



LEGAL

# DIGNITY TRAINING COLLECTION II

**COLLECTION OF MATERIAL ABOUT  
PROHIBITION AND PREVENTION  
OF TORTURE AND OTHER CRUEL,  
INHUMANE AND DEGRADING  
TREATMENT OR PUNISHMENT**

II: Other UN Standards Supplementing  
the Human Rights Treaties



**DIGNITY**

DANISH INSTITUTE AGAINST TORTURE

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OFFICE OF THE UNITED NATIONS  
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# Istanbul Protocol

*Manual on the Effective Investigation and  
Documentation of Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment*



UNITED NATIONS  
New York and Geneva, 2004

## NOTE

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## INTRODUCTION

Torture is defined in this manual in the words of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984:

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

Torture is a profound concern of the world community. Its purpose is to destroy deliberately not only the physical and emotional well-being of individuals but also, in some instances, the dignity and will of entire communities. It concerns all members of the human family because it impugns the very meaning of our existence and our hopes for a brighter future.<sup>2</sup>

Although international human rights and humanitarian law consistently prohibit torture under any circumstance (see chapter I), torture and ill-treatment are practised in more than half of the world's countries.<sup>3, 4</sup> The striking disparity between the absolute prohibition of torture and its prevalence in the world today demonstrates the need for States to identify and implement effective measures to protect individuals from torture and ill-treatment. This manual was developed to enable States to address one of the most fundamental concerns in protecting individuals from torture—effective documentation. Such documentation brings evidence of torture and ill-treatment to light so that perpetrators may be held accountable for their actions and the interests of justice may be served. The documentation methods contained in this manual are also applicable to other contexts, including human rights investigations and monitoring, political asylum evaluations, the defence of individuals who “confess” to crimes during torture and needs assessments for the care of torture victims, among others. In the case of health professionals who are coerced into neglect, misrepresentation or falsification of evidence of torture, this manual also provides an international point of reference for health professionals and adjudicators alike.

During the past two decades, much has been learned about torture and its consequences, but no international guidelines for documentation were available prior to the development of this manual. The *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative body. This manual includes principles for the effective investigation and documentation of torture,

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<sup>1</sup> Since 1982, the recommendations concerning United Nations assistance to victims of torture made by the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture to the Secretary-General of the United Nations, are based on article 1 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that “Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment” and that “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”, as well as on all other relevant international instruments.

<sup>2</sup> V. Iacopino, “Treatment of survivors of political torture: commentary”, *The Journal of Ambulatory Care Management*, vol. 21 (2) (1998), pp. 5-13.

<sup>3</sup> Amnesty International, *Amnesty International Report 1999* (London, AIP, 1999).

<sup>4</sup> M. Başoglu, “Prevention of torture and care of survivors: an integrated approach”, *The Journal of the American Medical Association (JAMA)*, vol. 270 (1993), pp. 606-611.

and other cruel, inhuman or degrading treatment or punishment (see annex I). These principles outline minimum standards for States in order to ensure the effective documentation of torture.<sup>5</sup> The guidelines contained in this manual are not presented as a fixed protocol. Rather, they represent minimum standards based on the principles and should be used taking into account available resources. The manual and principles are the result of three years of analysis, research and drafting, undertaken by more than 75 experts in law, health and human rights, representing 40 organizations or institutions from 15 countries. The conceptualization and preparation of this manual was a collaborative effort between forensic scientists, physicians, psychologists, human-rights monitors and lawyers working in Chile, Costa Rica, Denmark, France, Germany, India, Israel, the Netherlands, South Africa, Sri Lanka, Switzerland, Turkey, the United Kingdom, the United States of America, and the occupied Palestinian territories.

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<sup>5</sup> The Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are annexed to General Assembly resolution 55/89 of 4 December 2000 and to Commission on Human Rights resolution 2000/43 of 20 April 2000, both adopted without a vote.

## CHAPTER I

### RELEVANT INTERNATIONAL LEGAL STANDARDS

1. The right to be free from torture is firmly established under international law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment all expressly prohibit torture. Similarly, several regional instruments establish the right to be free from torture. The American Convention on Human Rights, the African Charter on Human and Peoples' Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms all contain express prohibitions of torture.

#### A. International humanitarian law

2. The international treaties governing armed conflicts establish international humanitarian law or the law of war. The prohibition of torture under international humanitarian law is only a small, but important, part of the wider protection these treaties provide for all victims of war. The four Geneva Conventions of 1949 have been ratified by 188 States. They establish rules for the conduct of international armed conflict and, especially, for the treatment of persons who do not, or who no longer, take part in hostilities, including the wounded, the captured and civilians. All four conventions prohibit the infliction of torture and other forms of ill-treatment. Two Protocols of 1977, additional to the Geneva Conventions, expand the protection and scope of these conventions. Protocol I (ratified to date by 153 States) covers international conflicts. Protocol II (ratified to date by 145 States) covers non-international conflicts.

3. More important to the purpose here, however, is what is known as "Common Article 3", found in all four conventions. Common Article 3 applies to armed conflicts "not of an international character", no further definition being given. It is taken to define core obligations that must be respected in all armed conflicts and not just in international wars between countries. This is generally taken to mean that no matter what the nature of a war or conflict, certain basic rules cannot be abrogated. The prohibition of torture is one of these and represents an element common to international humanitarian law and human rights law.

#### 4. Common Article 3 states:

... the following acts are and shall remain prohibited at any time and in any place whatsoever... violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; ... outrages upon personal dignity, in particular humiliating and degrading treatment...

5. As the Special Rapporteur on the question of torture, Nigel Rodley, has stated:

The prohibition of torture or other ill-treatment could hardly be formulated in more absolute terms. In the words of the official commentary on the text by the International Committee of the Red Cross (ICRC), no possible loophole is left; there can be no excuse, no attenuating circumstances.<sup>6</sup>

6. A further link between international humanitarian law and human rights law is found in the preamble to Protocol II, which itself regulates non-international armed conflicts (such as fully-fledged civil wars), and which states that: "... international instruments relating to human rights offer a basic protection to the human person."<sup>7</sup>

#### B. The United Nations

7. The United Nations has sought for many years to develop universally applicable standards to ensure adequate protection for all persons against torture or cruel, inhuman or degrading treatment. The conventions, declarations and resolutions adopted by the Member States of the United Nations clearly state that there may be no exception to the prohibition of torture and establish other obligations to ensure protection against such abuses. Among the most important of these instruments are the Universal Declaration of Human Rights,<sup>8</sup> the International Covenant on Civil and Political Rights,<sup>9</sup> the Standard Minimum Rules for the Treatment of Prisoners,<sup>10</sup> the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration on the Protection against Torture),<sup>11</sup> the Code of Conduct on

<sup>6</sup> N. Rodley, *The Treatment of Prisoners under International Law*, 2nd ed. (Oxford, Clarendon Press, 1999), p. 58.

<sup>7</sup> Second preambular paragraph of Protocol II (1977), additional to the Geneva Conventions of 1949.

<sup>8</sup> General Assembly resolution 217 A (III) of 10 December 1948, art. 5; see *Official Records of the General Assembly, Third Session* (A/810), p. 71.

<sup>9</sup> Entered into force on 23 March 1976; see General Assembly resolution 2200 A (XXI), of 16 December 1966, annex, art. 7; *Official Records of the General Assembly, Twenty-first Session, Supplement No. 16* (A/6316), p. 52, and United Nations, *Treaty Series*, vol. 999, p. 171.

<sup>10</sup> Adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

<sup>11</sup> General Assembly resolution 3452 (XXX) of 9 December 1975, annex, arts. 2 and 4; see *Official Records of the General Assembly, Thirtieth Session, Supplement No. 34* (A/10034), p. 91.

Law Enforcement,<sup>12</sup> the Principles of Medical Ethics Relevant to the Role of Health Personnel Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Principles of Medical Ethics),<sup>13</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture),<sup>14</sup> the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Body of Principles on Detention)<sup>15</sup> and the Basic Principles for the Treatment of Prisoners.<sup>16</sup>

8. The United Nations Convention against Torture does not cover pain or suffering arising only from, inherent in or incidental to lawful sanctions.<sup>17</sup>

9. Other United Nations human rights bodies and mechanisms have taken action to develop standards for the prevention of torture and standards involving the obligation of States to investigate allegations of torture. These bodies and mechanisms include the Committee against Torture, the Human Rights Committee, the Commission on Human Rights, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women and country-specific special rapporteurs appointed by the Commission on Human Rights.

#### 1. *Legal obligations to prevent torture*

10. The international instruments cited above establish certain obligations that States must respect to ensure protection against torture. These include:

(a) Taking effective legislative, administrative, judicial or other measures to prevent acts of torture. No exceptions, including war, may be invoked as justification for torture (art. 2 of the Convention against Torture and

art. 3 of the Declaration on the Protection against Torture);

(b) Not expelling, returning (*refouler*) or extraditing a person to a country when there are substantial grounds for believing he or she would be tortured (art. 3 of the Convention against Torture);

(c) Criminalization of acts of torture, including complicity or participation therein (art. 4 of the Convention against Torture, principle 7 of the Body of Principles on Detention, art. 7 of the Declaration on the Protection against Torture and paras. 31-33 of the Standard Minimum Rules for the Treatment of Prisoners);

(d) Undertaking to make torture an extraditable offence and assisting other States parties in connection with criminal proceedings brought in respect of torture (arts. 8 and 9 of the Convention against Torture);

(e) Limiting the use of incommunicado detention; ensuring that detainees are held in places officially recognized as places of detention; ensuring the names of persons responsible for their detention are kept in registers readily available and accessible to those concerned, including relatives and friends; recording the time and place of all interrogations, together with the names of those present; and granting physicians, lawyers and family members access to detainees (art. 11 of the Convention against Torture; principles 11-13, 15-19 and 23 of the Body of Principles on Detention; paras. 7, 22 and 37 of the Standard Minimum Rules for the Treatment of Prisoners);

(f) Ensuring that education and information regarding the prohibition of torture is included in the training of law enforcement personnel (civil and military), medical personnel, public officials and other appropriate persons (art. 10 of the Convention against Torture, art. 5 of the Declaration on the Protection against Torture, para. 54 of the Standard Minimum Rules for the Treatment of Prisoners);

(g) Ensuring that any statement that 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 (art. 15 of the Convention against Torture, art. 12 of the Declaration on the Protection against Torture);

(h) Ensuring that the competent authorities undertake a prompt and impartial investigation, whenever there are reasonable grounds to believe that torture has been committed (art. 12 of the Convention against Torture, principles 33 and 34 of the Body of Principles on Detention, art. 9 of the Declaration on the Protection against Torture);

(i) Ensuring that victims of torture have the right to redress and adequate compensation (arts. 13 and 14 of the Convention against Torture, art. 11 of the Declaration on the Protection against Torture, paras. 35 and 36 of the Standard Minimum Rules for the Treatment of Prisoners);

(j) Ensuring that the alleged offender or offenders is subject to criminal proceedings if an investigation establishes that an act of torture appears to have been committed.

<sup>12</sup> General Assembly resolution 34/169 of 17 December 1979, annex, art. 5; see *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 46 (A/34/46)*, p. 186.

<sup>13</sup> General Assembly resolution 37/194 of 18 December 1982, annex, principles 2-5; see *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 51 (A/37/51)*, p. 211.

<sup>14</sup> Entered into force on 26 June 1987; see General Assembly resolution 39/46 of 10 December 1984, annex, art. 2, *Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 51 (A/39/51)*, p. 197.

<sup>15</sup> General Assembly resolution 43/173 of 9 December 1988, annex, principle 6; see *Official Records of the General Assembly, Forty-third Session, Supplement No. 49 (A/43/49)*, p. 298.

<sup>16</sup> General Assembly resolution 45/111 of 14 December 1990, annex, principle 1; see *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 49 (A/45/49)*, p. 200.

<sup>17</sup> For an interpretation of what constitutes "lawful sanctions", see the report of the Special Rapporteur on torture to the fifty-third session of the Commission on Human Rights (E/CN.4/1997/7, paras. 3-11), in which the Special Rapporteur expressed the view that the administration of punishments such as stoning to death, flogging and amputation cannot be deemed lawful simply because the punishment has been authorized in a procedurally legitimate manner. The interpretation put forward by the Special Rapporteur, which is consistent with the positions of the Human Rights Committee and other United Nations mechanisms, was endorsed by resolution 1998/38 of the Commission on Human Rights, which "[r]eminds Governments that corporal punishment can amount to cruel, inhuman or degrading treatment or even to torture".

ted. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings (art. 7 of the Convention against Torture, art. 10 of the Declaration on the Protection against Torture).

## 2. *United Nations bodies and mechanisms*

### (a) *Committee against Torture*

11. The Committee against Torture monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee consists of 10 experts appointed because of their “high moral standing and recognized competence in the field of human rights”. Under article 19 of the Convention against Torture, the States parties submit to the Committee, through the Secretary-General, reports on the measures they have taken to give effect to their undertakings under the Convention. The Committee examines how the provisions of the Convention have been incorporated into domestic law and monitors how this functions in practice. Each report is considered by the Committee, which may make general comments and recommendations and include this information in its annual report to the States parties and to the General Assembly. These procedures take place in public meetings.

12. Under article 20 of the Convention against Torture, if the Committee receives reliable information that appears to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee must invite that State party to co-operate in the examination of the information and, to this end, to submit observations with regard to the information concerned. The Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently. In agreement with that State party, that inquiry may include a visit to its territory. After examining the findings of its member or members, the Committee transmits these findings to the State party concerned together with any comments or suggestions that seem appropriate in view of the situation. All the proceedings of the Committee under article 20 are confidential, and, at all stages of the proceedings, the cooperation of the State party is sought. After completion of these proceedings, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the other States parties and to the General Assembly.<sup>18</sup>

13. Under article 22 of the Convention against Torture, a State party may at any time recognize the competence of the Committee to receive and consider individual complaints from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention against Torture. The Committee then considers these communications confidentially and shall forward its view to the State

party concerned and to the individual. Only 39 of the 112 States parties that have ratified the Convention have also recognized the applicability of article 22.

14. Among the concerns addressed by the Committee in its annual reports to the General Assembly is the necessity of States parties to comply with articles 12 and 13 on the Convention against Torture to ensure that prompt and impartial investigations of all complaints of torture are undertaken. For example, the Committee has stated that it considers a delay of 15 months in investigating allegations of torture to be unreasonably long and not in compliance with article 12.<sup>19</sup> The Committee has also noted that article 13 does not require a formal submission of a complaint of torture, but that “[i]t is sufficient for torture only to have been alleged by the victim for [a State Party] to be under an obligation promptly and impartially to examine the allegation”.<sup>20</sup>

### (b) *Human Rights Committee*

15. The Human Rights Committee was established pursuant to article 28 of the International Covenant on Civil and Political Rights and the requirement to monitor implementation of the Covenant in the States parties. The Committee is composed of 18 independent experts who are expected to be persons of high moral character and of recognized competence in the field of human rights.

16. States parties to the Covenant must submit reports every five years on the measures they have adopted to give effect to the rights recognized in the Covenant and on progress made in the enjoyment of those rights. The Human Rights Committee examines the reports through a dialogue with representatives of the State party whose report is under consideration. The Committee then adopts concluding observations summarizing its main concerns and making appropriate suggestions and recommendations to the State party. The Committee also prepares general comments interpreting specific articles of the Covenant to guide States parties in their reporting, as well as their implementation of the Covenant’s provisions. In one such general comment, the Committee undertook to clarify article 7 of the International Covenant on Civil and Political Rights, which states that no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment. In the general comments on article 7 of the Covenant in the report of the Committee, it specifically noted that prohibiting torture or making it a crime was not sufficient implementation of article 7.<sup>21</sup> The Committee stated: “... States must ensure an effective protection through some machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities.”

17. On 10 April 1992, the Committee adopted new general comments on article 7, further developing the previous comments. The Committee reinforced its reading of article 7 by stating that “[c]omplaints must be investi-

<sup>18</sup> It should be pointed out, however, that application of article 20 can be limited because of a reservation by a State party, in which case article 20 is not applicable.

<sup>19</sup> See Communication 8/1991, para. 185, Report of the Committee against Torture to the General Assembly (A/49/44) of 12 June 1994.

<sup>20</sup> See Communication 6/1990, para. 10.4, Report of the Committee against Torture to the General Assembly (A/50/44) of 26 July 1995.

<sup>21</sup> United Nations, document A/37/40 (1982).



gated promptly and impartially by competent authorities so as to make the remedy effective". Where a State has ratified the first Optional Protocol to the International Covenant on Civil and Political Rights, an individual may submit a communication to the Committee complaining that his rights under the Covenant have been violated. If found admissible, the Committee issues a decision on the merits, which is made public in its annual report.

(c) *Commission on Human Rights*

18. The Commission on Human Rights is the primary human rights body of the United Nations. It is composed of 53 Member States elected by the Economic and Social Council for three-year terms. The Commission meets annually for six weeks in Geneva to act on human rights issues. The Commission may initiate studies and fact-finding missions, draft conventions and declarations for approval by higher United Nations bodies and discuss specific human rights violations in public or private sessions. On 6 June 1967, the Economic and Social Council, in resolution 1235, authorized the Commission to examine allegations of gross violations of human rights and to "make a thorough study of situations which reveal a consistent pattern of violations of human rights".<sup>22</sup> Under this mandate, the Commission has, among other procedures, adopted resolutions expressing concern about human rights violations and has appointed special rapporteurs to address human rights violations falling under a particular theme. The Commission has also adopted resolutions regarding torture and other cruel, inhuman or degrading treatment or punishment. In its resolution 1998/38, the Commission stressed that "all allegations of torture or cruel, inhuman or degrading treatment or punishment should be promptly and impartially examined by the competent national authority".

(d) *Special Rapporteur on the question of torture*

19. In 1985, the Commission decided, in resolution 1985/33, to appoint a Special Rapporteur on the question of torture. The Special Rapporteur is charged with seeking and receiving credible and reliable information on questions relevant to torture and to respond to that information without delay. The Commission has continued to renew the Special Rapporteur's mandate in subsequent resolutions.

