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VI DISCIPLINE

PART ONE: UN GUIDELINES

A. GENERAL

*Standard Rules for the Treatment of Prisoners*¹

Rule 27

Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

B. LIMITS ON DISCIPLINARY MEASURES

see also Section B 7 Inmate Rights During Disciplinary Proceedings below

1. Legal Authority

*Standard Rules for the Treatment of Prisoners*²

Rule 29

The following shall always be determined by the law or by the regulation of the competent administrative authority:

- (i) Conduct constituting a disciplinary offense
- (ii) The types and duration of punishment which may be inflicted
- (iii) The authority competent to impose such punishment

Rule 30

1. No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

¹ 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 *Supra*, note

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*³

Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the adoption and duration of disciplinary punishment that may be inflicted, and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. Torture- Definitions

see III INMATE RIGHTS AND TREATMENT OF PRISONERS

3. Prohibition Against Torture as a Form of Punishment

see III INMATE RIGHTS AND TREATMENT OF PRISONERS

4. State Responsibility

see III INMATE RIGHTS AND TREATMENT OF PRISONERS

5. Duties of Institutional Personnel

see III INMATE RIGHTS AND TREATMENT OF PRISONERS

6. Other Forms of Punishment

*Standard Minimum Rules for the Treatment of Prisoners*⁴

Rule 31

Corporal punishment, punishment by placing an inmate in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

Rule 32

1. Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he/she is fit to sustain it.

2. The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or departing from the principle stated in Rule 31.

³ General Assembly Resolution 43/173 of 9 December 1988.

⁴ *Supra*, note

3. The medical officer shall make daily visits to prisoners undergoing such punishments and shall advise the prison warden if he/she considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Rule 33

Instruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- (i) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority
- (ii) On medical grounds by direction of the medical officer
- (iii) By order of the prison warden, if other methods of control fail, in order to prevent a prisoner from injuring him/herself or others or from damaging property; in such instances the prison warden shall at once consult the medical officer and report to the higher administrative authority

*Basic Principles for the Treatment of Prisoners*⁵

Principle 7

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

7. Inmate Rights During Disciplinary Proceedings

7.(a) Right to be Informed of Charge and Make Defense

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*⁶

Principle 30

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

⁵ General Assembly Resolution 45/111 of 14 December 1990.

⁶ *Supra*, note

*Standard Minimum Rules for the Treatment of Prisoners*⁷*Article 30*

2. No prisoner shall be punished unless he/she has been informed of the offence alleged against him/her and given a proper opportunity of presenting his/her defense. The competent authority shall conduct a thorough examination of the case.

3. Where necessary and practicable the prisoner shall be allowed to make his/her defense through an interpreter.

7.(b) Right to Make Complaint/Investigation of Complaint

see III INMATE RIGHTS AND TREATMENT OF PRISONERS

7.(c) Right to Redress

see III INMATE RIGHTS AND TREATMENT OF PRISONERS

7.(d) Prohibition Against Using Evidence Obtained During Torture

see III INMATE RIGHTS AND TREATMENT OF PRISONERS

8. Prisoners not to be Employed in Disciplinary Capacity*Standard Minimum Rules for the Treatment of Prisoners*⁸*Rule 28*

1. No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

2. This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purpose of treatment.

⁷ *Supra*, note

⁸ *Supra*, note

9. Disciplinary Standards Applicable to Juveniles

*United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*⁹

Rule 66

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

Rule 67

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited. These measures include corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary infraction. Collective sanctions should be prohibited.

Rule 68

Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

- (i) Conduct constituting a disciplinary offence
- (ii) Type and duration of disciplinary sanctions that may be inflicted
- (iii) The authority competent to impose such sanctions
- (iv) The authority competent to consider appeals

Rule 69

A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

⁹ General Assembly Resolution 451113 of 14 December 1990.

Rule 70

No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defense, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

Rule 71

No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programs.

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:

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

PART TWO: PROPOSED PRISON POLICY

A. PURPOSE OF DISCIPLINARY SYSTEM

The purpose of the disciplinary system and the regulations is to encourage inmates to conduct themselves in a manner that promotes the good order of the penitentiary, through a process that contributes to the inmates' rehabilitation and successful reintegration into the community.

B. DISTRIBUTION OF RULES AND REGULATIONS

Each correctional institution shall make available a copy of the institution's rules and regulations to each inmate upon admission.

