (vi) Medicine bags

### **3.(b)(i) Headdress**

A prison warden shall permit an inmate to wear a headdress particular to a race, creed or faith unless:

- (a) for specific reason, the inmate is believed to be violent or suicidal and the headdress would present a danger to the inmate or others; or,
- (b) the wearing of the headdress will jeopardize the safety of the inmate (e.g. if the inmate is either to enter a hazardous work area or to work with tools or motorized equipment where the wearing of a hard-hat is required).

The prison warden may permit an inmate an alternative head covering when a headdress is not permitted to be worn.

A headdress, when not in use, should be stored with the personal effects of the inmate for safekeeping. Prison staff should be particularly careful to handle belongings of this sensitive nature with due respect and consideration and should allow the inmate to place the headdress in the personal effects container.

### **3.(b)(ii) Ceremonial Accouterments**

In order to prevent possible injury to others, the wearing of a ceremonial accouterment that is a potentially harmful instrument is prohibited.

### ***3.(c) Diet***

Where an inmate indicates a requirement for a special diet in order to observe the dietary laws and practices established by the inmate's religion, the prison warden shall, to the extent reasonable or practicable, ensure that such a diet is accommodated.

An incarcerated person has the right to observe dietary laws and practices established by his/her religion, if the religion meets the criteria provided for recognition and established through standards.

#### *Discussion:*

Recognised religious dietary practices should be accommodated where practiced. Religious diets should be in accordance with the general provisioning of the inmate population.

### ***3.(d) Provision of Worship Space***

Each prison shall identify and equip a space appropriate to, and sufficient for, the conduct of services or worship, observation or meditation by adherents of all religions, faiths or beliefs.

## **4. Medical Rights**

### ***4.(a) Protection Against Harmful Medical Procedures***

#### ***4.(a)(i) General***

All examinations, treatments and procedures affected by informed consent standards in the community are likewise to be observed for inmate care. In the case of minors, the informed consent of a parent, guardian or legal custodian applies where required by law.

### ***4.(b) Substance Testing***

#### ***4.(b)(i) Voluntary***

Any substance testing will be done on a voluntary basis. Inmates accepting a temporary absence with a condition to submit to such a test upon request, are considered to have given their consent upon signing the temporary absence permit.

#### ***4.(b)(ii) Refusal***

Where pre-consent has been obtained from the inmate (i.e. temporary absence or parole condition or program participation agreement), refusal to provide a sample for analysis may be a violation of the release or program conditions and thus resulting in grounds for revocation or removal.

Where no pre-consent has been obtained and an inmate refuses to submit to a request to provide a sample for analysis, the refusal, in and of itself, is not grounds for disciplinary action.

#### ***4.(c) Private Clinicians Visiting Inmates***

An inmate in a prison may be visited and interviewed by a private medical, psychiatric, or psychological clinician who is not on staff or otherwise retained by the prison's service.

#### ***4.(d) Inmate Fasting***

##### 4.(d)(i) Definition

A "fast" is defined as a complete and voluntary abstinence from nourishment, by an inmate acting on the basis of unimpaired and rational judgment concerning the consequences of such action.

##### 4.(d)(ii) Right to Fast

Everyone is guaranteed "the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Furthermore, everyone has the right not to be subjected to any cruel and unusual treatment or punishment. These rights are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

One cannot treat a person against his/her will, other than under court order and the requirement of consent is an over-riding consideration.

One cannot feed against the will of a person, but as a precautionary measure, the most that can be done is to place food and water available to the person and ensure the person is made aware of the consequences of his/her action.

Even though prison staff are charged with providing necessities of life and the safekeeping of inmates within the prison, inmates do have the right to fast, even to the point of their own death.

Where the inmate is:

- (a) of the age at which a person may consent to his/her own medical treatment,
- (b) mentally competent, and
- (c) conscious,

staff shall not interfere with an inmate's exercise of the right to fast.

#### ***4.(e) Personal Hygiene***

Inmates shall be permitted freedom in personal grooming insofar as their appearance and hygiene do not conflict with institutional requirements or other government regulations pertaining to safety and sanitation.

Hot and cold water shall be made available for the purposes of personal hygiene, including baths and/or showers, on a daily basis.

### **5. Accommodation**

#### ***5.(a) General***

Each inmate shall be provided with a personal living area that maximizes personal privacy without compromising the safety and security of the institution.

*Discussion:*

The right to personal privacy is perhaps the most compromised 'freedom' in a prison. Even within the current limits imposed by physical plant, attempts to preserve the individuality of the inmate and to maximize the inmate's right to personal privacy should be made.

The prison service shall provide clearly separated living quarters for:

- (i) Male residents in containment
- (ii) Male residents in remand or lockup status
- (iii) Female residents in containment
- (iv) Female residents in remand or lockup status

*Discussion:*

Housing the sexes separately does not necessarily preclude a co-correctional facility. Male and female residents may conceivably be contained within the same building, but shall be housed separately and apart within the structure.

Staff members of one sex shall be permitted to work in the areas of an institution occupied by members of the opposite sex only to the degree that human privacy and dignity are not compromised.

*Discussion:*

In most instances, policy requires male officers in male living units and female officers inside female living units. However, there are some physical plant configurations which would allow officers of

different sexes commonly working in living units of the opposite sex without compromising human dignity and privacy. The policy allows for staff members of different sexes to serve in such capacities as teachers, doctors, support personnel, nurses, administrators, etc.

#### ***5.(b) Inmates in Separate Living Units***

Inmates placed in separate living units because of special needs or circumstances shall retain all customary and specified rights and privileges of inmates in the general population.

##### *Discussion:*

Inmates in special segregation are there, not due to infractions of institutional rules, but due to their unique status within the institution. Therefore, unless it can be demonstrated that to continue their customary rights and privileges would clearly endanger them or others, their rights and privileges shall continue unimpeded.

#### ***5.(c) Privacy and Electronic Surveillance***

Where electronic surveillance is used, it shall only be used in hallways, corridors, day rooms, lounges or at points in the security perimeter.

##### *Discussion:*

A monitoring system should be a means of control and protection of life rather than punishment, and the most humane methods of obtaining the required level of security shall be utilised. Any system of monitoring resident activities must place maximum emphasis on human dignity and the privacy of the person whom it affects.

### **6. Searches**

Subsequent to being searched upon admission, a search of the person of an inmate and/or an inmate's possessions shall only be conducted where:

- (a) the director so authorised; or
- (b) a staff member has reasonable and probable grounds to believe that an inmate is in possession of drugs, weapons, or any other contraband item which may threaten the management, operation, discipline or security of the prison.

*Discussion:*

All searches of the person or possessions of an inmate shall be conducted so as to guard and preserve the integrity and dignity of the inmate.

**7. Grievance Procedure**

There shall be a procedure for fairly and expeditiously resolving offenders' grievances on matters within the jurisdiction of the commissioner.

Every offender shall have complete access to the offender grievance procedure without negative consequences.