20. The Special Rapporteur's authority to monitor extends to all Member States of the United Nations and to all States with observer status, regardless of the State's ratification of the Convention against Torture. The Special Rapporteur establishes contact with Governments, asks them for information on legislative and administrative measures taken to prevent torture, requests them to remedy any consequences and asks them to respond to information alleging the actual occurrence of torture. The Special Rapporteur also receives requests for urgent action, which he or she brings to the attention of the Governments concerned in order to ensure protection of an individual's right to physical and mental integrity. In addition, the Special Rapporteur holds consultations with gov-

ernment representatives who wish to meet with him or her and, in accordance with the position's mandate, makes *in situ* visits to some parts of the world. The Special Rapporteur submits reports to the Commission on Human Rights and to the General Assembly. These reports describe actions that the Special Rapporteur has taken under his or her mandate and persistently draw attention to the importance of prompt investigation of torture allegations. In the Report of the Special Rapporteur on the question of torture of 12 January 1995, the Special Rapporteur, Nigel Rodley, made a series of recommendations. In paragraph 926 (g) of the report, he stated:

When a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place... Independent national authorities, such as a national commission or ombudsman with investigatory and/or prosecutorial powers, should be established to receive and to investigate complaints. Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no relation to that which is investigating or prosecuting the case against the alleged victim.<sup>23</sup>

21. The Special Rapporteur emphasized this recommendation in his report of 9 January 1996.<sup>24</sup> Discussing his concern about torture practices, the Special Rapporteur pointed out in paragraph 136 that "both under general international law and under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, States are obliged to investigate allegations of torture".

(e) *Special Rapporteur on violence against women*

22. The Special Rapporteur on violence against women was established in 1994 by resolution 1994/45 of the Commission on Human Rights and that mandate was renewed by resolution 1997/44. The Special Rapporteur has established procedures to seek clarification and information from Governments, in a humanitarian spirit, on specific cases of alleged violence in order to identify and investigate specific situations and allegations of violence against women in any country. These communications may concern one or more individuals identified by name or information of a more general nature relating to a prevailing situation condoning or perpetrating violence against women. The definition of gender-based violence against women used by the Special Rapporteur is taken from the Declaration on the Elimination of Violence against Women, adopted by the General Assembly in resolution 48/104 of 20 December 1993. Urgent appeals may be sent by the Special Rapporteur in cases of gender-based violence against women that involve or may involve an imminent threat or fear of threat to the right to life or physical integrity of a person. The Special Rapporteur urges the competent national authorities not only to provide comprehensive information on the case but also to carry out an independent and impartial investigation concerning the case transmitted and to take immediate action to ensure that no further violation of the human rights of women occur.

<sup>22</sup> Ibid., E/4393.

<sup>23</sup> Ibid., E/CN.4/1995/34.

<sup>24</sup> Ibid., E/CN.4/1996/35.

23. The Special Rapporteur reports annually to the Commission on Human Rights on communications sent to Governments and on replies received by him or her. On the basis of information received from Governments and other reliable sources, the Special Rapporteur makes recommendations to the Governments concerned with a view to finding durable solutions to the elimination of violence against women in any country. The Special Rapporteur may send follow-up communications to Governments when no replies have been received or when insufficient information has been provided. Should a particular situation of violence against women in any given country persist and information received by the Special Rapporteur indicate that no measures are or have been taken by a Government to ensure the protection of the human rights of women, the Special Rapporteur may consider the possibility of seeking permission from the Government concerned to visit that country in order to carry out an on-site fact-finding mission.

(f) *United Nations Voluntary Fund for Victims of Torture*

24. The physical and psychological after-effects of torture can be devastating and last for years, affecting not only the victims but also members of their families. Assistance in recovering from the trauma suffered can be obtained from organizations that specialize in assisting victims of torture. In December 1981, the General Assembly established the United Nations Voluntary Fund for Victims of Torture to receive voluntary contributions for distribution to non-governmental organizations (NGOs) that provide psychological, medical, social, economic, legal and other forms of humanitarian assistance to victims of torture and members of their families. Depending on the voluntary contributions available, the Fund may finance about 200 NGO projects assisting about 80,000 victims of torture and members of their families in about 80 countries worldwide. The Fund financed the drafting and translation of the present manual and recommended its publication in the Professional Training Series of the Office of the United Nations High Commissioner for Human Rights, following a recommendation of its Board of Trustees, which subsidizes a limited number of projects to train health professionals and others on how to provide specialized assistance to victims of torture.

### C. Regional organizations

25. Regional bodies have also contributed to the development of standards for the prevention of torture. These bodies include the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Court of Human Rights, the European Committee for the Prevention of Torture and the African Commission on Human Rights.

1. *The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights*

26. On 22 November 1969, the Organization of American States adopted the American Convention on

Human Rights, which entered into force on 18 July 1978.<sup>25</sup> Article 5 of the Convention states:

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

27. Article 33 of the Convention provides for the establishment of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. As stated in its regulations, the Commission's principal function is to promote the observance and defence of human rights and to serve as an advisory body to the Organization of American States in this area.<sup>26</sup> In fulfilling this function, the Commission has looked to the Inter-American Convention to Prevent and Punish Torture to guide its interpretation of what is meant by torture under article 5.<sup>27</sup> The Inter-American Convention to Prevent and Punish Torture was adopted by the Organization of American States on 9 December 1985 and entered into force on 28 February 1987.<sup>28</sup> Article 2 of the Convention defines torture as:

...stany act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

28. Under article 1, the States parties to the Convention undertake to prevent and punish torture in accordance with the terms of the Convention. States parties to the Convention are required to conduct an immediate and proper investigation into any allegation that torture has occurred within their jurisdiction.

29. Article 8 provides that "States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case". Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States parties must guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and initiate, whenever appropriate, the corresponding criminal process.

30. In one of its 1998 country reports, the Commission noted that an obstacle to the effective prosecution of torturers is the lack of independence in an investigation of claims of torture, as the investigation is required to be undertaken by federal bodies likely to be acquainted with

<sup>25</sup> Organization of American States, *Treaty Series*, No. 36, and United Nations, *Treaty Series*, vol. 1144, p. 123, reprinted in "Basic documents pertaining to human rights in the inter-American system" (OEA/Ser. L.V/II.82, document 6, rev. 1), p. 25 (1992).

<sup>26</sup> "Regulations of the Inter-American Commission on Human Rights" (OEA/Ser.L.V/II.92), document 31, rev. 3 of 3 May 1996, art. (1).

<sup>27</sup> See case 10.832, report No. 35/96, Inter-American Commission on Human Rights Annual Report 1997, para. 75.

<sup>28</sup> Organization of American States, *Treaty Series*, No. 67.

parties accused of committing torture.<sup>29</sup> The Commission cited article 8 to underscore the importance of an “impartial examination” of each case.<sup>30</sup>

31. The Inter-American Court of Human Rights has addressed the necessity of investigating claims of violations of the American Convention on Human Rights. In its decision in the Velásquez Rodríguez case, judgement of 29 July 1988, the Court stated that:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.

32. Article 5 of the Convention provides for the right to be free from torture. Although the case dealt specifically with the issue of disappearance, one of the rights referred to by the Court as guaranteed by the American Convention on Human Rights is the right not to be subjected to torture or other forms of ill-treatment.

## 2. The European Court of Human Rights

33. On 4 November 1950, the Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force on 3 September 1953.<sup>31</sup> Article 3 of the European Convention states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. The European Convention established control mechanisms consisting of the European Court and the European Commission of Human Rights. Since the reform that entered into force on 1 November 1998, a new permanent Court has replaced the former Court and Commission. The right of individual applications is now mandatory, and all victims have direct access to the Court. The Court has had the occasion to consider the necessity of investigating allegations of torture as a way of ensuring the rights guaranteed by article 3.

34. The first judgement on this issue was the decision in the *Aksoy v. Turkey* case (100/1995/606/694), delivered on 18 December 1996.<sup>32</sup> In that case, the Court considered that:

[w]here an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the causing of the injury, failing which a clear issue arises under Article 3 of the Convention.<sup>33</sup>

35. The Court went on to hold that the injuries inflicted on the applicant resulted from torture and that article 3 had been violated.<sup>34</sup> Furthermore, the Court interpreted article 13 of the Convention, which provides

for the right to an effective remedy before a national authority, as imposing an obligation to investigate claims of torture thoroughly. Considering the “fundamental importance of the prohibition of torture” and the vulnerability of torture victims, the Court held that “Article 13 imposes, without prejudice to any other remedy available under the domestic system, an obligation on States to carry out a thorough and effective investigation of incidents of torture”.<sup>35</sup>

36. According to the Court's interpretation, the notion of an “effective remedy” in article 13 entails a thorough investigation of every “arguable claim” of torture. The Court noted that although the Convention has no express provision, such as article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “such a requirement is implicit in the notion of an ‘effective remedy’ under Article 13”.<sup>36</sup> The Court then found that the State had violated article 13 by failing to investigate the applicant's allegation of torture.<sup>37</sup>

37. In a judgement of 28 October 1998 in the case of *Assenov and Others v. Bulgaria* (90/1997/874/1086), the Court went even further in recognizing an obligation for the State to investigate allegations of torture not only under article 13 but also under article 3. In this case, a young Romany arrested by the police showed medical evidence of beatings, but it was impossible to assess, on the basis of available evidence, whether these injuries were caused by his father or by the police. The Court recognized that “the degree of bruising found by the doctor who examined Mr. Assenov ... indicates that the latter's injuries, whether caused by his father or by the police, were sufficiently serious to amount to ill-treatment within the scope of Article 3”.<sup>38</sup> Contrary to the Commission that held that there was no violation of article 3, the Court did not stop there. It went on and considered that the facts raised “a reasonable suspicion that these injuries may have been caused by the police”.<sup>39</sup> Hence the Court held that:

[I]n these circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention “to secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be an effective official investigation. This investigation... should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance..., would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.<sup>40</sup>

38. For the first time, the Court concluded that a violation of article 3 had occurred, not from ill-treatment per se but from a failure to carry out effective official investigation on the allegation of ill-treatment. In addi-

<sup>29</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Mexico*, 1998, para. 323.

<sup>30</sup> *Ibid.*, para. 324.

<sup>31</sup> United Nations, *Treaty Series*, vol. 213, p. 222.

<sup>32</sup> See Additional Protocols Nos. 3, 5 and 8, which entered into force on 21 September 1970, 20 December 1971 and 1 January 1990, *European Treaty Series* Nos. 45, 46 and 118, respectively.

<sup>33</sup> See European Court of Human Rights, *Reports of Judgments and Decisions* 1996–VI, para. 61.

<sup>34</sup> *Ibid.*, para. 64.

<sup>35</sup> *Ibid.*, para. 98.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*, para. 100.

<sup>38</sup> *Ibid.*, *Reports of Judgments and Decisions* 1998–VIII, para. 95.

<sup>39</sup> *Ibid.*, para. 101.

<sup>40</sup> *Ibid.*, para. 102.

tion, the Court reiterated its position in the Aksoy case and concluded that there had also been a violation of article 13. The Court considered that:

Where an individual has an arguable claim that he has been ill-treated in breach of Article 3, the notion of an effective remedy entails, in addition to a thorough and effective investigation of the kind as also required by Article 3 . . . , effective access for the complainant to the investigatory procedure and payment of compensation where appropriate.<sup>41</sup>

### 3. *The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*

39. In 1987, the Council of Europe adopted the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force on 1 February 1989.<sup>42</sup> By 1 March 1999, all 40 member States of the Council of Europe had ratified the Convention. This Convention complements the judicial mechanism of the European Convention on Human Rights with a preventive mechanism. The Convention intentionally does not create substantive norms. The Convention established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, consisting of one member per member State. The members elected to the Committee should be of high moral standard, impartial, independent and also available to carry out field missions.

40. The Committee carries out visits to member States of the Council of Europe, partially on a regular periodic basis and partially on an ad hoc basis. A visiting delegation of the Committee consists of members of the Committee, accompanying experts in the medical, legal or other fields, interpreters and members of the secretariat. These delegations visit persons deprived of their liberty by the authorities of the country visited.<sup>43</sup> The powers of each visiting delegation are quite vast: it may visit any place where persons are held deprived of their liberty; make unannounced visits to any such place; repeat visits to these places; talk to persons deprived of their liberty in private; visit any or all persons it chooses to in these places; and see all premises (not only cell areas) without restrictions. The delegation can have access to all papers and files concerning the persons visited. The entire work of the Committee is based on confidentiality and cooperation.

41. After a visit, the Committee writes a report. Based on the facts observed during the visit, the report comments on the conditions found, makes concrete recommendations and asks any questions that need further clarification. The State party answers the report in writing and thereby establishes a dialogue between the Committee and the State party, which continues until the following visit. The Committee's reports and the State party's answers are confidential documents, but the State party

(not the Committee) may decide to publish both the reports and the answers. So far, nearly all the States parties have made public both reports and answers.

42. In the course of its activities over the past 10 years, the Committee has gradually developed a set of criteria for the treatment of persons held in custody that constitutes general standards. These standards deal not only with the material conditions but also with procedural safeguards. For example, three safeguards advocated by the Committee for persons held in police custody are:

(a) The right of a person deprived of liberty, if he or she so desires, to inform immediately a third party (family member) of the arrest;

(b) The right of a person deprived of liberty to have immediate access to a lawyer;

(c) The right of a person deprived of liberty to have access to a physician, including, if he or she so wishes, a physician of his or her own choice.

43. Furthermore, the Committee has stressed repeatedly that one of the most effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by competent authorities of all complaints of such treatment brought before them and, where appropriate, the imposition of a suitable penalty. This has a strong dissuasive effect.

### 4. *The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights*

44. In comparison with the European and inter-American systems, Africa does not have a convention on torture and its prevention. The question of torture is examined on the same level as are other human rights violations. The question of torture is dealt with primarily in the African Charter of Human and Peoples' Rights, which was adopted by the Organization of African Unity on 27 June 1981 and which entered into force on 21 October 1986.<sup>44</sup> Article 5 of the African Charter states:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

45. In accordance with article 30 of the African Charter, the African Commission on Human and Peoples' Rights was established in June 1987 and was charged "to promote human and peoples' rights and ensure their protection in Africa". In its periodic sessions, the Commission has passed several country resolutions on matters concerning human rights in Africa, some of which have dealt with torture, among other violations. In some of its country resolutions, the Commission raised concerns about the degradation of human rights situations, including the practice of torture.

<sup>41</sup> Ibid., para. 117.

<sup>42</sup> *European Treaty Series*, No. 126.

<sup>43</sup> A person deprived of liberty is any person deprived of liberty by a public authority, such as, but not exclusively, persons arrested or in any form of detention, prisoners awaiting trial, sentenced prisoners and persons involuntarily confined to psychiatric hospitals.

<sup>44</sup> Organization of African Unity, document CAB/LEG/67/3, Rev. 5, 21, *International Legal Materials*, 58 (1982).

46. The Commission has established new mechanisms, such as the Special Rapporteur on Prisons, the Special Rapporteur on Arbitrary and Summary Executions and the Special Rapporteur on Women, whose mandate is to report during the open sessions of the Commission. These mechanisms have created opportunities for victims and NGOs to send information directly to special rapporteurs. At the same time, a victim or an NGO can make a complaint to the Commission regarding acts of torture as defined in article 5 of the African Charter. While an individual complaint is pending before the Commission, the victim or the NGO can send the same information to special rapporteurs for their public reports to the Commission's sessions. To provide a forum for adjudicating claims of violations of the rights guaranteed in the African Charter, the Organization of African Unity Assembly adopted a protocol for the establishment of the African Court of Human and Peoples' Rights in June 1998.

#### **D. The International Criminal Court**

47. The Rome Statute of the International Criminal Court, adopted on 17 July 1998, established a permanent international criminal court to try individuals responsible for genocide, crimes against humanity and war crimes (A/CONF.183/9). The Court has jurisdiction over cases alleging torture either as part of the crime of genocide or as a crime against humanity, if the torture is committed as part of a widespread or systematic attack, or as a war crime under the Geneva Conventions of 1949. Torture is defined in the Rome Statute as the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused. As of 25 September 2000, the Rome Statute of the International Criminal Court had been signed by 113 countries and ratified by 21 States. The Court will have its headquarters in The Hague. This Court has jurisdiction only in cases in which States are unable or unwilling to prosecute individuals responsible for the crimes described in the Rome Statute.

## CHAPTER II

### RELEVANT ETHICAL CODES

48. All professions work within ethical codes, which provide a statement of the shared values and acknowledged duties of professionals and set moral standards with which they are expected to comply. Ethical standards are established primarily in two ways: by international instruments drawn up by bodies like the United Nations and by codes of principles drafted by the professions themselves, through their representative associations, nationally or internationally. The fundamental tenets are invariably the same and focus on obligations owed by the professional to individual clients or patients, to society at large and to colleagues in order to maintain the honour of the profession. These obligations reflect and complement the rights to which all people are entitled under international instruments.

#### A. Ethics of the legal profession

49. As the ultimate arbiters of justice, judges play a special role in the protection of the rights of citizens. International standards create an ethical duty on the part of judges to ensure that the rights of individuals are protected. Principle 6 of the United Nations Basic Principles on the Independence of the Judiciary states that “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected”.<sup>45</sup> Similarly, prosecutors have an ethical duty to investigate and prosecute a crime of torture committed by public officials. Article 15 of the United Nations Guidelines on the Role of Prosecutors states: “Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.”<sup>46</sup>

50. International standards also establish a duty for lawyers, in carrying out their professional functions, to promote and protect human rights and fundamental

freedoms. Principle 14 of the United Nations Basic Principles on the Role of Lawyers provides: “Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.”<sup>47</sup>

#### B. Health-care ethics

51. There are very clear links between concepts of human rights and the well-established principle of health-care ethics. The ethical obligations of health professionals are articulated at three levels and are reflected in United Nations documents in the same way as they are for the legal profession. They are also embodied in statements issued by international organizations representing health professionals, such as the World Medical Association, the World Psychiatric Association and the International Council of Nurses.<sup>48</sup> National medical associations and nursing organizations also issue codes of ethics, which their members are expected to follow. The central tenet of all health-care ethics, however articulated, is the fundamental duty always to act in the best interests of the patient, regardless of other constraints, pressures or contractual obligations. In some countries, medical ethical principles, such as that of doctor-patient confidentiality, are incorporated into national law. Even where ethical principles are not established in law in this way, all health professionals are morally bound by the standards set by their professional bodies. They are judged to be guilty of misconduct if they deviate from professional standards without reasonable justification.

##### 1. *United Nations statements relevant to health professionals*

52. Health professionals, like all other persons working in prison systems, must observe the Standard Minimum Rules for the Treatment of Prisoners, which require that medical, including psychiatric, services must be

<sup>45</sup> Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>46</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990.

<sup>47</sup> See footnote 46 above.

<sup>48</sup> There are also a number of regional groupings, such as the Commonwealth Medical Association and the International Conference of Islamic Medical Associations that issue important statements on medical ethics and human rights for their members.

available to all prisoners without discrimination and that all sick prisoners or those requesting treatment be seen daily.<sup>49</sup> These requirements reinforce the ethical obligations of physicians, discussed below, to treat and act in the best interests of patients for whom they have a duty to care. In addition, the United Nations has specifically addressed the ethical obligations of doctors and other health professionals in the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>50</sup> These make clear that health professionals have a moral duty to protect the physical and mental health of detainees. They are specifically prohibited from using medical knowledge and skills in any manner that contravenes international statements of individual rights.<sup>51</sup> In particular, it is a gross contravention of health-care ethics to participate, actively or passively, in torture or condone it in any way.