Any change in rules and regulations shall be immediately conveyed in writing to all inmates or posted on a bulletin board by the officer in charge.

C. DISCIPLINARY OFFENCES

An inmate commits a disciplinary offence when he/she:

- (a) disobeys a justifiable order of a staff member;
- (b) is, without authorisation, in an area prohibited to inmates;
- (c) willfully or recklessly damages or destroys the property of others or that of the institution;
- (d) commits theft;
- (e) is in possession of stolen property;
- (f) is disrespectful or abusive toward a staff member in a manner that could undermine a staff member's authority;
- (g) is disrespectful or abusive toward any person in a manner that is likely to provoke a person to be violent;
- (h) fights with, assaults or threatens to assault another person;
- (i) is in possession of, or deals in, contraband;
- (j) without prior authorisation, is in possession of, or deals in, an item that is not authorised by a directive or by a written order of the institutional head;
- (k) takes an intoxicant into his/her body;
- (l) fails or refuses to provide a urine sample when demanded pursuant to local guidelines;
- (m) creates or participates in:
 - (i) a disturbance
 - (ii) any other activity that is likely to jeopardise the security of the penitentiary;

- (n) does anything for the purpose of escaping or assisting another inmate to escape;
- (o) offers, gives or accepts a bribe or reward;
- (p) without reasonable excuse, leaves work or refuses to work;
- (q) engages in gambling;
- (r) willfully disobeys a written rule governing the conduct of inmates; or
- (s) attempts to do, or assists another person to do, anything referred to in Paragraphs (a) to (r).

D. DISCIPLINARY PROCEEDINGS

1. Informal Resolution

Where a staff member believes on reasonable grounds that an inmate has committed or is committing a disciplinary offence, the staff member shall take all reasonable steps to resolve the matter informally, where possible.

2. Disciplinary Charges

When an inmate breaches a rule and the circumstances are such that the breach can be settled informally, the officer should, subject to established limitations, attempt to do so. If that avenue is not available, the officer shall deal with the incident formally and in writing.

3. Offence Reports

3.(a) Purpose

To establish procedures for staff to follow when an inmate's behavior warrants the completion of an offense report.

3.(b) Responsibility

It is the responsibility of all employees of the prison service, contractors and contractors' employees to observe and initiate written reports on inmates who are displaying negative behavior.

3.(c) Report

A concise account of the inmate's behavior shall be recorded on an inmate offense report and notification of charge report. The report must include all information necessary to ensure that the incident is fully recorded and the written report is sent to the designated supervisor's office for further action.

3.(c)(i) Content of Report

A violation of institutional rules, when filed, shall include or be accompanied by, but not necessarily limited to the following information:

- (i) The identity of the inmate
- (ii) Specific rule(s) violated
- (iii) The location, date and time of the breach
- (iv) Formal statement of charge
- (v) A statement of any unusual inmate behavior
- (vi) The circumstances of the breach
- (vii) Staff and/or inmate witnesses
- (viii) Disposition of any physical evidence
- (ix) Any immediate action taken, including use of force
- (x) Reporting staff member's signature, the date and time report is prepared, and signed and dated report of the investigating officer
- (xi) Any statements made by the inmate, including reasons for the behavior

3.(d) Supervisor Responsibilities

The reporting officer shall, prior to the completion of the shift, present the report to the immediate supervisor, who shall review the allegations with the reporting officer. The supervisor shall sign the report only after being satisfied that:

- (a) the charge cannot be handled informally;
- (b) there is sufficient evidence to support a charge; and
- (c) the proper charge is being used.

In signing the report, the supervisor is confirming the propriety of the action taken.

Once the supervisor signs the report, the inmate shall be provided with a copy. The reverse side of the inmate's copy contains relevant advice respecting the hearing.

A copy of the report is then delivered to the prison warden or designate.

The duties of the reporting officer are not completed with this phase of the process. The report shall be tendered in evidence at the hearing. Should the inmate enter a denial of the allegation, the reporting officer shall be called to give evidence.

4. Investigating Officer

4.(a) General

An investigating officer may be identified to independently investigate the circumstances around the violation, and his/her report is to be submitted to the panel independently of the report of the staff member charging the inmate.

An investigating officer may be appointed by the prison warden or designate, when either:

- (a) the report does not contain all relevant information and data to support the disciplinary hearing; or
- (b) the severity of the allegation warrants further investigation; or
- (c) the circumstances appear relatively complex.