53. "Participation in torture" includes evaluating an individual's capacity to withstand ill-treatment; being present at, supervising or inflicting maltreatment; resuscitating individuals for the purposes of further maltreatment or providing medical treatment immediately before, during or after torture on the instructions of those likely to be responsible for it; providing professional knowledge or individuals' personal health information to torturers; and intentionally neglecting evidence and falsifying reports, such as autopsy reports and death certificates.<sup>52</sup> The United Nations Principles also incorporate one of the fundamental rules of health-care ethics by emphasizing that the only ethical relationship between prisoners and health professionals is one designed to evaluate, protect and improve prisoners' health. Thus, assessment of detainees' health in order to facilitate punishment or torture is clearly unethical.

## 2. *Statements from international professional bodies*

54. Many statements from international professional bodies focus on principles relevant to the protection of human rights and represent a clear international medical consensus on these issues. Declarations of the World Medical Association define internationally agreed aspects of the ethical duties to which all doctors are held. The World Medical Association's Declaration of Tokyo<sup>53</sup> reiterates the prohibition of any form of medical participation or medical presence in torture or ill-treatment. This is reinforced by the United Nations Principles that specifically refer to the Declaration of Tokyo. Doctors are

<sup>49</sup> Standard Minimum Rules for the Treatment of Prisoners and Procedures for the Effective Implementation of the Standard Minimum Rules, adopted by the United Nations in 1955.

<sup>50</sup> Adopted by the General Assembly in 1982.

<sup>51</sup> Particularly the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>52</sup> Health professionals must, however, bear in mind the duty of confidentiality owed to patients and the obligation to obtain informed consent for disclosure of information, particularly when individuals may be put at risk by such disclosure (see chapter II, sect. C.3).

<sup>53</sup> Adopted by the World Medical Association in 1975.

clearly prohibited from providing information or any medical instrument or substance that would facilitate ill-treatment. The same rule is specifically applied to psychiatry in the World Psychiatric Association's Declaration of Hawaii,<sup>54</sup> which prohibits the misuse of psychiatric skills to violate the human rights of any individual or group. The International Conference on Islamic Medicine made a similar point in its Declaration of Kuwait,<sup>55</sup> which bans doctors from allowing their special knowledge to be used "to harm, destroy or inflict damage on the body, mind or spirit, whatever the military or political reason". Similar provisions are made for nurses in the directive on the Nurse's Role in the Care of Detainees and Prisoners.<sup>56</sup>

55. Health professionals also have a duty to support colleagues who speak out against human rights violations. Failure to do so risks not only an infringement of patient rights and a contravention of the declarations listed above but also brings the health professions into disrepute. Tarnishing the honour of the profession is considered to be serious professional misconduct. The World Medical Association's resolution on human rights<sup>57</sup> calls on all national medical associations to review the human rights situation in their own countries and ensure that doctors do not conceal evidence of abuse even where they fear reprisal. It requires national bodies to provide clear guidance, especially for doctors working in the prison system, to protest alleged violations of human rights and provide effective machinery for investigating doctors' unethical activities in the human rights sphere. It also requires that they support individual doctors who call attention to human rights abuses. The World Medical Association's subsequent Declaration of Hamburg<sup>58</sup> reaffirms the responsibility of individuals and organized medical groups worldwide to encourage doctors to resist torture or any pressure to act contrary to ethical principles. It calls upon individual doctors to speak out against maltreatment and urges national and international medical organizations to support doctors who resist such pressure.

## 3. *National codes of medical ethics*

56. The third level at which ethical principles are articulated is through national codes. These reflect the same core values as mentioned above, since medical ethics are the expression of values common to all doctors. In virtually all cultures and codes, the same basic presumptions occur about duties to avoid harm, help the sick, protect the vulnerable and not discriminate between patients on any basis other than the urgency of their medical needs. Identical values are present in the codes for the nursing profession. A problematic aspect of ethical principles is that they do not, however, provide definitive rules for every dilemma but require some interpretation. When weighing ethical dilemmas, it is vital that health professionals bear in mind the fundamental moral

<sup>54</sup> Adopted in 1977.

<sup>55</sup> Adopted in 1981 (1401 in the Islamic calendar).

<sup>56</sup> Adopted by the International Council of Nurses in 1975.

<sup>57</sup> Adopted in 1990.

<sup>58</sup> Adopted in 1997.

obligations expressed in their shared professional values but also that they implement them in a manner that reflects the basic duty to avoid harm to their patients.

### **C. Principles common to all codes of health-care ethics**

57. The principle of professional independence requires health professionals always to concentrate on the core purpose of medicine, which is to alleviate suffering and distress and avoid harm, despite other pressures. Several other ethical principles are so fundamental that they are invariably found in all codes and ethical statements. The most basic are the injunctions to provide compassionate care, do no harm and to respect patients' rights. These are central requirements for all health professionals.

#### *1. The duty to provide compassionate care*

58. The duty to provide care is expressed in a variety of ways in national and international codes and declarations. One aspect of this duty is the medical duty to respond to those in medical need. This is reflected in the World Medical Association's International Code of Medical Ethics,<sup>59</sup> which recognizes the moral obligation of doctors to provide emergency care as a humanitarian duty. The duty to respond to need and suffering is echoed in traditional statements in virtually all cultures.

59. Underpinning much of modern medical ethics are the principles established in the earliest statements of professional values that require doctors to provide care even at some risk to themselves. For example, the Caraka Samhita, a Hindu code dating from the first century AD, instructs doctors to "endeavour for the relief of patients with all thy heart and soul. Thou shall not desert or injure thy patient for the sake of thy life or thy living". Similar instructions were given in early Islamic codes and the modern Declaration of Kuwait requires doctors to focus on the needy, be they "near or far, virtuous or sinner, friend or enemy".

60. Western medical values have been dominated by the influence of the Hippocratic oath and similar pledges, such as the Prayer of Maimonides. The Hippocratic oath represents a solemn promise of solidarity with other doctors and a commitment to benefit and care for patients while avoiding harming them. It also contains a promise to maintain confidentiality. These four concepts are reflected in various forms in all modern professional codes of health-care ethics. The World Medical Association's Declaration of Geneva<sup>60</sup> is a modern restatement of the Hippocratic values. It is a promise by which doctors undertake to make the health of their patients their primary consideration and vow to devote themselves to the service of humanity with conscience and dignity.

61. Aspects of the duty to care are reflected in many of the World Medical Association's declarations, which make clear that doctors must always do what is best for

the patient, including detainees and alleged criminals. This duty is often expressed through the notion of professional independence, requiring doctors to adhere to best medical practices despite any pressure that might be applied. The World Medical Association's International Code of Medical Ethics emphasizes doctors' duty to provide care "in full technical and moral independence, with compassion and respect for human dignity". It also stresses the duty to act only in the patient's interest and says that doctors owe their patients complete loyalty. The World Medical Association's Tokyo Declaration and Declaration on Physician Independence and Professional Freedom<sup>61</sup> make unambiguously clear that doctors must insist on being free to act in patients' interests, regardless of other considerations, including the instructions of employers, prison authorities or security forces. The latter declaration requires doctors to ensure that they "have the professional independence to represent and defend the health needs of patients against all who would deny or restrict needed care for those who are sick or injured". Similar principles are prescribed for nurses in the International Council of Nurses Code of Ethics.

62. Another way in which duty to provide care is expressed by the World Medical Association is through its recognition of patient rights. Its Declaration of Lisbon on the Rights of the Patient<sup>62</sup> recognizes that every person is entitled, without discrimination, to appropriate health care and reiterates that doctors must always act in a patient's best interest. Patients must be guaranteed autonomy and justice, according to the Declaration, and both doctors and providers of medical care must uphold patient's rights. "Whenever legislation, government action or any other administration or institution denies patients these rights, physicians should pursue appropriate means to assure or to restore them." Individuals are entitled to appropriate health care, regardless of factors such as their ethnic origin, political beliefs, nationality, gender, religion or individual merit. People accused or convicted of crimes have an equal moral entitlement to appropriate medical and nursing care. The World Medical Association's Declaration of Lisbon emphasizes that the only acceptable criterion for discriminating between patients is the relative urgency of their medical need.

#### *2. Informed consent*

63. While the declarations reflecting a duty of care all emphasize an obligation to act in the best interests of the individual being examined or treated, this presupposes that health professionals know what is in the patient's best interest. An absolutely fundamental precept of modern medical ethics is that patients themselves are the best judge of their own interests. This requires health professionals to give normal precedence to a competent adult patient's wishes rather than to the views of any person in authority about what would be best for that individual. Where the patient is unconscious or otherwise incapable of giving valid consent, health professionals must make a judgement about how that person's best interests can be

<sup>59</sup> Adopted in 1949.

<sup>60</sup> Adopted in 1948.

<sup>61</sup> Adopted by the World Medical Association in 1986.

<sup>62</sup> Adopted by the World Medical Association in 1981; amended by its General Assembly at its forty-seventh session in September 1995.



protected and promoted. Nurses and doctors are expected to act as an advocate for their patients, and this is made clear in statements such as the World Medical Association's Declaration of Lisbon and the International Council of Nurses' statement on the Nurse's Role in Safeguarding Human Rights.<sup>63</sup>

64. The World Medical Association's Declaration of Lisbon specifies the duty for doctors to obtain voluntary and informed consent from mentally competent patients to any examination or procedure. This means that individuals need to know the implications of agreeing and the consequences of refusing. Before examining patients, health professionals must, therefore, explain frankly the purpose of the examination and treatment. Consent obtained under duress or as a result of false information being given to the patient is invalid, and doctors acting on it are likely to be in breach of medical ethics. The graver the implications of the procedure for the patient, the greater the moral imperative to obtain properly informed consent. That is to say, where examination and treatment are clearly of therapeutic benefit to individuals, their implied consent by cooperating in the procedures may be sufficient. In cases where examination is not primarily for the purposes of providing therapeutic care, great caution is required in ensuring that the patient knows and agrees to this and that it is in no way contrary to the individual's best interests. As previously stated, examination to ascertain whether an individual can withstand punishment, torture or physical pressure during interrogation is unethical and contrary to the purpose of medicine. The only ethical assessment of a prisoner's health is one designed to evaluate the patient's health in order to maintain and improve optimum health, not to facilitate punishment. Physical examination for evidential purposes in an inquiry requires consent that is informed in the sense that the patient understands factors such as how the health data gained from the examination will be used, how they will be stored and who will have access to them. If these and other points relevant to the patient's decision are not made clear in advance, consent to examination and recording of information is invalid.

### 3. Confidentiality

65. All ethical codes, from the Hippocratic oath to modern times, include the duty of confidentiality as a fundamental principle, which also features prominently in the World Medical Association's declarations, such as the Declaration of Lisbon. In some jurisdictions, the obligation of professional secrecy is seen as so important that it is incorporated into national law. The duty of confidentiality is not absolute and may be ethically breached in exceptional circumstances where failure to do so will foreseeably give rise to serious harm to people or a serious perversion of justice. Generally, however, the duty of confidentiality covering identifiable personal health information can be overridden only with the informed permission of the patient.<sup>64</sup> Non-identifiable patient information can be freely used for other purposes and

should be used preferably in all situations where disclosure of the patient's identity is non-essential. This may be the case, for example, in the collection of data about patterns of torture or maltreatment. Dilemmas arise where health professionals are pressured or required by law to disclose identifiable information which would be likely to put patients at risk of harm. In such cases, the fundamental ethical obligations are to respect the autonomy and best interests of the patient, to do good and avoid harm. This supersedes other considerations. Doctors should make clear to the court or the authority requesting information that they are bound by professional duties of confidentiality. Health professionals responding in this way are entitled to the support of their professional association and colleagues. In addition, during periods of armed conflict, international humanitarian law gives specific protection to doctor-patient confidentiality, requiring that doctors do not denounce people who are sick or wounded.<sup>65</sup> Health professionals are protected in that they cannot be compelled to disclose information about their patients in such situations.

### D. Health professionals with dual obligations

66. Health professionals have dual obligations, in that they owe a primary duty to the patient to promote that person's best interests and a general duty to society to ensure that justice is done and violations of human rights prevented. Dilemmas arising from these dual obligations are particularly acute for health professionals working with the police, military, other security services or in the prison system. The interests of their employer and their non-medical colleagues may be in conflict with the best interests of the detainee patients. Whatever the circumstances of their employment, all health professionals owe a fundamental duty to care for the people they are asked to examine or treat. They cannot be obliged by contractual or other considerations to compromise their professional independence. They must make an unbiased assessment of the patient's health interests and act accordingly.

#### 1. Principles guiding all doctors with dual obligations

67. In all cases where doctors are acting for another party, they have an obligation to ensure that this is understood by the patient.<sup>66</sup> Doctors must identify themselves to patients and explain the purpose of any examination or treatment. Even when doctors are appointed and paid by a third party, they retain a clear duty of care to any patient whom they examine or treat. They must refuse to comply with any procedures that may harm patients or leave them physically or psychologically vulnerable to harm. They must ensure that their contractual terms allow them professional independence to make clinical judgements. Doctors must ensure that any person in custody has access to any medical examination and treatment needed. Where the detainee is a minor or a vulnerable adult, doctors have additional duties to act as an advocate. Doctors retain a

<sup>63</sup> Adopted in 1983.

<sup>64</sup> Except for common public health requirements, such as the reporting by name of individuals with infectious diseases, drug addiction, mental disorders, etc.

<sup>65</sup> Article 16 of Protocol I (1977) and article 10 of Protocol II (1977), additional to the Geneva Conventions of 1949.

<sup>66</sup> These principles are extracted from *Doctors with Dual Obligations* (London, British Medical Association, 1995).

general duty of confidentiality so that information should not be disclosed without the patient's knowledge. They must ensure that their medical records are kept confidential. Doctors have a duty to monitor and speak out when services in which they are involved are unethical, abusive, inadequate or pose a potential threat to patients' health. In such cases, they have an ethical duty to take prompt action as failure to take an immediate stand makes protest at a later stage more difficult. They should report the matter to appropriate authorities or international agencies who can investigate, but without exposing patients, their families or themselves to foreseeable serious risk of harm. Doctors and professional associations should support colleagues who take such action on the basis of reasonable evidence.

## 2. *Dilemmas arising from dual obligations*

68. Dilemmas may occur when ethics and law are in contradiction. Circumstances can arise where their ethical duties oblige health professionals not to obey a particular law, such as a legal obligation to reveal confidential medical information about a patient. There is consensus in international and national declarations of ethical precepts that other imperatives, including the law, cannot oblige health professionals to act contrary to medical ethics and to their conscience. In such cases, health professionals must decline to comply with the law or a regulation rather than compromise basic ethical precepts or expose patients to serious danger.

69. In some cases, two ethical obligations are in conflict. International codes and ethical principles require the reporting of information concerning torture or maltreatment to a responsible body. In some jurisdictions, this is also a legal requirement. In some cases, however, patients may refuse to give consent to being examined for such purposes or to having the information gained from examination disclosed to others. They may be fearful of the risks of reprisals for themselves or their families. In such situations, health professionals have dual responsibilities: to the patient and to society at large, which has an interest in ensuring that justice is done and perpetrators of abuse are brought to justice. The fundamental principle of avoiding harm must feature prominently in consideration of such dilemmas. Health professionals should seek solutions that promote justice without breaching the individual's right to confidentiality. Advice should be sought from reliable agencies; in some cases this may be the national medical association or non-governmental agencies. Alternatively, with supportive encouragement, some reluctant patients may agree to disclosure within agreed parameters.

70. The ethical obligations of a doctor may vary according to the context of the doctor-patient encounter and the possibility of the patient being able to exercise free choice about the disclosure decision. For example, where the doctor and patient are in a clearly therapeutic situation, such as the provision of care in hospital, there is a strong moral imperative for doctors to preserve the usual rules of confidentiality that normally prevail in therapeutic relationships. Reporting evidence of torture obtained in such encounters is entirely appropriate as long as the patient does not forbid it. Doctors should report such

evidence if patients request it or give properly informed consent to it. They should support patients in such decisions.

71. Forensic doctors have a different relationship with the individuals they examine and usually have an obligation to report their observations factually. The patient has less power and choice in such situations and may not be able to speak openly about what has occurred. Before beginning any examination, forensic doctors must explain their role to the patient and make clear that medical confidentiality is not a usual part of their role, as it would be in a therapeutic context. Regulations may not permit the patient to refuse examination, but the patient has an option of choosing whether to disclose the cause of any injury. Forensic doctors should not falsify their reports but should provide impartial evidence, including making clear in their reports any evidence of maltreatment.<sup>67</sup>

72. Prison doctors are primarily providers of therapeutic treatment but they also have the task of examining detainees arriving in prison from police custody. In this role or in treatment of people within a prison, they may discover evidence of unacceptable violence, which prisoners themselves are not in a realistic position to denounce. In such situations, doctors must bear in mind the best interests of the patient and their duties of confidentiality to that person, but the moral arguments for the doctor to denounce evident maltreatment are strong, since prisoners themselves are often unable to do so effectively. Where prisoners agree to disclosure, no conflict arises and the moral obligation is clear. If a prisoner refuses to allow disclosure, doctors must weigh the risk and potential danger to that individual patient against the benefits to the general prison population and the interests of society in preventing the perpetuation of abuse.

73. Health professionals must also bear in mind that reporting abuse to the authorities in whose jurisdiction it is alleged to have occurred may well entail risks of harm for the patient or for others, including the whistle-blower. Doctors must not knowingly place individuals in danger of reprisal. They are not exempt from taking action but should use discretion and must consider reporting the information to a responsible body outside the immediate jurisdiction or, where this would not entail foreseeable risks to health professionals and patients, report it in a non-identifiable manner. Clearly, if the latter solution is taken, health professionals must take into account the likelihood of pressure being brought on them to disclose identifying data or the possibility of having their medical records forcibly seized. While there are no easy solutions, health professionals should be guided by the basic injunction to avoid harm above all other considerations and seek advice, where possible, from national or international medical bodies.

<sup>67</sup> See V. Iacopino and others, "Physician complicity in misrepresentation and omission of evidence of torture in postdetention medical examinations in Turkey", *Journal of the American Medical Association (JAMA)*, vol. 276 (1996), pp. 396-402.

## CHAPTER III

### LEGAL INVESTIGATION OF TORTURE

74. States are required under international law to investigate reported incidents of torture promptly and impartially. Where evidence warrants it, a State in whose territory a person alleged to have committed or participated in torture is present, must either extradite the alleged perpetrator to another State that has competent jurisdiction or submit the case to its own competent authorities for the purpose of prosecution under national or local criminal laws. The fundamental principles of any viable investigation into incidents of torture are competence, impartiality, independence, promptness and thoroughness. These elements can be adapted to any legal system and should guide all investigations of alleged torture.

75. Where investigative procedures are inadequate because of a lack of resources or expertise, the appearance of bias, the apparent existence of a pattern of abuse or other substantial reasons, States shall pursue investigations through an independent commission of inquiry or similar procedure. Members of that commission must be chosen for their recognized impartiality, competence and independence as individuals. In particular, they must be independent of any institution, agency or person that may be the subject of the inquiry.

76. Section A describes the broad purpose of an investigation into torture. Section B sets forth basic principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. Section C sets forth suggested procedures for conducting an investigation into alleged torture, first considering the decision regarding the appropriate investigative authority, then offering guidelines regarding collection of oral testimony from the reported victim and other witnesses and collection of physical evidence. Section D provides guidelines for establishing a special independent commission of inquiry. These guidelines are based on the experiences of several countries that have established independent commissions to investigate alleged human rights abuses, including extrajudicial killings, torture and disappearances.

#### **A. Purposes of an investigation into torture**

77. The broad purpose of the investigation is to establish the facts relating to alleged incidents of torture, with a view to identifying those responsible for the incidents and facilitating their prosecution, or for use in the context of other procedures designed to obtain redress for victims. The issues addressed here may also be relevant

for other types of investigations of torture. To fulfil this purpose, those carrying out the investigation must, at a minimum, seek to obtain statements from the victims of alleged torture; to recover and preserve evidence, including medical evidence, related to the alleged torture to aid in any potential prosecution of those responsible; to identify possible witnesses and obtain statements from them concerning the alleged torture; and to determine how, when and where the alleged incidents of torture occurred as well as any pattern or practice that may have brought about the torture.

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

78. The following principles represent a consensus among individuals and organizations having expertise in the investigation of torture. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as torture or other ill-treatment) include the following:

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

(b) Identification of measures needed to prevent recurrence;

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

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

80. The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry.<sup>68</sup> The persons conducting the investigation must have at their disposal all the necessary budgetary and technical resources for effective investigation. They must also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same applies to any witness. To this end, the investigative authority is entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence. Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families must be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment should be removed from any position of control or power, whether direct or indirect, over complainants, witnesses or their families, as well as those conducting the investigation.

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

82. In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States must ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission should be chosen for their recognized impartiality, competence and independence as individuals. In particular, they must be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission must have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these principles.<sup>69</sup> A written report, made within a reasonable time, must include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report must be made public. It must also describe in detail specific events that were found to have occurred, the evidence upon which such findings were based and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State must, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

83. Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and, in particular, must obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations must be conducted in private under the control of

the medical expert and outside the presence of security agents and other government officials. The medical expert should promptly prepare an accurate written report. This report should include at least the following:

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

(b) The background. A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment was alleged to have occurred and all complaints of physical and psychological symptoms;

(c) A physical and psychological examination. A record of all physical and psychological findings upon clinical examination including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(d) An opinion. An interpretation as to the probable relationship of physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment or further examination should also be given;

(e) A record of authorship. The report should clearly identify those carrying out the examination and should be signed.

84. The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. The report should be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that the report is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or when authorized by a court empowered to enforce the transfer. For general considerations for written reports following allegations of torture, see chapter IV. Chapters V and VI describe in detail the physical and psychological assessments, respectively.

## **C. Procedures of a torture investigation**

### *1. Determination of the appropriate investigative body*

85. In cases where involvement in torture by public officials is suspected, including possible orders for the use of torture by ministers, ministerial aides, officers acting with the knowledge of ministers, senior officers in State ministries, senior military leaders or tolerance of torture by such individuals, an objective and impartial investigation may not be possible unless a special commission of inquiry is established. A commission of inquiry may also

<sup>68</sup> Under certain circumstances professional ethics may require information to be kept confidential. These requirements should be respected.

<sup>69</sup> See footnote 68.

be necessary where the expertise or the impartiality of the investigators is called into question.

86. Factors that support a belief that the State was involved in the torture or that special circumstances exist that should trigger the creation of a special impartial investigation mechanism include:

(a) Where the victim was last seen unharmed in police custody or detention;

(b) Where the *modus operandi* is recognizably attributable to State-sponsored torture;

(c) Where persons in the State or associated with the State have attempted to obstruct or delay the investigation of the torture;

(d) Where public interest would be served by an independent inquiry;

(e) Where investigation by regular investigative agencies is in question because of lack of expertise or lack of impartiality or for other reasons, including the importance of the matter, the apparent existence of a pattern of abuse, complaints from the person or the above inadequacies or other substantial reasons.

87. Several considerations should be taken into account when a State decides to establish an independent commission of inquiry. First, persons subject to an inquiry should be guaranteed the minimum procedural safeguards protected by international law at all stages of the investigation. Second, investigators should have the support of adequate technical and administrative personnel, as well as access to objective, impartial legal advice to ensure that the investigation will produce admissible evidence for criminal proceedings. Third, investigators should receive the full scope of the State's resources and powers. Finally, investigators should have the power to seek help from the international community of experts in law and medicine.

## 2. *Interviewing the alleged victim and other witnesses*

88. Because of the nature of torture cases and the trauma individuals suffer as a result, often including a devastating sense of powerlessness, it is particularly important to show sensitivity to the alleged torture victim and other witnesses. The State must protect alleged victims of torture, witnesses and their families from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Investigators must inform witnesses about the consequences of their involvement in the investigation and about any subsequent developments in the case that may affect them.

### (a) *Informed consent and other protection for the alleged victim*

89. From the outset, the alleged victim should be informed, wherever possible, of the nature of the proceedings, why his or her evidence is being sought, if and how evidence offered by the alleged victim may be used. Investigators should explain to the person which portions of the investigation will be public information and which portions will be confidential. The person has the right to refuse to cooperate with all or part of the investigation.

Every effort should be made to accommodate his or her schedule and wishes. The alleged torture victim should be regularly informed of the progress of the investigation. The alleged victim should also be notified of all key hearings in the investigation and prosecution of the case. The investigators should inform the alleged victim of the arrest of the suspected perpetrator. Alleged victims of torture should be given contact information for advocacy and treatment groups that might be of assistance to them. Investigators should work with advocacy groups within their jurisdiction to ensure that there is a mutual exchange of information and training concerning torture.

### (b) *Selection of the investigator*

90. The authorities investigating the case must identify a person primarily responsible for questioning the alleged victim. While the alleged victim may need to discuss his or her case with both legal and medical professionals, the investigating team should make every effort to minimize unnecessary repetitions of the person's story. In selecting a person as the primary investigator with responsibility for the alleged torture victim, special consideration should be given to the victim's preference for a person of the same gender, the same cultural background or the ability to communicate in his or her native language. The primary investigator should have prior training or experience in documenting torture and in working with victims of trauma, including torture. In situations where an investigator with prior training or experience is not available, the primary investigator should make every effort to become informed about torture and its physical and psychological consequences before interviewing the individual. Information about torture is available from sources including this manual, several professional and training publications, training courses and professional conferences. The investigator should also have access to international expert advice and assistance throughout the investigation.

### (c) *Context of the investigation*

91. Investigators should carefully consider the context in which they are working, take necessary precautions and provide safeguards accordingly. If interviewing people who are still imprisoned or in similar situations in which reprisals are possible, the interviewer should use care not to put them in danger. In situations where talking to an investigator may endanger someone, a "group interview" may be preferable to an individual interview. In other cases, the interviewer must choose a place for the private interview where the witness feels comfortable to talk freely.

92. Evaluations occur in a variety of political contexts. This results in important differences in the manner in which evaluations should be conducted. The legal standards under which the investigation is conducted are also affected by the context. For example, an investigation culminating in the trial of an alleged perpetrator will require the highest level of proof, whereas a report supporting an application for political asylum in a third country need provide only a relatively low level of proof of torture. The investigator must adapt the following guidelines according to the particular situation and purpose of the

evaluation. Examples of various contexts include, but are not limited to, the following:

- (i) In prison or detention in the individual's home country;
- (ii) In prison or detention in another country;
- (iii) Not in detention in the home country but in a hostile oppressive climate;
- (iv) Not in detention in the home country during a time of peace and security;
- (v) In another country that may be friendly or hostile;
- (vi) In a refugee camp setting;
- (vii) In a war crimes tribunal or truth commission.

93. The political context may be hostile towards the victim and the examiner, for example, when detainees are interviewed while they are held in prison by their governments or while they are detained by foreign governments in order to be deported. In countries where asylum-seekers are examined in order to establish evidence of torture, the reluctance to acknowledge claims of trauma and torture may be politically motivated. The possibility of further endangering the safety of the detainee is very real and must be taken into account during every evaluation. Even in cases where persons alleging torture are not in imminent danger, investigators should use great care in their contact with them. The investigator's choice of language and attitude will greatly affect the alleged victim's ability and willingness to be interviewed. The location of the interview should be as safe and comfortable as possible, including access to toilet facilities and refreshments. Sufficient time should be allotted to interview the alleged torture victim. Investigators should not expect to get the full story during the first interview. Questions of a private nature will be traumatic for the alleged victim. The investigator must be sensitive in tone, phrasing and sequencing of questions, given the traumatic nature of the alleged victim's testimony. The witness must be told of the right to stop the questioning at any time, to take a break if needed or to choose not to respond to any question.

94. Psychological counsellors or those trained in working with torture victims should be accessible, if possible, to the alleged torture victim, witnesses and members of the investigating team. Retelling the facts of the torture may cause the person to relive the experience or suffer other trauma-related symptoms (see chapter IV, sect. H). Hearing details of torture may result in secondary trauma symptoms to interviewers, and they must be encouraged to discuss their reactions with one another, respecting their professional ethical requirements of confidentiality. Wherever possible, this should be with the help of an experienced facilitator. There are two particular risks to be aware of: first, there is a danger that the interviewer may identify with those alleging torture and not be sufficiently challenging of the story; second, the interviewer may become so used to hearing histories of torture that he or she diminishes in his or her own mind the experiences of the person being interviewed.

#### (d) *Safety of witnesses*

95. The State is responsible for protecting alleged victims, witnesses and their families from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture should be removed from any position of control or power, whether direct or indirect over complainants, witnesses and their families as well as those conducting investigations. Investigators must give constant consideration to the effect of the investigation on the safety of the person alleging torture and other witnesses.

96. One suggested technique for providing a measure of safety to interviewees, including prisoners in countries in conflict situations, is to write down and keep safe the identities of people visited so that investigators can follow up on the safety of those individuals at a future return visit. Investigators must be allowed to talk to anyone and everyone, freely and in private, and be allowed to repeat the visit to these same persons (thus the need for traceable identities of those interviewed) as the need arises. Not all countries accept these conditions, and investigators may find it difficult to obtain similar guarantees. In cases in which witnesses are likely to be put in danger because of their testimony, the investigator should seek other forms of evidence.

97. Prisoners are in greater potential danger than persons who are not in custody. Prisoners might have different reactions to different situations. In one situation, prisoners may unwittingly put themselves in danger by speaking out too rashly, thinking they are protected by the very presence of the "outside" investigator. This may not be the case. In other situations, investigators may come up against a "wall of silence", as prisoners are far too intimidated to trust anyone, even when offered talks in private. In the latter case, it may be necessary to start with "group interviews", so as to be able to explain clearly the scope and purpose of the investigation and subsequently offer to have interviews in private with those persons who desire to speak. If the fear of reprisals, justified or not, is too great, it may be necessary to interview all prisoners in a given place of custody, so as not to pinpoint any specific person. Where an investigation leads to prosecution or another public truth-telling forum, the investigator should recommend measures to prevent harm to the alleged torture victim by such means as expunging names and other information that identifies the person from the public records or offering the person an opportunity to testify through image or voice-altering devices or closed circuit television. These measures must be consistent with the rights of the accused.

#### (e) *Use of interpreters*

98. Working through an interpreter when investigating torture is not easy, even with professionals. It will not always be possible to have interpreters on hand for all different dialects and languages, and sometimes it may be necessary to use interpreters from the person's family or cultural group. This is not ideal, as the person may not always feel comfortable talking about the torture experience through people he or she knows. Ideally, the interpreter should be part of the investigating team and knowl-

edgeable about torture issues (see chapters IV, sect. I, and VI, sect. C.2).

(f) *Information to be obtained from the person alleged to have been tortured*

99. The investigator should attempt to obtain as much of the following information as possible through the testimony of the alleged victim (see chapter IV, sect. E):

- (i) The circumstances leading up to the torture, including arrest or abduction and detention;
- (ii) Approximate dates and times of the torture, including when the last instance of torture occurred. Establishing this information may not be easy, as there may be several places and perpetrators (or groups of perpetrators) involved. Separate stories may have to be recorded about the different places. Expect chronologies to be inaccurate and sometimes even confusing; notions of time are often hard to focus on for someone who has been tortured. Separate stories about different places may be useful when trying to get a global picture of the situation. Survivors will often not know exactly to where they were taken, having been blindfolded or semi-conscious. By putting together converging testimonies, it may be possible to “map out” specific places, methods and even perpetrators;
- (iii) A detailed description of the persons involved in the arrest, detention and torture, including whether he or she knew any of them prior to the events relating to the alleged torture, clothing, scars, birthmarks, tattoos, height, weight (the person may be able to describe the torturer in relation to his or her own size), anything unusual about the perpetrator’s anatomy, language and accent and whether the perpetrators were intoxicated at any time;
- (iv) Contents of what the person was told or asked. This may provide relevant information when trying to identify secret or unacknowledged places of detention;
- (v) A description of the usual routine in the place of detention and the pattern of ill-treatment;
- (vi) A description of the facts of the torture, including the methods of torture used. This is understandably often difficult, and investigators should not expect to obtain the full story during one interview. It is important to obtain precise information, but questions related to intimate humiliation and assault will be traumatic, often extremely so;
- (vii) Whether the individual was sexually assaulted. Most people will tend to answer a question on sexual assault as meaning actual rape or sodomy. Investigators should be sensitive to the fact that verbal assaults, disrobing, groping, lewd or humiliating acts or blows or electric shocks to the genitals are often not taken by the victim as constituting sexual assault. These acts all violate the individual’s intimacy and should be considered as being part and parcel of sexual assault. Very often, victims of sexual assault will say

nothing or even deny any sexual assault. It is often only on the second or even third visit, if the contact made has been empathic and sensitive to the person’s culture and personality, that more of the story will come out;

- (viii) Physical injuries sustained in the course of the torture;
- (ix) A description of weapons or other physical objects used;
- (x) The identity of witnesses to the events involving torture. The investigator must use care in protecting the safety of witnesses and should consider encrypting the identities of witnesses or keeping these names separate from the substantive interview notes.

(g) *Statement from the person who is alleging torture*

100. The investigator should tape-record a detailed statement from the person and have it transcribed. The statement should be based on answers given in response to non-leading questions. Non-leading questions do not make assumptions or conclusions and allow the person to offer the most complete and unbiased testimony. Examples of non-leading questions are “What happened to you and where?” rather than “Were you tortured in prison?”. The latter question assumes that what happened to the witness was torture and limits the location of the actions to a prison. Avoid asking questions with lists, as this can force the individual into giving inaccurate answers if what actually happened does not exactly match one of the options. Allow the person to tell his or her own story, but assist by asking questions that increase in specificity. Encourage the person to use all his/her senses in describing what has happened to him or her. Ask what he or she saw, smelled, heard and felt. This is important, for instance, in situations where the person may have been blindfolded or experienced the assault in the dark.

(h) *Alleged perpetrator’s statement*

101. If possible, the investigators should interview the alleged perpetrators. The investigators must provide them with legal protections guaranteed under international and national law.

### 3. *Securing and obtaining physical evidence*

102. The investigator should gather as much physical evidence as possible to document an incident or pattern of torture. One of the most important aspects of a thorough and impartial investigation of torture is the collection and analysis of physical evidence. Investigators should document the chain of custody involved in recovering and preserving physical evidence in order to use such evidence in future legal proceedings, including potential criminal prosecution. Most torture occurs in places where people are held in some form of custody, where preservation of physical evidence or unrestricted access may be initially difficult or even impossible. Investigators must be given authority by the State to obtain unrestricted access to any place or premises and be able to secure the setting where torture allegedly took place. Investigative personnel and other investigators should coordinate their efforts in

carrying out a thorough investigation of the place where torture allegedly occurred. Investigators must have unrestricted access to the alleged scene of torture. Their access must include, but not be limited to, open or closed areas, including buildings, vehicles, offices, prison cells or other premises where torture is alleged to have taken place.

103. Any building or area under investigation must be closed off so as not to lose any possible evidence. Only investigators and their staff should be allowed entry into the area once it has been designated as under investigation. Examination of the scene for any material evidence should take place. All evidence must be properly collected, handled, packaged, labelled and placed in safe-keeping to prevent contamination, tampering or loss of evidence. If the torture has allegedly taken place recently enough for such evidence to be relevant, any samples found of body fluids (such as blood or semen), hair, fibres and threads should be collected, labelled and properly preserved. Any implements that could be used to inflict torture, whether they be destined for that purpose or used circumstantially, should be taken and preserved. If recent enough to be relevant, any fingerprints located must be lifted and preserved. A labelled sketch of the premises or place where torture has allegedly taken place must be made to scale, showing all relevant details, such as the location of the floors in a building, rooms, entrances, windows, furniture and surrounding terrain. Colour photographs must also be taken to record the same. A record of the identity of all persons at the alleged torture scene must be made, including complete names, addresses and telephone numbers or other contact information. If torture is recent enough for it to be relevant, an inventory of the clothing of the person alleging torture should be taken and tested at a laboratory, if available, for bodily fluids and other physical evidence. Information must be obtained from anyone present on the premises or in the area under investigation to determine whether they were witness to the incidents of alleged torture. Any relevant papers, records or documents should be saved for evidential use and handwriting analysis.

#### 4. Medical evidence

104. The investigator should arrange for a medical examination of the alleged victim. The timeliness of such medical examination is particularly important. A medical examination should be undertaken regardless of the length of time since the torture, but if it is alleged to have happened within the past six weeks, such an examination should be arranged urgently before acute signs fade. The examination should include an assessment of the need for treatment of injuries and illnesses, psychological help, advice and follow-up (see chapter V for a description of the physical examination and forensic evaluation). A psychological appraisal of the alleged torture victim is always necessary and may be part of the physical examination, or where there are no physical signs, may be performed by itself (see chapter VI for a description of the psychological evaluation).

105. In formulating a clinical impression for the purpose of reporting physical and psychological evidence of torture, there are six important questions to ask:

(a) Are the physical and psychological findings consistent with the alleged report of torture?

(b) What physical conditions contribute to the clinical picture?