The investigating officer or the reporting officer, as the case may be, shall be available to give evidence at the hearing.

4.(b) Investigating Officer's Responsibilities

The appointed investigating officer shall record:

- (a) the accounts of witnesses, staff and inmates, who can give direct evidence,
- (b) the offending inmate's account of the incident, and
- (c) a synopsis of the incident.

The duties of the investigating officer are completed, with this phase of the process, except for the giving of evidence at the hearing.

5. Determination of Offence

A designated senior prison official will be responsible for designating the charge and for determining if it should be minor or serious. If there are concerns regarding the offense, the originator of the report shall be contacted for clarification.

Once designated, the officer in charge shall forward the report to the prison warden or designate for review and he/she will sign agreeing to the need for the offense report or will indicate that a charge is not warranted.

6. Inmate Notification

A copy of the offense report will be given to the inmate with the proposed hearing date. The officer providing the inmate with a copy of the offense report shall also inform the inmate of his/her right to council and provide him/her with the list of lawyers.

E. DISCIPLINARY HEARINGS

1. Jurisdiction

When an inmate is alleged to have committed an act which constitutes an indictable offence, the prison warden shall consult with local crown counsel to determine whether the case should be dealt with in an outside court or as an internal disciplinary matter.

2. Disciplinary Panel Guidelines

Though some of an inmate's normal rights have been suspended or restricted by incarceration, it is nevertheless important to recognise and accept the premise that the principles of administrative and procedural fairness apply at these hearings. An inmate is entitled to a fair hearing, to hear and be heard, while undergoing this internal disciplinary process.

A disciplinary hearing is not a criminal trial; it is an administrative hearing with procedural rules to ensure a fair presentation of evidence, a hearing for both sides, and a just determination of the facts.

The purpose of these guidelines is to assist staff through the procedural steps in disciplinary hearings, and simultaneously, to ensure that their responsibilities within this framework are properly and adequately discharged.

3. Panel Scope and Structure

Disciplinary panels at prisons shall be established, as shall rules and regulations governing:

- (a) inmate conduct,
- (b) breaches of conduct,
- (c) panel procedures,
- (d) dispositions, and
- (e) appeals and reviews,

and shall be set out in formal, legal fashion.

4. Expediency

Disciplinary hearings should be held within twenty-four hours (excluding Saturdays, Sundays or holidays) from the time the charging officer submits the charge sheet to the shift supervisor. If an extension is required, a postponement may be granted.

The hearing must be started within seventy-two hours but where the hearing cannot proceed due to unavailability of the inmate or critical witnesses, the panel chairperson

may adjourn the continuation of the hearing until such time as it may be completed. An adjournment shall not be unduly prejudicial to the inmate.

5. Assistance to Inmate

When an inmate is inarticulate, illiterate, or is not fluent in the English language, the officer in charge shall appoint a person to assist that inmate in presenting his/her case, understanding the procedures which apply at the hearing, and explaining the consequences of a finding against the inmate.

Where the inmate requests a lawyer or other person to assist in the defense of an allegation, the reasons for the request shall be considered by the panel chairperson who shall advise the inmate of the reasons for accepting or rejecting the request. In reaching such a decision, the panel chairperson should be guided by the following:

- (i) The seriousness of the allegation and the potential penalty
- (ii) The case is likely to be complicated, or raise legal or procedural issues
- (iii) The capacity of the inmate to understand the proceedings and present a defense
- (iv) The need for reasonable speed in completing the disciplinary process

6. Inmate Participation

The inmate shall be present throughout the hearing, unless circumstances prevent attendance, and shall be provided reasonable assistance in presenting a defense and understanding the procedures and consequences of the hearing. The inmate may be dismissed while the panel deliberates its decision and, where appropriate, the disposition.

7. Formation of Panel

Panel formation shall be in accordance with the prison's rules and regulations. An independent chairperson shall chair the disciplinary court and award punishment for serious or flagrant offenses. Any officer having direct personal knowledge of the facts, or direct personal involvement in the incident giving rise to the allegation/charge is disqualified from sitting on the panel.

The prison warden or designate, based upon case complexities or operational needs, determines whether a charge should be heard by:

- (a) a senior prison official,
- (b) a panel, or
- (c) an independent chairperson in the case of serious or flagrant offences.