(c) Are the psychological findings expected or typical reactions to extreme stress within the cultural and social context of the individual?

(d) Given the fluctuating course of trauma-related mental disorders over time, what is the time frame in relation to the torture events? Where in the course of recovery is the individual?

(e) What other stressful factors are affecting the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role, etc.)? What impact do these issues have on the victim?

(f) Does the clinical picture suggest a false allegation of torture?

#### 5. Photography

106. Colour photographs should be taken of the injuries of persons alleging that they have been tortured, of the premises where torture has allegedly occurred (interior and exterior) and of any other physical evidence found there. A measuring tape or some other means of showing scale on the photograph is essential. Photographs must be taken as soon as possible, even with a basic camera, because some physical signs fade rapidly and locations can be interfered with. Instantly developed photos may decay over time. More professional photos are preferred and should be taken as soon as the equipment becomes available. If possible, photographs should be taken using a 35-millimetre camera with an automatic date feature. The chain of custody of the film, negatives and prints must be fully documented.

### D. Commission of inquiry

#### 1. Defining the scope of the inquiry

107. States and organizations establishing commissions of inquiry need to define the scope of the inquiry by including terms of reference in their authorization. Defining the commission's terms of reference can greatly increase its success by giving legitimacy to the proceedings, assisting commission members in reaching a consensus on the scope of the inquiry and providing a measure by which the commission's final report can be judged. Recommendations for defining terms of reference are as follows:

(a) They should be neutrally framed so that they do not suggest a predetermined outcome. To be neutral, terms of reference must not limit investigations in areas that might uncover State responsibility for torture;

(b) They should state precisely which events and issues are to be investigated and addressed in the commission's final report;

(c) They should provide flexibility in the scope of inquiry to ensure that thorough investigation by the com-



mission is not hampered by overly restrictive or overly broad terms of reference. The necessary flexibility may be accomplished, for example, by permitting the commission to amend its terms of reference as necessary. It is important, however, for the commission to keep the public informed of any amendments to its mandate.

## *2. The power of the commission*

108. Principles should set out the powers of the commission in a general manner. The commission specifically needs the following:

(a) Authority to obtain all information necessary to the inquiry including the authority to compel testimony under legal sanction, to order the production of documents including State and medical records, and to protect witnesses, families of the victim and other sources;

(b) Authority to issue a public report;

(c) Authority to conduct on-site visits, including at the location where the torture is suspected to have occurred;

(d) Authority to receive evidence from witnesses and organizations located outside the country.

## *3. Membership criteria*

109. Commission members should be chosen for their recognized impartiality, competence and independence as individuals as defined as follows:

(a) Impartiality. Commission members should not be closely associated with any individual, State entity, political party or other organization potentially implicated in the torture. They should not be too closely connected to an organization or group of which the victim is a member, as this may damage the commission's credibility. This should not, however, be an excuse for blanket exclusions from the commission, for instance, of members of large organizations of which the victim is also a member or of persons associated with organizations dedicated to the treatment and rehabilitation of torture victims;

(b) Competence. Commission members must be capable of evaluating and weighing evidence and exercising sound judgement. If possible, commissions of inquiry should include individuals with expertise in law, medicine and other appropriate specialized fields;

(c) Independence. Members of the commission should have a reputation in their community for honesty and fairness.

110. The objectivity of the investigation and the commission's findings may, among other things, depend on whether it has three or more members rather than one or two. A single commissioner should in general not conduct investigations into torture. A single, isolated commissioner will generally be limited in the depth of the investigation that he or she can conduct alone. In addition, a single commissioner will have to make controversial and important decisions without debate and will be particularly vulnerable to State and other outside pressure.

## *4. The commission's staff*

111. Commissions of inquiry should have impartial, expert counsel. Where the commission is investigating allegations of State misconduct, it would be advisable to appoint counsel outside the Ministry of Justice. The chief counsel to the commission should be insulated from political influence, through civil service tenure or as a wholly independent member of the bar. The investigation will often require expert advisers. Technical expertise should be available to the commission in areas such as pathology, forensic science, psychiatry, psychology, gynaecology and paediatrics. To conduct a completely impartial and thorough investigation, the commission would almost always need its own investigators to pursue leads and develop evidence. The credibility of an inquiry would thus be significantly enhanced to the extent that the commission would be able to rely on its own investigators.

## *5. Protection of witnesses*

112. The State shall protect complainants, witnesses, those conducting the investigation and their families from violence, threats of violence or any other form of intimidation (see section C.2 (d) above). If the commission concludes that there is a reasonable fear of persecution, harassment or harm to any witness or prospective witness, the commission may find it advisable to hear the evidence in camera, keep the identity of an informant or witness confidential, use only evidence that will not risk identifying the witness and take other appropriate measures.

## *6. Proceedings*

113. It follows from general principles of criminal procedure that hearings should be conducted in public, unless in-camera proceedings are necessary to protect the safety of a witness. In-camera proceedings should be recorded and the sealed, unpublished record kept in a known location. Occasionally, complete secrecy may be required to encourage testimony, and the commission may want to hear witnesses privately, informally or without recording testimony.

## *7. Notice of inquiry*

114. Wide notice of the establishment of a commission and the subject of the inquiry should be given. The notice should include an invitation to submit relevant information and written statements to the commission and instructions to persons willing to testify. Notice can be disseminated through newspapers, magazines, radio, television, leaflets and posters.

## *8. Receipt of evidence*

115. Commissions of inquiry should have the power to compel testimony and produce documents, plus the authority to compel testimony from officials allegedly involved in torture. Practically, this authority may involve the power to impose fines or sentences if government officials or other individuals refuse to comply. Commissions

of inquiry should invite persons to testify or submit written statements as a first step in gathering evidence. Written statements may become an important source of evidence if their authors are afraid to testify, cannot travel to proceedings or are otherwise unavailable. Commissions of inquiry should review other proceedings that could provide relevant information.

#### 9. *Rights of parties*

116. Those alleging that they have been tortured and their legal representatives should be informed of and have access to any hearing and all information relevant to the investigation and must be entitled to present evidence. This particular emphasis on the role of the survivor as a party to the proceedings reflects the especially important role his/her interests play in the conduct of the investigation. However, all other interested parties should also have an opportunity to be heard. The investigative body must be entitled to issue summonses to witnesses, including the officials allegedly involved, and to demand the production of evidence. All these witnesses should be permitted legal counsel if they are likely to be harmed by the inquiry, for example, when their testimony could expose them to criminal charges or civil liability. Witnesses may not be compelled to testify against themselves. There should be an opportunity for the effective questioning of witnesses by the commission. Parties to the inquiry should be allowed to submit written questions to the commission.

#### 10. *Evaluation of evidence*

117. The commission must assess all information and evidence it receives to determine reliability and probity. The commission should evaluate oral testimony, taking into account the demeanour and overall credibility of the witness. The commission must be sensitive to social, cultural and gender issues that affect demeanour. Corroboration of evidence from several sources will increase the probative value of such evidence and the reliability of

hearsay evidence. The reliability of hearsay evidence must be considered carefully before the commission accepts it as fact. Testimony not tested by cross-examination must also be viewed with caution. In-camera testimony preserved in a closed record or not recorded at all is often not subject to cross-examination and, therefore, may be given less weight.

#### 11. *Report of the commission*

118. The commission should issue a public report within a reasonable period of time. Furthermore, when the commission is not unanimous in its findings, the minority commissioners should file a dissenting opinion. Commission of inquiry reports should contain, at a minimum, the following information:

- (a) The scope of inquiry and terms of reference;
- (b) The procedures and methods of evaluating evidence;
- (c) A list of all witnesses, including age and gender, who have testified, except for those whose identities are withheld for protection or who have testified in camera, and exhibits received as evidence;
- (d) The time and place of each sitting (this might be annexed to the report);
- (e) The background of the inquiry, such as relevant social, political and economic conditions;
- (f) The specific events that occurred and the evidence upon which such findings are based;
- (g) The law upon which the commission relied;
- (h) The commission's conclusions based on applicable law and findings of fact;
- (i) Recommendations based on the findings of the commission.

119. The State should reply publicly to the commission's report and, where appropriate, indicate which steps it intends to take in response to the report.

## CHAPTER IV

### GENERAL CONSIDERATIONS FOR INTERVIEWS

120. When a person who has allegedly been tortured is interviewed, there are a number of issues and practical factors that have to be taken into consideration. These considerations apply to all persons carrying out interviews, whether they are lawyers, medical doctors, psychologists, psychiatrists, human rights monitors or members of any other profession. The following section takes up this “common ground” and attempts to put it into contexts that may be encountered when investigating torture and interviewing victims of torture.

#### **A. Purpose of inquiry, examination and documentation**

121. The broad purpose of the investigation is to establish the facts related to alleged incidents of torture (see chapter III, sect. D). Medical evaluations of torture may be useful evidence in legal contexts such as:

- (a) Identifying the perpetrators responsible for torture and bringing them to justice;
- (b) Support of political asylum applications;
- (c) Establishing conditions under which false confessions may have been obtained by State officials;
- (d) Establishing regional practices of torture. Medical evaluations may also be used to identify the therapeutic needs of survivors and as testimony in human rights investigations.

122. The purpose of the written or oral testimony of the physician is to provide expert opinion on the degree to which medical findings correlate with the patient’s allegation of abuse and to communicate effectively the physician’s medical findings and interpretations to the judiciary or other appropriate authorities. In addition, medical testimony often serves to educate the judiciary, other government officials and the local and international communities on the physical and psychological sequelae of torture. The examiner should be prepared to do the following:

- (a) Assess possible injury and abuse, even in the absence of specific allegations by individuals, law enforcement or judicial officials;
- (b) Document physical and psychological evidence of injury and abuse;
- (c) Correlate the degree of consistency between examination findings and specific allegations of abuse by the patient;

(d) Correlate the degree of consistency between individual examination findings with the knowledge of torture methods used in a particular region and their common after-effects;

(e) Render expert interpretation of the findings of medical-legal evaluations and provide expert opinion regarding possible causes of abuse in asylum hearings, criminal trials and civil proceedings;

(f) Use information obtained in an appropriate manner to enhance fact-finding and further documentation of torture.

#### **B. Procedural safeguards with respect to detainees**

123. Forensic medical evaluation of detainees should be conducted in response to official written requests by public prosecutors or other appropriate officials. Requests for medical evaluations by law enforcement officials are to be considered invalid unless they are requested by written orders of a public prosecutor. Detainees themselves, their lawyers or relatives, however, have the right to request a medical evaluation to seek evidence of torture and ill-treatment. The detainee should be taken to the forensic medical examination by officials other than soldiers and police since torture and ill-treatment may have occurred in the custody of these officials and, therefore, that would place unacceptable coercive pressures on the detainee or the physician not to document torture or ill-treatment effectively. The officials who supervise the transportation of the detainee should be responsible to the public prosecutors and not to other law enforcement officials. The detainee’s lawyer should be present during the request for examination and post-examination transport of the detainee. Detainees have the right to obtain a second or alternative medical evaluation by a qualified physician during and after the period of detention.

124. Each detainee must be examined in private. Police or other law enforcement officials should never be present in the examination room. This procedural safeguard may be precluded only when, in the opinion of the examining doctor, there is compelling evidence that the detainee poses a serious safety risk to health personnel. Under such circumstances, security personnel of the health facility, not the police or other law enforcement officials, should be available upon the medical examiner’s request. In such cases, security personnel should still remain out of earshot (i.e. be only within visual contact) of the patient. Medical evaluation of detainees should be conducted at a location that the physician deems most

suitable. In some cases, it may be best to insist on evaluation at official medical facilities and not at the prison or jail. In other cases, prisoners may prefer to be examined in the relative safety of their cell, if they feel the medical premises may be under surveillance, for example. The best place will be dictated by many factors, but in all cases, investigators should ensure that prisoners are not forced into accepting a place with which they are not comfortable.

125. The presence of police officers, soldiers, prison officers or other law enforcement officials in the examination room, for whatever reason, should be noted in the physician's official medical report. Their presence during the examination may be grounds for disregarding a negative medical report. The identity and titles of others who are present in the examination room during the medical evaluations should be indicated in the report. Medical-legal evaluations of detainees should include the use of a standardized medical report form (see annex IV for guidelines that may be used to develop standard medical report forms).

126. The original, completed evaluation should be transmitted directly to the person requesting the report, generally the public prosecutor. When a detainee or a lawyer acting on his or her behalf requests a medical report, the report must be provided. Copies of all medical reports should be retained by the examining physician. A national medical association or a commission of inquiry may choose to audit medical reports to ensure that adequate procedural safeguards and documentation standards are adhered to, particularly by doctors employed by the State. Reports should be sent to such an organization, provided the issues of independence and confidentiality have been addressed. Under no circumstances should a copy of the medical report be transferred to law enforcement officials. It is mandatory that a detainee undergo a medical examination at the time of detention and an examination and evaluation upon release.<sup>70</sup> Access to a lawyer should be provided at the time of the medical examination. An outside presence during examination may be impossible in most prison situations. In such cases, it should be stipulated that prison doctors working with prisoners should respect medical ethics, and should be capable of carrying out their professional duties independently of any third-party influence. If the forensic medical examination supports allegations of torture, the detainee should not be returned to the place of detention, but rather should appear before the prosecutor or judge to determine the detainee's legal disposition.<sup>71</sup>

### C. Official visits to detention centres

127. Visits to prisoners are not to be considered lightly. They can in some cases be notoriously difficult to carry out in an objective and professional way, particularly in countries where torture is still being practised.

<sup>70</sup> See the United Nations Standard Minimum Rules for the Treatment of Prisoners (chap. I, sect. B).

<sup>71</sup> "Health care for prisoners: implications of Kalk's refusal", *The Lancet*, vol. 337 (1991), pp. 647-648.

One-off visits, without follow-up to ensure the safety of the interviewees after the visit, may be dangerous. In some cases, one visit without a repeat visit may be worse than no visit at all. Well-meaning investigators may fall into the trap of visiting a prison or police station, without knowing exactly what they are doing. They may obtain an incomplete or false picture of reality. They may inadvertently place prisoners that they may never visit again in danger. They may give an alibi to the perpetrators of torture, who may use the fact that outsiders visited their prison and saw nothing.

128. Visits should best be left to investigators who can carry them out and follow them up in a professional way and who have certain weathered procedural safeguards for their work. The notion that some evidence is better than no evidence is not valid when working with prisoners who might be put in danger by giving testimony. Visits to detention facilities by well-meaning people representing official and non-governmental institutions can be difficult and, worse, can be counter-productive. In the case in point here, a distinction should be made between a bona fide visit necessary for the inquiry, which is not in question, and a non-essential visit that goes beyond that, which when made by non-specialists could cause more harm than good in a country that practises torture. Independent commissions constituted by jurists and physicians should be given ensured periodic access to visit places of detention and prisons.

129. Interviews with people who are still in custody, and possibly even in the hands of the perpetrators of torture will obviously be very different from interviews in the privacy and security of an outside, safe medical facility. The importance of obtaining the person's trust in such situations cannot be stressed enough. However, it is even more important not, even unwittingly, to betray that trust. All precautions should be taken to ensure that detainees do not place themselves in danger. Detainees who have been tortured should be asked whether the information can be used and in what way. They may be too afraid to allow use of their names, fearing reprisals for example. Investigators, clinicians and interpreters are bound to respect that which has been promised to the detainee.

130. A clear dilemma may arise if, for example, it is evident that a large number of prisoners have been tortured in a given place, but they all refuse to allow investigators to use their stories because of fear. The options are either betraying the prisoners' trust in the effort to stop torture or respecting trust and going away without saying anything; a useful way has to be found out of this dilemma. When confronted with a number of prisoners with clear signs on their bodies of whippings, beatings, lacerations caused by canings, etc., but who all refuse mention of their cases out of fear of reprisal, it is useful to organize a "health inspection" of the whole ward in full view in the courtyard. In that way, the visiting medical investigator walking through the ranks and directly observing the very visible signs of torture on the backs of the prisoners is able to make a report on what he has seen and will not have to say that prisoners complained about torture. This first step ensures the prisoners' trust for future follow-up visits.

131. Other more subtle forms of torture, psychological or sexual, for example, clearly cannot be dealt with in the same way. In these cases, it may be necessary for investigators to refrain from comment for one or several visits until the circumstances allow or encourage detainees to be less afraid and to authorize the use of their stories. The physician and interpreter should provide their names and explain their role in conducting the evaluation. Documentation of medical evidence of torture requires specific knowledge by licensed health practitioners. Knowledge of torture and its physical and psychological consequences can be gained through publications, training courses, professional conferences and experience. In addition, knowledge about regional practices of torture and ill-treatment is important because such information may corroborate an individual's accounts of these. Experience in interviewing and examining individuals for physical and psychological evidence of torture and in documenting findings should be acquired under the supervision of experienced clinicians.

132. Those still in custody may sometimes be too trusting in situations where the interviewer simply cannot guarantee that there will be no reprisals, if a repeat visit has not been negotiated and fully accepted by the authorities or if the person's identity has not been recorded so as to ensure follow-up, for example. Every precaution should be taken to be sure that prisoners do not place themselves at risk unnecessarily, naively trusting an outsider to protect them.

133. Ideally, when visits are made to people still in custody the interpreters should be outsiders and not recruited locally. This is mainly to avoid them or their families being put under pressure from inquisitive authorities wanting to know what information was given to the investigators. The issue may be more complex when the detainees are from a different ethnic group than their jailers. Should the local interpreter be from the same ethnic group as the prisoner, so as to gain his/her trust, but at the same time arousing the mistrust of the authorities who would possibly attempt to intimidate the interpreter? Furthermore, the interpreter may be reluctant to work in a hostile environment, which would potentially place him or her at risk. Or should the interpreter come from the same ethnic group as the captors, thereby gaining trust, but losing that of the prisoner, while still leaving the interpreter vulnerable to intimidation by the authorities? The answer is obviously and ideally neither of the above. Interpreters should be from outside the region and seen by all to be as independent as the investigators.

134. A person interviewed at 8 p.m. deserves as much attention as one seen at 8 a.m. Investigators should arrange to have enough time and not overwork themselves. It is unfair to the 8 p.m. person (who in addition has been waiting all day to tell his or her story) to be cut short because of the time. Similarly, the nineteenth story about *falanga* deserves as much attention as the first. Prisoners who do not often see outsiders may never have had a chance to talk about their torture. It is an erroneous assumption to think that prisoners talk constantly among themselves about torture. Prisoners who have nothing new to offer the investigation deserve as much time as the other prisoners.

## **D. Techniques of questioning**

135. Several basic rules must be respected (see chapter III, sect. C.2 (g)). Information is certainly important, but the person being interviewed is even more so, and listening is more important than asking questions. If only questions are asked, all that are obtained are answers. To the detainee, it may be more important to talk about family than to talk about torture. This should be duly considered, and time should be allowed for some discussion of personal matters. Torture, particularly sexual torture, is a very intimate subject and may not come up before a follow-up visit or even later. Individuals should not be forced to talk about any form of torture if they feel uncomfortable about it.

## **E. Documenting the background**

### *1. Psychosocial history and pre-arrest*

136. If an alleged torture victim is no longer in custody, the examiner should inquire into the person's daily life, relations with friends and family, work or school, occupation, interests, future plans and use of alcohol and drugs. Information should also be elicited regarding the person's post-detention psychosocial history. When an individual is still in custody, a more limited psychosocial history regarding occupation and literacy is sufficient. Inquire about prescription medication being taken by the patient; this is particularly important because such medications may be denied to a person in custody, with significant adverse health consequences. Inquiries into political activities, beliefs and opinions are relevant insofar as they help to explain why a person was detained or tortured, but such inquiries are best made indirectly by asking the person which accusations were made or why they think they were detained and tortured.

### *2. Summary of detention and abuse*

137. Before obtaining a detailed account of events, elicit summary information, including dates, places, duration of detention, frequency and duration of torture sessions. A summary will help to make effective use of time. In some cases in which survivors have been tortured on multiple occasions, they may be able to recall what happened to them, but often they cannot recall exactly where and when each event occurred. In such circumstances, it may be advisable to elicit the historical account according to methods of abuse rather than relating a series of events during specific arrests. Similarly, in writing up the story it may often be useful to have "what happened where" documented as much as possible. Holding places are operated by different security, police or armed forces, and what happened in different places may be useful for a full picture of the torture system. Obtaining a map of where the torture occurred may be useful in piecing together the stories of different people. This will often prove very useful for the overall investigation.

### 3. *Circumstances of detention*

138. Consider the following questions: what time was it? Where were you? What were you doing? Who was there? Describe the appearance of those who detained you. Were they military or civilian, in uniform or in street clothes? What type of weapons were they carrying? What was said? Any witnesses? Was this a formal arrest, administrative detention or disappearance? Was violence used, threats spoken? Was there any interaction with family members? Note the use of restraints or blindfold, means of transportation, destination and names of officials, if known.

### 4. *Place and conditions of detention*

139. Include access to and descriptions of food and drink, toilet facilities, lighting, temperature and ventilation. Also, document any contact with family, lawyers or health professionals, conditions of overcrowding or solitary confinement, dimensions of the detention place and whether there are other people who can corroborate the detention. Consider the following questions: what happened first? Where were you taken? Was there an identification process (personal information recorded, fingerprints, photographs)? Were you asked to sign anything? Describe the conditions of the cell or room (note size, others present, light, ventilation, temperature, presence of insects, rodents, bedding and access to food, water and toilet). What did you hear, see and smell? Did you have any contact with people outside or access to medical care? What was the physical layout of the place where you were detained?

### 5. *Methods of torture and ill-treatment*

140. In obtaining background information on torture and ill-treatment, caution should be used about suggesting forms of abuse to which a person may have been subjected. This may help separate potential embellishment from valid experiences. However, eliciting negative responses to questions about various forms of torture may also help establish the credibility of the person. Questions should be designed to elicit a coherent narrative account. Consider the following questions. Where did the abuse take place, when and for how long? Were you blindfolded? Before discussing forms of abuse, note who was present (give names, positions). Describe the room or place. Which objects did you observe? If possible, describe each instrument of torture in detail; for electrical torture, the current, device, number and shape of electrodes. Ask about clothing, disrobing and change of clothing. Record quotations of what was said during interrogation, insults hurled at the victim, etc. What was said among the perpetrators?

141. For each form of abuse, note: body position, restraint, nature of contact, including duration, frequency, anatomical location and the area of the body affected. Was there any bleeding, head trauma or loss of consciousness? Was the loss of consciousness due to head trauma, asphyxiation or pain? The investigator should also ask about how the person was at the end of the "session". Could he or she walk? Did he or she have to be helped or

carried back to the cell? Could he or she get up the next day? How long did the feet stay swollen? All this gives a certain completeness to the description, which a checklist of methods does not. The history should include the date of positional torture, how many times and for how many days the torture lasted, the period of each episode, the style of the suspension (reverse-linear, being covered by thick cloth-blanket or being tied directly with a rope, putting weight on the legs or pulling down) or position. In cases of suspension torture, ask which sort of material was used (rope, wire and cloth leave different marks, if any, on the skin after suspension). The examiner must remember that statements on the length of the torture session by the torture survivor are subjective and may not be correct, since disorientation of time and place during torture is a generally observed finding. Was the person sexually assaulted in any manner? Elicit what was said during the torture. For example, during electric shock torture to the genitals, perpetrators often tell their torture victims that they will no longer have normal sexual relations or something similar. For a detailed discussion of the assessment of an allegation of sexual torture, including rape, see chapter V, sect. D.8.

### F. *Assessment of the background*

142. Torture survivors may have difficulty recounting the specific details of the torture for several important reasons, including:

- (a) Factors during torture itself, such as blindfolding, drugging, lapses of consciousness, etc.;
- (b) Fear of placing themselves or others at risk;
- (c) A lack of trust in the examining clinician or interpreter;
- (d) The psychological impact of torture and trauma, such as high emotional arousal and impaired memory, secondary to trauma-related mental illnesses, such as depression and post-traumatic stress disorder (PTSD);
- (e) Neuropsychiatric memory impairment from beatings to the head, suffocation, near drowning or starvation;
- (f) Protective coping mechanisms, such as denial and avoidance;
- (g) Culturally prescribed sanctions that allow traumatic experiences to be revealed only in highly confidential settings.<sup>72</sup>

143. Inconsistencies in a person's story may arise from any or all of these factors. If possible, the investigator should ask for further clarification. When this is not possible, the investigator should look for other evidence that supports or refutes the story. A network of consistent supporting details can corroborate and clarify the person's story. Although the individual may not be able to provide the details desired by the investigator, such as dates, times, frequencies and exact identities of perpetrators, a broad outline of the traumatic events and torture will emerge and stand up over time.

<sup>72</sup> R. F. Mollica and Y. Caspi-Yavin, "Overview: the assessment and diagnosis of torture events and symptoms", in *Torture and Its Consequences: Current Treatment Approaches*, M. Başoğlu, ed. (Cambridge, Cambridge University Press, 1992), pp. 38-55.

## G. Review of torture methods

144. After eliciting a detailed narrative account of events, it is advisable to review other possible torture methods. It is essential to learn about regional practices of torture and modify local guidelines accordingly. Questioning about specific forms of torture is helpful when:

- (a) Psychological symptoms cloud recollections;
- (b) The trauma was associated with impaired sensory capabilities;
- (c) There is a case of possible organic brain damage;
- (d) There are mitigating educational and cultural factors.

145. The distinction between physical and psychological methods is artificial. For example, sexual torture generally causes both physical and psychological symptoms, even when there has been no physical assault. The following list of torture methods is given to show some of the categories of possible abuse. It is not meant to be used by investigators as a checklist or as a model for listing torture methods in a report. A method-listing approach may be counter-productive, as the entire clinical picture produced by torture is much more than the simple sum of lesions produced by methods on a list. Indeed, experience has shown that when confronted with such a “package-deal” approach to torture, perpetrators often focus on one of the methods and argue about whether that particular method is a form of torture. Torture methods to consider include, but are not limited to:

- (a) Blunt trauma, such as a punch, kick, slap, whipping, a beating with wires or truncheons or falling down;
- (b) Positional torture, using suspension, stretching limbs apart, prolonged constraint of movement, forced positioning;
- (c) Burns with cigarettes, heated instruments, scalding liquid or a caustic substance;
- (d) Electric shocks;
- (e) Asphyxiation, such as wet and dry methods, drowning, smothering, choking or use of chemicals;
- (f) Crush injuries, such as smashing fingers or using a heavy roller to injure the thighs or back;
- (g) Penetrating injuries, such as stab and gunshot wounds, wires under nails;
- (h) Chemical exposure to salt, chilli pepper, gasoline, etc. (in wounds or body cavities);
- (i) Sexual violence to genitals, molestation, instrumentation, rape;
- (j) Crush injury or traumatic removal of digits and limbs;
- (k) Medical amputation of digits or limbs, surgical removal of organs;
- (l) Pharmacological torture using toxic doses of sedatives, neuroleptics, paralytics, etc.;
- (m) Conditions of detention, such as a small or overcrowded cell, solitary confinement, unhygienic conditions, no access to toilet facilities, irregular or contaminated

food and water, exposure to extremes of temperature, denial of privacy and forced nakedness;

(n) Deprivation of normal sensory stimulation, such as sound, light, sense of time, isolation, manipulation of brightness of the cell, abuse of physiological needs, restriction of sleep, food, water, toilet facilities, bathing, motor activities, medical care, social contacts, isolation within prison, loss of contact with the outside world (victims are often kept in isolation in order to prevent bonding and mutual identification and to encourage traumatic bonding with the torturer);

(o) Humiliation, such as verbal abuse, performance of humiliating acts;

(p) Threats of death, harm to family, further torture, imprisonment, mock executions;

(q) Threats of attack by animals, such as dogs, cats, rats or scorpions;

(r) Psychological techniques to break down the individual, including forced betrayals, accentuating feelings of helplessness, exposure to ambiguous situations or contradictory messages;

(s) Violation of taboos;

(t) Behavioural coercion, such as forced engagement in practices against the religion of the victim (e.g. forcing Muslims to eat pork), forced harm to others through torture or other abuses, forced destruction of property, forced betrayal of someone placing them at risk of harm;

(u) Forcing the victim to witness torture or atrocities being inflicted on others.

## H. Risk of re-traumatization of the interviewee

146. Taking into consideration that lesions of different types and levels may occur according to the methods of torture practised, the data acquired subsequent to a comprehensive medical history and physical examination should be assessed together with appropriate laboratory and radiological examinations. Providing information and making explanations for each process to be applied during the medical examination and ensuring detailed awareness about the laboratory methods play a significant role (see chapter VI, sect. B.2 (a)).

147. The presence of psychological sequelae in torture survivors, particularly the various manifestations of PTSD, may cause the torture survivor to fear experiencing a re-enactment of his or her torture experience during the interview, physical examination or laboratory test. Explaining to the torture survivor what he or she should expect prior to the medical examination is an important component of the process. Those who survive torture and remain in their country may experience intense fear and suspicion about being re-arrested, and they are often forced to go underground to avoid being arrested again. Those who are exiled or refugees may leave behind their native language, culture, family, friends, work and everything that is familiar to them.

148. The torture survivor’s personal reactions to the interviewer (and the interpreter, in cases where one is used) can have an effect on the interview process and, in

turn, the outcome of the investigation. Likewise, the personal reactions of the investigator towards the person can also affect the process of the interview and the outcome of the investigation. It is important to examine the barriers to effective communication and the understanding that these personal reactions might impose on an investigation. The investigator should maintain an ongoing examination of the interview and investigation process through consultation and discussion with colleagues familiar with the field of psychological assessment and treatment of torture survivors. This type of peer supervision can be an effective means of monitoring the interview and investigation process for biases and barriers to effective communication and for obtaining accurate information (see chapter VI, sect. C.2).

149. Despite all precautions, physical and psychological examinations by their very nature may re-traumatize the patient by provoking or exacerbating symptoms of post-traumatic stress by reviving painful effects and memories (see chapter VI, sect. B.2). Questions about psychological distress and, especially, about sexual matters are considered taboo in most traditional societies, and the asking of such questions is regarded as irreverent or insulting. If sexual torture was part of the violations incurred, the claimant may feel irredeemably stigmatized and tainted in his or her moral, religious, social or psychological integrity. The expression of a respectful awareness of these conditions, as well as the clarification of confidentiality and its limits, are, therefore, of paramount importance for a well-conducted interview. A subjective assessment has to be made by the evaluator about the extent to which pressing for details is necessary for the effectiveness of the report in court, especially if the claimant demonstrates obvious signs of distress in the interview.

### **I. Use of interpreters**

150. For many purposes, it is necessary to use an interpreter to allow the interviewer to understand what is being said. Although the interviewer and the interviewee may share a little of a common language, the information being sought is often too important to risk the errors that arise from an incomplete understanding of one another. Interpreters must be advised that what they hear and interpret in interviews is strictly confidential. It is the interpreters who get all the information, first-hand and uncensored. Individuals must be given assurances that neither the investigator nor the interpreter will misuse information in any way (see chapter VI, sect. C.2).

151. When the interpreter is not a professional, there is always the risk of the investigator losing control of the interview. Individuals may be carried away talking to the person who speaks their language, and the interview may divert from the issues at hand. There is also a risk that an interpreter with a bias might lead the interviewee on or distort the replies. Loss of information, sometimes relevant, sometimes not, is inevitable when working through interpretation. In extreme cases, it may even be necessary for investigators to refrain from taking notes during interviews and carry out interviews in several short sessions,

so as to have time to write down the main points of what has been said between sessions.

152. Investigators should remember to talk to the person and to maintain eye contact, even if he or she has a natural tendency to speak to the interpreter. It helps to use the second person when speaking through the interpreter, for example “what did you do next”, rather than the third person “ask him what happened next”. All too often, investigators write their notes during the time when the interpreter is either translating the question or the interviewee answering it. Some investigators do not appear to be listening, as the interview is going on in a language they do not understand. This should not be the case, as it is essential for investigators to observe not just the words but also the body language, facial expressions, tone of voice and gestures of the interviewee if they are to obtain a full picture. Investigators should familiarize themselves with torture-related words in the person’s language so as to show that they know about the issue. Reacting, rather than showing a blank face, when hearing a torture-related word such as *submarino* or *darmashakra* will add to the investigator’s credibility.

153. When visiting prisoners, it is best never to use local interpreters if there is a possibility of their being considered untrustworthy by those interviewed. It may also be unfair for the local interpreters, who may be “debriefed” by the local authorities after a visit, or otherwise put under pressure, to be involved with political prisoners. It is best to use independent interpreters, clearly seen as coming from elsewhere. The next best thing to speaking the local language fluently is to work with a trained interpreter with experience, who is sensitive to the issue of torture and to the local culture. As a rule, co-detainees should not be used for interpretation, unless it is obvious that the interviewee has chosen someone he or she trusts. In the case of people who are not in detention, many of these same rules also apply, but it may be easier to bring in someone (a local person) from the outside, which is rarely possible in prison situations.

### **J. Gender issues**

154. Ideally, an investigation team should contain specialists of both genders, permitting the person who says that they have been tortured to choose the gender of the investigator and, where necessary, the interpreter. This is particularly important when a woman has been detained in a situation where rape is known to happen, even if she has not, so far, complained of it. Even if no sexual assault takes place, most torture has sexual aspects (see chapter V, sect. D.8). The re-traumatization can often be worse if she feels she has to describe what happened to a person who is physically similar to her torturers, who will inevitably have been mostly or entirely men. In some cultures, it would be impossible for a male investigator to question a female victim, and this must be respected. However, in most cultures, if there is only a male physician available, many women would prefer to talk to him rather than a female of another profession in order to gain the medical information and advice that she wants. In such a case, it is essential that the interpreter, if used, be female. Some interviewees may also prefer that the interpreter be from



outside their immediate locality, both because of the danger of being reminded of their torture and because of the perceived threat to their confidentiality (see chapter IV, sect. I). If no interpreter is necessary, then a female member of the investigating team should be present as a chaperone throughout at least the physical examination and, if the patient wishes, throughout the entire interview.

155. When the victim is male and has been sexually abused, the situation is more complex because he too will have been sexually abused mostly or entirely by men. Some men would, therefore, prefer to describe their experiences to women because their fear of other men is so great, while others would not want to discuss such personal matters in front of a woman.

## **K. Indications for referral**

156. Wherever possible, examinations to document torture for medical-legal reasons should be combined with an assessment for other needs, whether referral to specialist physicians, psychologists, physiotherapists or those who can offer social advice and support. Investigators should be aware of local rehabilitation and support services. The clinician should not hesitate to insist on any consultation and examination that he or she considers necessary in a medical evaluation. In the course of documenting medical evidence of torture and ill-treatment, physicians are not absolved of their ethical obligations. Those who appear to be in need of further medical or psychological care should be referred to the appropriate services.

## **L. Interpretation of findings and conclusions**

157. Physical manifestations of torture may vary according to the intensity, frequency and duration of

abuse, the torture survivor's ability to protect him or herself and the physical condition of the detainee prior to the torture. Other forms of torture may not produce physical findings, but may be associated with other conditions. For example, beatings to the head that result in loss of consciousness can cause post-traumatic epilepsy or organic brain dysfunction. Also, poor diet and hygiene in detention can cause vitamin deficiency syndromes.

158. Certain forms of torture are strongly associated with particular sequelae. For example, beatings to the head that result in loss of consciousness are particularly important to the clinical diagnosis of organic brain dysfunction. Trauma to the genitals is often associated with subsequent sexual dysfunction.

159. It is important to realize that torturers may attempt to conceal their acts. To avoid physical evidence of beating, torture is often performed with wide, blunt objects, and torture victims are sometimes covered with a rug, or shoes in the case of *falanga*, to distribute the force of individual blows. Stretching, crushing injuries and asphyxiation are also forms of torture with the intention of producing maximal pain and suffering with minimal evidence. For the same reason, wet towels are used with electric shocks.

160. The report must list the qualifications and experience of the investigator. Where possible, the name of the witness or patient should be given. If this puts the person at significant risk, an identifier can be used that allows the investigating team to relate the person to the record, but that will not allow anyone else to identify the individual. The report must indicate who else was in the room at the time of the interview or any part of it. It should detail the relevant history, avoiding hearsay and, where appropriate, report the findings. It must be signed, dated and include any necessary declaration required by the jurisdiction for which it is written (see annex IV).

## CHAPTER V

### PHYSICAL EVIDENCE OF TORTURE

161. Witness and survivor testimony are necessary components in the documentation of torture. To the extent that physical evidence of torture exists, it provides important confirmatory evidence that a person has been tortured. However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars.

162. A medical evaluation for legal purposes should be conducted with objectivity and impartiality. The evaluation should be based on the physician's clinical expertise and professional experience. The ethical obligation of beneficence demands uncompromising accuracy and impartiality in order to establish and maintain professional credibility. When possible, clinicians who conduct evaluations of detainees should have specific essential training in forensic documentation of torture and other forms of physical and psychological abuse. They should have knowledge of prison conditions and torture methods used in the particular region where the patient was imprisoned and the common after-effects of torture. The medical report should be factual and carefully worded. Jargon should be avoided. All medical terminology should be defined so that it is understandable to lay persons. The physician should not assume that the official requesting a medical-legal evaluation has related all the material facts. It is the physician's responsibility to discover and report upon any material findings that he or she considers relevant, even if they may be considered irrelevant or adverse to the case of the party requesting the medical examination. Findings that are consistent with torture or other forms of ill-treatment must not be excluded from a medical-legal report under any circumstance.