8. Procedural Steps

The panel shall proceed through the following steps:

1. Identify the panel.
2. Identify the inmate by name and number.
3. Ask the inmate if a copy of the offence report was received.
4. Read the allegation.
5. Ensure the inmate understands the allegation.
6. Ask for a plea to the allegation, i.e.
 - (a) admit the disciplinary offence, or
 - (b) deny the disciplinary offence.
7. Record the plea.
8. If the inmate makes no plea or refuses to plead, the situation shall be treated as a denial of disciplinary offence.

In the case of a denial:

1. Consider the report, and hear oral evidence from the officer who initiated the charge. Where an investigating officer was appointed, that officer shall be called to give oral evidence.
2. Ensure those officers named as witnesses are available to testify either through reports, or preferably in person.
3. Call any other witnesses who, in the opinion of the panel, may offer relevant facts to assist in the panel's deliberations. Witnesses may be called to testify both on behalf of the administration or the accused. The panel and the inmate may question those witnesses.
4. Witnesses should only be called if they have relevant, direct, first-hand knowledge of the circumstances of the charge.
5. The inmate should be afforded every reasonable opportunity to present a defense and be heard. The panel may question an accused giving evidence.
6. Facts the inmate does not wish to give as evidence should not be interpreted adversely against the inmate.
7. Evidence provided by an informant shall be given in such a way as to ensure absolute protection for the source of the information, yet must be detailed enough to ensure the inmate is aware of the substance of the allegation.

8. After considering all the evidence, the panel shall determine the guilt or innocence of the accused. It may adjourn to do so, or may do so immediately. In making this determination, it is not necessary to find the accused guilty beyond a reasonable doubt, but on the balance of probabilities. The evidence weighed by the panel should be relevant, trustworthy and credible.

In cases where the inmate admits the disciplinary offence:

1. Consider the report of the officer who initiated the allegation, and, if appointed, the report of an investigating officer.
2. Consider any oral or written statement which the inmate might wish to make concerning the circumstances and disposition of the disciplinary offence.

9. Finding

The panel should fairly and impartially consider all the evidence before it at the hearing, and then determine, on the balance of probabilities, whether the allegation has been substantiated.

When the panel determines that the allegation is not substantiated, the panel is obliged to dismiss the allegation.

The panel shall advise the inmate of the finding.

10. Disposition

Where the allegation has been substantiated by the evidence, and before determining the disposition, the panel should:

- (a) examine the disciplinary record of the inmate; and
- (b) ask if the inmate has anything to say before the sentence is passed.

After taking into consideration the above, the seriousness of the offence, and the effect the disposition may have on the inmate and the inmate population, the panel then imposes the appropriate disposition as set out in the prison's rules and regulations.

An inmate who is found guilty of a disciplinary offence is liable to one or more of the following:

- (i) A warning or reprimand
- (ii) A loss of privileges
- (iii) An order to make restitution
- (iv) A fine
- (v) Performance of extra duties

(vi) In the case of a serious disciplinary offence, segregation from other inmates for a maximum of thirty days

The disposition shall be explained to the inmate.

F. REVIEW OF PANEL DECISION

1. General

The panel shall advise the inmate of the provisions for review procedures.

The inmate may apply for a review as provided for, at any time following the imposition of a disposition.

If the inmate applies for a suspension or reduction immediately following the imposition of a disposition, the panel should review and consider the inmate's progress file and any other pertinent records to ascertain the inmate's previous conduct. If the panel is satisfied the case warrants a reduction or suspension, the panel should discuss the conditions with the inmate.

If the inmate indicates a willingness to comply with the terms of the undertaking, the panel should then consider the reduction or suspension of the disposition.

The panel shall respond to the inmate's request for a reduction or suspension of the disposition and then confirm or adjust the sentence.

A record of the disposition as well as the reasons for that disposition is then entered on the inmate offence report.

2. Information of Judgment and Filing

A "notice of punishment or administrative action disciplinary court/minor offence court" shall be distributed as follows with a photocopy to finance when a fine has been levied:

1. Inmate's file
2. Case Management
3. Sentence Administrator
4. Work location if inmate is sentenced to punitive segregation
5. Staff who reported the offence

3. Storage of File

The prison shall retain these records for sixty days from the date of disposition. This standard ensures that a complete and thorough examination of the hearing can be conducted in the event that an appeal is lodged against either the finding of disposition or the panel.