#### A. Interview structure

163. These comments apply especially to interviews conducted with persons no longer in custody. The location of the interview and examination should be as safe and comfortable as possible. Sufficient time should be allotted to conduct a detailed interview and examination. A two-to-four-hour interview may be insufficient to conduct an evaluation for physical or psychological evidence of torture. Furthermore, at any given time of an evaluation, situation-specific variables, such as the dynamics of the interview, a patient's feelings of powerlessness in the face of having his/her intimacy intruded upon, fear of future persecution, shame about events and survivor guilt may simulate the circumstances of a torture experience. This may increase the patient's anxiety and resistance to disclose relevant information. A second, and possibly a third,

interview may have to be scheduled to complete the evaluation.

164. Trust is an essential component of eliciting an accurate account of abuse. Earning the trust of someone who has experienced torture or other forms of abuse requires active listening, meticulous communication, courtesy and genuine empathy and honesty. Physicians must have the capacity to create a climate of trust in which disclosure of crucial, though perhaps very painful or shameful, facts can occur. It is important to be aware that those facts are sometimes intimate secrets that the person may reveal at that moment for the first time. In addition to providing a comfortable setting, adequate time for the interviews, refreshments and access to toilet facilities, the clinician should explain what the patient can expect in the evaluation. The clinician should be mindful of the tone, phrasing and sequencing of questions (sensitive questions should be asked only after some degree of rapport has been developed) and should acknowledge the patient's ability to take a break if needed or to choose not to respond to any question.

165. Physicians and interpreters have a duty to maintain confidentiality of information and to disclose information only with the patient's consent (see chapter III, sect. C). Each person should be examined individually with privacy. He or she should be informed of any limits on the confidentiality of the evaluation that may be imposed by State or judicial authorities. The purpose of the interview needs to be made clear to the person. Physicians must ensure that informed consent is based on adequate disclosure and understanding of the potential benefits and adverse consequences of a medical evaluation and that consent is given voluntarily without coercion by others, particularly law enforcement or judicial authorities. The person has the right to refuse the evaluation. In such circumstances, the clinician should document the reason for refusal of an evaluation. Furthermore, if the person is a detainee, the report should be signed by his or her lawyer and another health official.

166. Patients may fear that information revealed in the context of an evaluation may not be safely kept from being accessed by persecuting governments. Fear and mistrust may be particularly strong in cases where physicians or other health workers were participants in the torture. In many circumstances, the evaluator will be a member of the majority culture and ethnicity, whereas the patient, in the situation and location of the interview, is likely to belong to a minority group or culture. This dynamic of inequality may reinforce the perceived and real imbalance of power and may increase the potential

sense of fear, mistrust and forced submission in the patient.

167. Empathy and human contact may be the most important thing that people still in custody receive from the investigator. The investigation itself may contribute nothing of specific benefit to the person being interviewed, as in most cases their torture will be over. The meagre consolation of knowing that the information may serve a future purpose will however be greatly enhanced if the investigator shows appropriate empathy. While this may seem self-evident, all too often investigators in prison visits are so concerned about obtaining information that they fail to empathize with the prisoner being interviewed.

## **B. Medical history**

168. Obtain a complete medical history, including information about prior medical, surgical or psychiatric problems. Be sure to document any history of injuries before the period of detention and any possible after-effects. Avoid leading questions. Structure inquiries to elicit an open-ended, chronological account of the events experienced during detention.

169. Specific historical information may be useful in correlating regional practices of torture with individual allegations of abuse. Examples of useful information include descriptions of torture devices, body positions, methods of restraint, descriptions of acute or chronic wounds and disabilities and identifying information about perpetrators and places of detention. While it is essential to obtain accurate information regarding a torture survivor's experiences, open-ended interviewing methods require that patients should disclose these experiences in their own words using free recall. An individual who has survived torture may have trouble expressing in words his or her experiences and symptoms. In some cases, it may be helpful to use these trauma event and symptom checklists or questionnaires. If the interviewer believes it may be helpful to use these, there are numerous questionnaires available; however, none are specific to torture victims. All complaints made by a torture survivor are significant. Although there may be no correlation with the physical findings, they should be reported. Acute and chronic symptoms and disabilities associated with specific forms of abuse and the subsequent healing processes should be documented.

### *1. Acute symptoms*

170. The individual should be asked to describe any injuries that may have resulted from the specific methods of alleged abuse. These can be, for example, bleeding, bruising, swelling, open wounds, lacerations, fractures, dislocations, joint stress, haemoptysis, pneumothorax, tympanic membrane perforation, genito-urinary system injuries, burns (colour, bulla or necrosis according to the degree of burn), electrical injuries (size and number of lesions, their colour and surface characteristics), chemical injuries (colour, signs of necrosis), pain, numbness, constipation and vomiting. The intensity, frequency and duration of each symptom should be noted. The development of any subsequent skin lesions should be described indi-

cating whether or not they left scars. Ask about health on release; was he or she able to walk or confined to bed? If confined, for how long? How long did wounds take to heal? Were they infected? What treatment was received? Was it a physician or a traditional healer? Be aware that the detainee's ability to make such observations may have been compromised by the torture itself or its after-effects and should be documented.

### *2. Chronic symptoms*

171. Elicit information on physical ailments that the individual believes were associated with torture or ill-treatment. Note the severity, frequency and duration of each symptom and any associated disability or need for medical or psychological care. Even if the after-effects of acute lesions cannot be seen months or years later, some physical findings may still remain, such as electrical current or thermal burn scars, skeletal deformities, incorrect healing of fractures, dental injuries, loss of hair and myofibrosis. Common somatic complaints include headache, back pain, gastrointestinal symptoms, sexual dysfunction and muscle pain. Common psychological symptoms include depressive affect, anxiety, insomnia, nightmares, flashbacks and memory difficulties (see chapter VI, sect. B.2).

### *3. Summary of an interview*

172. Torture victims may have injuries that are substantially different from other forms of trauma. Although acute lesions may be characteristic of the alleged injuries, most lesions heal within about six weeks of torture, leaving no scars or, at the most, non-specific scars. This is often the case when torturers use techniques that prevent or limit detectable signs of injury. Under such circumstances, the physical examination may be within normal limits, but this in no way negates allegations of torture. A detailed account of the patient's observations of acute lesions and the subsequent healing process often represents an important source of evidence in corroborating specific allegations of torture or ill-treatment.

## **C. The physical examination**

173. Subsequent to the acquisition of background information and after the patient's informed consent has been obtained, a complete physical examination by a qualified physician should be performed. Whenever possible, the patient should be able to choose the gender of the physician and, where used, of the interpreter. If the doctor is not of the same gender as the patient, a chaperone who is should be used unless the patient objects. The patient must understand that he or she is in control and has the right to limit the examination or to stop it at any time (see chapter IV, sect. J).

174. In this section, there are many references to specialist referral and further investigations. Unless the patient is in detention, it is important for physicians to have access to physical and psychological treatment facilities, so that any identified need can be followed up. In many situations, certain diagnostic test techniques will

not be available, and their absence must not invalidate the report (see annex II for further details of possible diagnostic tests).

175. In cases of alleged recent torture and when the clothes worn during torture are still being worn by the torture survivor, they should be taken for examination without having been washed, and a fresh set of clothes should be provided. Wherever possible, the examination room should be equipped with sufficient light and medical equipment for the examination. Any deficiencies should be noted in the report. The examiner should note all pertinent positive and negative findings, using body diagrams to record the location and nature of all injuries (see annex III). Some forms of torture such as electrical shock or blunt trauma may be initially undetectable, but may be detected during a follow-up examination. Although it will rarely be possible to record photographically lesions of prisoners in custody of their torturers, photography should be a routine part of examinations. If a camera is available, it is always better to take poor quality photographs than to have none. They should be followed up with professional photographs as soon as possible (see chapter III, sect. C.5).

## 1. Skin

176. The examination should include the entire body surface in order to detect signs of generalized skin disease including signs of vitamin A, B and C deficiency, pre-torture lesions or lesions inflicted by torture, such as abrasions, contusions, lacerations, puncture wounds, burns from cigarettes or heated instruments, electrical injuries, alopecia and nail removal. Torture lesions should be described by their localization, symmetry, shape, size, colour and surface (e.g. scaly, crusty, ulcerating) as well as their demarcation and level in relation to the surrounding skin. Photography is essential whenever possible. Ultimately, the examiner must offer an opinion as to the origin of the lesions: inflicted or self-inflicted, accidental or the result of a disease process.<sup>73, 74</sup>

## 2. Face

177. Facial tissues should be palpated for evidence of fracture, crepitation, swelling or pain. The motor and sensory components, including smell and taste of all cranial nerves, should be examined. Computerized tomography (CT), rather than routine radiography, is the best modality to diagnose and characterize facial fractures, determine alignment and diagnose associated soft tissue injuries and complications. Intracranial and cervical spinal injuries are often associated with facial trauma.

<sup>73</sup> O. V. Rasmussen, "Medical aspects of torture", *Danish Medical Bulletin*, vol. 37, supplement No. 1 (1990), pp. 1-88.

<sup>74</sup> R. Bunting, "Clinical examinations in the police context", *Clinical Forensic Medicine*, W. D. S. McLay, ed. (London, Greenwich Medical Media, 1996), pp. 59-73.

## (a) Eyes

178. There are many forms of trauma to the eyes, including conjunctival haemorrhage, lens dislocation, subhyeloid haemorrhage, retrobulbar haemorrhage, retinal haemorrhage and visual field loss. Given the serious consequences of lack of treatment or improper treatment, ophthalmologic consultation should be obtained whenever there is a suspicion of ocular trauma or disease. CT is the best modality to diagnose orbital fractures and soft tissue injuries to the bulbar and retrobulbar contents. Nuclear magnetic resonance imaging (MRI) may be an adjunct for identifying soft tissue injury. High resolution ultrasound is an alternative method for evaluation of trauma to the eye globe.

## (b) Ears

179. Trauma to the ears, especially rupture of the tympanic membrane, is a frequent consequence of harsh beatings. The ear canals and tympanic membranes should be examined with an otoscope and injuries described. A common form of torture, known in Latin America as *telefono*, is a hard slap of the palm to one or both ears, rapidly increasing pressure in the ear canal, thus rupturing the drum. Prompt examination is necessary to detect tympanic membrane ruptures less than 2 millimetres in diameter, which may heal within 10 days. Fluid may be observed in the middle or external ear. If otorrhea is confirmed by laboratory analysis, MRI or CT should be performed to determine the fracture site. The presence of hearing loss should be investigated, using simple screening methods. If necessary, audiometric tests should be conducted by a qualified audiometric technician. The radiographic examination of fractures of the temporal bone or disruption of the ossicular chain is best determined by CT, then hypocycloidal tomography and, lastly, linear tomography.

## (c) Nose

180. The nose should be evaluated for alignment, crepitation and deviation of the nasal septum. For simple nasal fractures, standard nasal radiographs should be sufficient. For complex nasal fractures and when the cartilaginous septum is displaced, CT should be performed. If rhinorrhea is present, CT or MRI is recommended.

## (d) Jaw, oropharynx and neck

181. Mandibular fractures or dislocations may result from beatings. Temporomandibular joint syndrome is a frequent consequence of beatings about the lower face and jaw. The patient should be examined for evidence of crepitation of the hyoid bone or laryngeal cartilage resulting from blows to the neck. Findings concerning the oropharynx should be noted in detail, including lesions consistent with burns from electrical shock or other trauma. Gingival haemorrhage and the condition of the gums should also be noted.

## (e) Oral cavity and teeth

182. Examination by a dentist should be considered a component of periodic health examination in detention. This examination is often neglected, but it is an important

component of the physical examination. Dental care may be purposefully withheld to allow caries, gingivitis or tooth abscesses to worsen. A careful dental history should be taken, and, if dental records exist, they should be requested. Tooth avulsions, fractures of the teeth, dislocated fillings and broken prostheses may result from direct trauma or electric shock torture. Dental caries and gingivitis should be noted. Poor quality dentition may be due to conditions in detention or may have preceded the detention. The oral cavity must be carefully examined. During application of an electric current, the tongue, gums or lips may be bitten. Lesions might be produced by forcing objects or materials into the mouth, as well as by applying electric current. X-rays and MRI are able to determine the extent of soft tissue, mandibular and dental trauma.

### 3. Chest and abdomen

183. Examination of the trunk, in addition to noting lesions of the skin, should be directed towards detecting regions of pain, tenderness or discomfort that would reflect underlying injuries of the musculature, ribs or abdominal organs. The examiner must consider the possibility of intramuscular, retroperitoneal and intra-abdominal haematomas, as well as laceration or rupture of an internal organ. Ultrasonography, CT and bone scintigraphy should be used, when realistically available, to confirm such injuries. Routine examination of the cardiovascular system, lungs and abdomen should be performed in the usual manner. Pre-existing respiratory disorders are likely to be aggravated in custody, and new respiratory disorders frequently develop.

### 4. Musculoskeletal system

184. Complaints of musculoskeletal aches and pains are very common in survivors of torture.<sup>75</sup> They may be the result of repeated beatings, suspension, other positional torture or the general physical environment of detention.<sup>76</sup> They may also be somatic (see chapter VI, sect. B.2). While they are non-specific, they should be documented. They often respond well to sympathetic physiotherapy.<sup>77</sup> Physical examination of the skeleton should include testing for mobility of joints, the spine and the extremities. Pain with motion, contracture, strength, evidence of compartment syndrome, fractures with or without deformity and dislocations should all be noted. Suspected dislocations, fractures and osteomyelitis should be evaluated with radiographs. For suspected osteomyelitis, routine radiographs should be taken, followed by three-phase bone scintigraphy. Injuries to tendons, ligaments and muscles are best evaluated with MRI, but arthrography can also be performed. In the acute stage, this can detect haemorrhage and possible muscle tears. Muscles usually heal completely without scarring; thus, later imaging studies will be negative. Under MRI and CT, denervated muscles and chronic compartment

syndrome will be imaged as muscle fibrosis. Bone bruises can be detected by MRI or scintigraphy. Bone bruises usually heal without leaving traces.

### 5. Genito-urinary system

185. Genital examination should be performed only with the consent of the patient and, if necessary, should be postponed to a later examination. A chaperone must be present if the examining physician's gender is different from that of the patient. For more information, see chapter IV, sect. J. See section D.8 below for further information regarding examination of victims of sexual assault. Ultrasonography and dynamic scintigraphy can be used for detecting genito-urinary trauma.

### 6. Central and peripheral nervous systems

186. The neurological examination should evaluate the cranial nerves, sensory organs and peripheral nervous system, checking for both motor and sensory neuropathies related to possible trauma, vitamin deficiencies or disease. Cognitive ability and mental status must also be evaluated (see chapter VI, sect. C). In patients who report being suspended, special emphasis on examination for brachial plexopathy (asymmetrical hand strength, wrist drop, arm weakness with variable sensory and tendon reflexes) is necessary. Radiculopathies, other neuropathies, cranial nerve deficits, hyperalgesia, parasthesias, hyperaesthesia, change in position, temperature sensation, motor function, gait and coordination may all result from trauma associated with torture. In patients with a history of dizziness and vomiting, a vestibular examination should be conducted, and evidence of nystagmus noted. Radiological evaluation should include MRI or CT. MRI is preferred over CT for radiological evaluation of the brain and posterior fossae.

## D. Examination and evaluation following specific forms of torture

187. The following discussion is not meant to be an exhaustive discussion of all forms of torture, but it is intended to describe in more detail the medical aspects of many of the more common forms of torture. For each lesion and for the overall pattern of lesions, the physician should indicate the degree of consistency between it and the attribution given by the patient. The following terms are generally used:

(a) Not consistent: the lesion could not have been caused by the trauma described;

(b) Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes;

(c) Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes;

(d) Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes;

<sup>75</sup> See footnote 73 above.

<sup>76</sup> D. Forrest, "Examination for the late physical after-effects of torture", *Journal of Clinical Forensic Medicine*, vol. 6 (1999), pp. 4-13.

<sup>77</sup> See footnote 73 above.

(e) Diagnostic of: this appearance could not have been caused in any way other than that described.

188. Ultimately, it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story (see chapter IV, sect. G, for a list of torture methods).

### 1. *Beatings and other forms of blunt trauma*

#### (a) *Skin damage*

189. Acute lesions are often characteristic of torture, because they show a pattern of inflicted injury that differs from non-inflicted injuries, for example, their shape, repetition, distribution on the body. Since most lesions heal within about six weeks of torture, leaving no scars or non-specific scars, a characteristic history of the acute lesions and their development until healing might be the only support for an allegation of torture. Permanent changes in the skin due to blunt trauma are infrequent, non-specific and usually without diagnostic significance. A sequel of blunt violence, which is diagnostic of prolonged application of tight ligatures, is a linear zone extending circularly around the arm or leg, usually at the wrist or ankle. This zone contains few hairs or hair follicles, and this is probably a form of cicatricial alopecia. No differential diagnosis in the form of a spontaneous skin disease exists, and it is difficult to imagine any trauma of this nature occurring in everyday life.

190. Among acute lesions, abrasions resulting from superficial scraping lesions of the skin may appear as scratches, brush-burn type lesions or larger scraped lesions. At times, abrasions may show a pattern that reflects the contours of the instrument or surface that inflicted the injury. Repeated or deep abrasions may create areas of hypo or hyperpigmentation, depending on skin type. This occurs on the inside of the wrists if the hands have been tied together tightly.