G. FAILURE TO COMPLY

When an inmate fails to comply with a term or condition imposed as the result of reduction or suspension of a disposition, the panel or officer who reduced or suspended the disposition, may require the inmate to appear before the panel. The panel may impose a new disposition or reinstate the disposition previously suspended or reduced.

H. APPEAL PROCEDURES

The inmate shall be advised of the appeal procedures outlined in the prison's rules and regulations.

I. SEGREGATION

1. Definition

Punitive segregation refers to the housing of an inmate in segregation for a specific sentence, for a period not exceeding thirty days.

An inmate may only be sentenced to punitive segregation pursuant to the applicable directives after determination of guilt by the independent chairperson on a serious charge.

2. Policy Objective

To provide institutional policies and procedures in the management of inmates in punitive segregation and administrative segregation in a secure and humane manner.

3. Segregation Unit

3.(a) Physical Plant

The physical plant in which segregated inmates are housed shall meet the standard specified for physical plant housing for general population inmates.

The segregation unit cells shall be of similar size and shall contain the same facilities as the general population cells/units.

3.(b) Inmate Rights During Segregation

Inmates segregated for disciplinary reasons shall retain all the customary and specified rights and privileges of inmates in the general population, with the exception of those rights and privileges which are qualified or removed by the prison's regulations.

Discussion:

Possible limitations of inmates' rights and privileges are as follows:

During confinement in a segregation cell, an inmate shall:

- (a) unless the prison warden considers it could endanger the inmate or other persons, have a mattress, bedding, and clothing- the type normally issued to inmates in the prison;
- (b) unless the prison warden considers this would pose a special danger to the inmate or other persons, the use of tobacco products; and
- (c) after the first twenty-four hours of confinement, thereafter shall be allowed a minimum one hour exercise period outside the segregation cell during each twenty-four hour period.

It should be noted that the United Nations Standard Minimum Rules for the Treatment of Prisoners requires that the one hour exercise period take place out-of-doors. This consideration should be tempered by considerations of climate.

Any determination by the prison warden and/or his/her designate to limit the rights of an inmate in disciplinary segregation shall be done so in writing and a copy of the determination shall be given to the inmate within twenty-four hours of the determination being made.

A person incarcerated in segregation and/or isolation shall be permitted to attend regular services of worship where the prison warden is satisfied that such attendance will not jeopardise the security of the institution or cause disruption of the services.

Telephone privileges shall apply as per regulations.

All inmates shall be allowed to wear standard institutional clothing.

Normal institutional meals shall be provided to all inmates.

Inmates shall be allowed to shave and shower a minimum of three times a week, and barbering services shall be available by submitting a written request.

Library privileges including legal materials, shall be available in segregation. Inmates' written requests for specific books and/or reference materials shall be directed to the institutional librarian.

Inmates shall have access to program staff by initiating a request to the institutional case management officer assigned.

If any of the usually authorised privileges afforded inmates in the segregation unit are denied or withdrawn, a report shall be submitted to the warden, advising of the action taken and reasons why.

Every inmate in the segregation unit shall be visited:

- (a) upon request, by the supervisor in charge, evenings, weekends and statutory holidays,
- (b) on a weekly basis, by a member of his/her case management team, and
- (c) Monday through Friday by the officer in charge of the prison.

A nurse shall make daily visits to the segregation unit to see each inmate and provide prescribed medication.

The institutional health care officer shall examine each inmate as soon as possible after admission to the segregation unit. No inmate shall be kept in segregation if, in the opinion of the health care officer, this area may have an adverse effect on the inmate's health.

Inmates refusing consent for this examination shall have the refusal recorded and witnessed.

4. Logs

There shall be four permanent log books kept in the segregation unit, and available to senior staff:

Individual Inmate Log: All pertinent data shall be recorded such as admission information, raw data, release or tentative release date, special problems or needs, etc.

Daily Visitors Log: All official visitors shall sign this log and record date and time of the visit.

Daily Participation Log: All services provided to each inmate shall be recorded (exercise, shower, shave, visits, meals, bedding and clothing).

General Information Log Book: Every shift shall record activities and incidents which took place during the shift, for the benefit of the next shift.

5. Fire Safety and Evacuation

Staff shall become familiar with fire fighting equipment available in the segregation building.

Evacuation areas for inmates housed in this unit shall normally be the exercise yards.