191. Contusions and bruises are areas of haemorrhage into soft tissue due to the rupture of blood vessels from blunt trauma. The extent and severity of a contusion depend not only on the amount of force applied but also on the structure and vascularity of the contused tissue. Contusions occur more readily in areas of thin skin overlying bone or in fatty areas. Many medical conditions, including vitamin and other nutritional deficiencies, may be associated with easy bruising or purpura. Contusions and abrasions indicate that blunt force has been applied to a particular area. The absence of a bruise or abrasion, however, does not indicate that there was no blunt force to that area. Contusions may be patterned, reflecting the contours of the inflicting instrument. For instance, rail-shaped bruising may occur when an instrument, such as a truncheon or cane, has been used. The shape of the object may be inferred from the shape of the bruise. As contusions resolve, they undergo a series of colour changes. Most bruises initially appear dark blue, purple or crimson. As the haemoglobin in the bruise breaks down, the colour gradually changes to violet, green, dark yellow or pale yellow and then disappears. It is very difficult, however, to date accurately the occurrence of contusions. In some

skin types, this can lead to hyperpigmentation, which can last several years. Contusions that develop in deeper subcutaneous tissues may not appear until several days after injury, when the extravasated blood has reached the surface. In cases of an allegation but an absence of a contusion, the victim should be re-examined after several days. It should be taken into consideration that the final position and shape of bruises bear no relationship to the original trauma and that some lesions may have faded by the time of re-examination.<sup>78</sup>

192. Lacerations, a tearing or crushing of the skin and underlying soft tissues by the pressure of blunt force, develop easily on the protruding parts of the body, since the skin is compressed between the blunt object and the bone surface under the subdermal tissues. However, with sufficient force the skin can be torn on any part of the body. Asymmetrical scars, scars in unusual locations and a diffuse spread of scarring all suggest deliberate injury.<sup>79</sup>

193. Scars resulting from whipping represent healed lacerations. These scars are depigmented and often hypertrophic, surrounded by narrow, hyperpigmented stripes. The only differential diagnosis is plant dermatitis, but this is dominated by hyperpigmentation and shorter scars. By contrast, symmetrical, atrophic, depigmented linear changes of the abdomen, axillae and legs, which are sometimes claimed to be torture sequelae, represent striae distensae and are not normally related to torture.<sup>80</sup>

194. Burning is the form of torture that most frequently leaves permanent changes in the skin. Sometimes, these changes may be of diagnostic value. Cigarette burns often leave 5-10-millimetre-long, circular or ovoid, macular scars with a hyper or a hypopigmented centre and a hyperpigmented, relatively indistinct periphery. The burning away of tattoos with cigarettes has also been reported in relation to torture. The characteristic shape of the resulting scar and any tattoo remnants will help in the diagnosis.<sup>81</sup> Burning with hot objects produces markedly atrophic scars which reflect the shape of the instrument and which are sharply demarcated with narrow hypertrophic or hyperpigmented marginal zones corresponding to an initial zone of inflammation. This may, for instance, be seen after burning with an electrically heated metal rod or a gas lighter. It is difficult to make a differential diagnosis if many scars are present. Spontaneously occurring inflammatory processes lack the characteristic marginal zone and only rarely show a pronounced loss of tissue. Burning may result in hypertrophic or keloid scars as is the case following a burn produced by burning rubber.

195. When the nail matrix is burnt, subsequent growth produces striped, thin, deformed nails, sometimes broken up in longitudinal segments. If a nail has been pulled off, an overgrowth of tissue may be produced from

<sup>78</sup> S. Gürpınar and S. Korur Fincancı, "İnsan Hakları İhlalleri ve Hekim Sorumluluğu" (Human rights violations and responsibility of the physician), *Birinci Basamak İçin Adli Tıp El Kitabı* (Handbook of Forensic Medicine for General Practitioners) (Ankara, Turkish Medical Association, 1999).

<sup>79</sup> See footnote 73 above.

<sup>80</sup> L. Danielsen, "Skin changes after torture", *Torture*, vol. 2, supplement 1 (1992), pp. 27-28.

<sup>81</sup> Ibid.

the proximal nail fold, resulting in the formation of pterygium. Changes in the nail caused by *Lichen planus* constitute the only relevant differential diagnosis, but they will usually be accompanied by widespread skin injury. On the other hand, fungus infections are characterized by thickened, yellowish, crumbling nails, different from the above changes.

196. Sharp trauma wounds are produced when the skin is cut with a sharp object, such as a knife, bayonet or broken glass and include stab wounds, incised or cut wounds and puncture wounds. The acute appearance is usually easy to distinguish from the irregular and torn appearance of lacerations and scars found upon later examination that may be distinctive. Regular patterns of small incisional scars could be due to traditional healers.<sup>82</sup> If pepper or other noxious substances are applied to open wounds, the scars may become hypertrophic. An asymmetrical pattern and different sizes of scars are probably significant in the diagnosis of torture.

#### (b) *Fractures*

197. Fractures produce a loss of bone integrity due to the effect of a blunt mechanical force on various vector planes. A direct fracture occurs at the site of impact or at the site where the force was applied. The location, contour and other characteristics of a fracture reflect the nature and direction of the applied force. It is sometimes possible to distinguish fracture inflicted from accidental injury by the radiological appearance of the fracture. Radiographic dating of relatively recent fractures should be done by an experienced trauma radiologist. Speculative judgements should be avoided in the evaluations of the nature and age of blunt traumatic lesions, since a lesion may vary according to the age, sex, tissue characteristics, the condition and health of the patient and the severity of the trauma. For example, well-conditioned, muscularly fit, younger individuals are more resistant to bruising than frail, older individuals.

#### (c) *Head trauma*

198. Head trauma is one of the most common forms of torture. In cases of recurring head trauma, even if not always of serious dimensions, cortical atrophy and diffuse axonal damage can be expected. In cases of trauma caused by falls, counter-coup (location in opposition to the trauma) lesions of the brain may be observed. Whereas in cases of direct trauma, contusions of the brain may be observed directly under the region in which the trauma is inflicted. Scalp bruises are frequently invisible externally unless there is swelling. Bruises may be difficult to see in dark-skinned individuals, but will be tender upon palpation.

199. Having been exposed to blows to the head, a torture survivor may complain of continuous headaches. These are often somatic or may be referred from the neck (see section C above). The victim may claim to suffer pain when touched in that region, and diffuse or local fullness or increased firmness may be observed by means of palpation of the scalp. Scars can be observed in cases where there have been lacerations of the scalp. Headaches may

be the initial symptom of an expanding subdural haematoma. They may be associated with the acute onset of mental status changes, and a CT scan must be performed urgently. Soft tissue swelling or haemorrhage will usually be detected with CT or MRI. It may also be appropriate to arrange psychological or neuropsychological assessment (see chapter VI, sect. C.4).

200. Violent shaking as a form of torture may produce cerebral injury without leaving any external marks, although bruises may be present on the upper chest or shoulders where the victim or his clothing has been grabbed. At its most extreme, shaking can produce injuries identical to those seen in the shaken baby syndrome: cerebral oedema, subdural haematoma and retinal haemorrhages. More commonly, victims complain of recurrent headaches, disorientation or mental status changes. Shaking episodes are usually brief, only a few minutes or less, but may be repeated many times over a period of days or weeks.

#### (d) *Chest and abdominal trauma*

201. Rib fractures are a frequent consequence of beatings to the chest. If displaced, they can be associated with lacerations of the lung and possible pneumothorax. Fractures of the vertebral pedicles may result from direct use of blunt force.

202. In cases of acute abdominal trauma, the physical examination should seek evidence of abdominal organ and urinary tract injury. However, the examination is often negative. Gross haematuria is the most significant indication of kidney contusion. Peritoneal lavage may detect occult abdominal haemorrhage. Free abdominal fluid detected by CT after peritoneal lavage may be from the lavage or haemorrhage; thus invalidating the finding. On a CT, acute abdominal haemorrhage is usually isointense or reveals water density unlike acute central nervous system (CNS) haemorrhage, which is hyperintense. Organ injury may be present as free air, extraluminal fluid or areas of low attenuation, which may represent oedema, contusion, haemorrhage or a laceration. Peripancreatic oedema is one of the signs of acute traumatic and non-traumatic pancreatitis. Ultrasound is particularly useful in detecting subcapsular haematomas of the spleen. Renal failure due to crush syndrome may be acute after severe beatings. Renal hypertension can be a late complication of renal injury.

### 2. *Beatings to the feet*

203. *Falanga* is the most common term for repeated application of blunt trauma to the feet (or more rarely to the hands or hips), usually applied with a truncheon, a length of pipe or similar weapon. The most severe complication of *falanga* is closed compartment syndrome, which can cause muscle necrosis, vascular obstruction or gangrene of the distal portion of the foot or toes. Permanent deformities of the feet are uncommon but do occur, as do fractures of the carpal, metacarpal and phalanges. Because the injuries are usually confined to soft tissue, CT or MRI are the preferred methods for radiological documentation of the injury, but it must be emphasized that physical examination in the acute phase should be

<sup>82</sup> See footnote 76 above.

diagnostic. *Falanga* may produce chronic disability. Walking may be painful and difficult. The tarsal bones may be fixed (spastic) or have increased motion. Squeezing the plantar (sole) of the foot and dorsiflexion of the great toe may produce pain. On palpation, the entire length of the plantar aponeurosis may be tender and the distal attachments of the aponeurosis may be torn, partly at the base of the proximal phalanges, partly at the skin. The aponeurosis will not tighten normally, making walking difficult and muscle fatigue may follow. Passive extension of the big toe may reveal whether the aponeurosis has been torn. If it is intact, the beginning of tension in the aponeurosis should be felt on palpation when the toe is dorsiflexed to 20 degrees; maximum normal extension is about 70 degrees. Higher values suggest injury to the attachments of the aponeurosis.<sup>83, 84, 85, 86</sup> On the other hand, limited dorsiflexion and pain on hyperextension of the large toe are findings of *Hallux rigidus*, which results from dorsal osteophyte at the first metatarsal head and/or base of the proximal phalanx.

204. Numerous complications and syndromes can occur:

(a) Closed compartment syndrome. This is the most severe complication. An oedema in a closed compartment results in vascular obstruction and muscle necrosis, which may result in fibrosis, contracture or gangrene in the distal foot or toes. It is usually diagnosed by measuring pressures in the compartment;

(b) Crushed heel and anterior footpads. The elastic pads under the calcaneus and proximal phalanges are crushed during *falanga*, either directly or as a result of oedema associated with the trauma. Also, the connective tissue bands that extend through adipose tissue and connect bone to the skin are torn. Adipose tissue is deprived of its blood supply and atrophies. The cushioning effect is lost and the feet no longer absorb the stresses produced by walking;

(c) Rigid and irregular scars involving the skin and subcutaneous tissues of the foot after the application of *falanga*. In a normal foot, the dermal and sub-dermal tissues are connected to the planter aponeurosis through tight connective tissue bands. However, these bands can be partially or completely destroyed due to the oedema that ruptures the bands after exposure to *falanga*;

(d) Rupture of the plantar aponeurosis and tendons of the foot. An oedema in the post-*falanga* period may rupture these structures. When the supportive function necessary for the arch of the foot disappears, the act of walking becomes more difficult and foot muscles, especially the *quadratus plantaris longus*, are excessively forced;

(e) Planter fasciitis. May occur as a further complication of this injury. In cases of *falanga*, irritation is often present throughout the whole aponeurosis, causing chronic aponeurosis. Studies on the subject have shown that in prisoners released after 15 years of detention and who claimed to have been subjected to *falanga* application when first arrested, positive bone scans of hyperactive points in the calcaneus or metatarsal bones were observed.<sup>87</sup>

205. Radiological methods such as MRI, CT scan and ultrasound can often confirm cases of trauma occurring as a result of the application of *falanga*. Positive radiological findings may also be secondary to other diseases or trauma. Routine radiographs are recommended as the initial examination. MRI is the preferred radiological examination for detecting soft tissue injury. MRI or scintigraphy can detect bone injury in the form of a bruise, which may not be detected by routine radiographs or CT.<sup>88</sup>

### 3. Suspension

206. Suspension is a common form of torture that can produce extreme pain, but which leaves little, if any, visible evidence of injury. A person still in custody may be reluctant to admit to being tortured, but the finding of peripheral neurological deficits, diagnostic of brachial plexopathy, virtually proves the diagnosis of suspension torture. Suspension can be applied in various forms:

(a) Cross suspension. Applied by spreading the arms and tying them to a horizontal bar;

(b) Butchery suspension. Applied by fixation of hands upwards, either together or one by one;

(c) Reverse butchery suspension. Applied by fixation of feet upward and the head downward;

(d) "Palestinian" suspension. Applied by suspending the victim with the forearms bound together behind the back, the elbows flexed 90 degrees and the forearms tied to a horizontal bar. Alternatively, the prisoner is suspended from a ligature tied around the elbows or wrists with the arms behind the back;

(e) "Parrot perch" suspension. Applied by suspending a victim by the flexed knees from a bar passed below the popliteal region, usually while the wrists are tied to the ankles.

207. Suspension may last from 15 to 20 minutes to several hours. "Palestinian" suspension may produce permanent brachial plexus injury in a short period. The "parrot perch" may produce tears in the cruciate ligaments of the knees. Victims will often be beaten while suspended or otherwise abused. In the chronic phase, it is usual for pain and tenderness around the shoulder joints to persist,

<sup>83</sup> G. Sklyv, "Physical sequelae of torture", in *Torture and Its Consequences: Current Treatment Approaches*, M. Başoğlu, ed. (Cambridge, Cambridge University Press, 1992), pp. 38-55.

<sup>84</sup> See footnote 76.

<sup>85</sup> K. Prip, L. Tived, N. Holten, *Physiotherapy for Torture Survivors: A Basic Introduction* (Copenhagen, International Rehabilitation Council for Torture Victims, 1995).

<sup>86</sup> F. Bojsen-Moller and K. E. Flagstad, "Plantar aponeurosis and internal architecture of the ball of the foot", *Journal of Anatomy*, vol. 121 (1976), pp. 599-611.

<sup>87</sup> V. Lök and others, "Bone scintigraphy as clue to previous torture", *The Lancet*, vol. 337, No. 8745 (1991), pp. 846-847. See also M. Tunca and V. Lök, "Bone scintigraphy in screening of torture survivors", *The Lancet*, vol. 352, No. 9143 (1998), p. 1859.

<sup>88</sup> See footnotes 76 and 83 and V. Lök and others, "Bone scintigraphy as an evidence of previous torture", *Treatment and Rehabilitation Center Report of the Human Rights Foundation of Turkey* (Ankara, 1994), pp. 91-96.



as the lifting of weight and rotation, especially internal, will cause severe pain many years later. Complications in the acute period following suspension include weakness of the arms or hands, pain and paresthesias, numbness, insensitivity to touch, superficial pain and tendon reflex loss. Intense deep pain may mask muscle weakness. In the chronic phase, weakness may continue and progress to muscle wasting. Numbness and, more frequently, paresthesia are present. Raising the arms or lifting weight may cause pain, numbness or weakness. In addition to neurologic injury, there may be tears of the ligaments of the shoulder joints, dislocation of the scapula and muscle injury in the shoulder region. On visual inspection of the back, a “winged scapula” (prominent vertebral border of the scapula) may be observed with injury to the long thoracic nerve or dislocation of the scapula.

208. Neurologic injury is usually asymmetrical in the arms. Brachial plexus injury manifests itself in motor, sensory and reflex dysfunction.

(a) Motor examination. Asymmetrical muscle weakness, more prominent distally, is the most expected finding. Acute pain may make the examination for muscle strength difficult to interpret. If the injury is severe, muscle atrophy may be seen in the chronic phase;

(b) Sensory examination. Complete loss of sensation or paresthesias along the sensory nerve pathways is common. Positional perception, two-point discrimination, pinprick evaluation and perception of heat and cold should all be tested. If at least three weeks later, deficiency or reflex loss or decrease is present, appropriate electrophysiological studies should be performed by a neurologist experienced in the use and interpretation of these methodologies;

(c) Reflex examination. Reflex loss, a decrease in reflexes or a difference between the two extremities may be present. In “Palestinian” suspension, even though both brachial plexi are subjected to trauma, asymmetric plexopathy may develop due to the manner in which the torture victim has been suspended, depending on which arm is placed in a superior position or the method of binding. Although research suggests that brachial plexopathies are usually unilateral, that is at variance with experience in the context of torture, where bilateral injury is common.

209. Among the shoulder region tissues, the brachial plexus is the structure most sensitive to traction injury. “Palestinian” suspension creates brachial plexus damage due to forced posterior extension of the arms. As observed in the classical type of “Palestinian” suspension, when the body is suspended with the arms in posterior hyperextension, typically the lower plexus and then the middle and upper plexus fibres, if the force on the plexus is severe enough, are damaged, respectively. If the suspension is of a “crucifixion” type, but does not include hyperextension, the middle plexus fibres are likely to be the first ones damaged due to hyperabduction. Brachial plexus injuries may be categorized as follows:

(a) Damage to the lower plexus. Deficiencies are localized in the forearm and hand muscles. Sensory deficiencies may be observed on the forearm and at the fourth and fifth fingers of the hand’s medial side in an ulnar nerve distribution;

(b) Damage to the middle plexus. Forearm, elbow and finger extensor muscles are affected. Pronation of the forearm and radial flexion of the hand may be weak. Sensory deficiency is found on the forearm and on the dorsal aspects of the first, second and third fingers of the hand in a radial nerve distribution. Triceps reflexes may be lost;

(c) Damage to the upper plexus. Shoulder muscles are especially affected. Abduction of the shoulder, axial rotation and forearm pronation-supination may be deficient. Sensory deficiency is noted in the deltoid region and may extend to the arm and outer parts of the forearm.

#### 4. *Other positional torture*

210. There are many forms of positional torture, all of which tie or restrain the victim in contorted, hyperextended or other unnatural positions, which cause severe pain and may produce injuries to ligaments, tendons, nerves and blood vessels. Characteristically, these forms of torture leave few, if any, external marks or radiological findings, despite subsequent frequently severe chronic disability.

211. All positional torture is directed towards tendons, joints and muscles. There are various methods: “parrot suspension”, “banana stand” or the classic “banana tie” over a chair just on the ground, or on a motorcycle, forced standing, forced standing on a single foot, prolonged standing with arms and hands stretched high on a wall, prolonged forced squatting and forced immobilization in a small cage. In accordance with the characteristics of these positions, complaints are characterized as pain in a region of the body, limitation of joint movement, back pain, pain in the hands or cervical parts of the body and swelling of the lower legs. The same principles of neurologic and musculoskeletal examination apply to these forms of positional torture as apply to suspension. MRI is the preferred radiologic modality for evaluation of injuries associated with all forms of positional torture.

#### 5. *Electric shock torture*

212. Electric current is transmitted through electrodes placed on any part of the body. The most common areas are the hands, feet, fingers, toes, ears, nipples, mouth, lips and genital area. The power source may be a hand-cranked or combustion generator, wall source, stun gun, cattle prod or other electric device. Electric current follows the shortest route between the two electrodes. The symptoms that occur when electric current is applied have this characteristic. For example, if electrodes are placed on a toe of the right foot and on the genital region, there will be pain, muscle contraction and cramps in the right thigh and calf muscles. Excruciating pain will be felt in the genital region. Since all muscles along the route of the electric current are tetanically contracted, dislocation of the shoulder, lumbar and cervical radiculopathies may be observed when the current is moderately high. However, the type, time of application, current and voltage of the energy used cannot be determined with certainty upon physical examination of the victim. Torturers often use water or gels in order to increase the efficiency of the tor-

ture, expand the entrance point of the electric current on the body and prevent detectable electric burns. Trace electrical burns are usually a reddish brown circular lesion from 1 to 3 millimetres in diameter, usually without inflammation, which may result in a hyperpigmented scar. Skin surfaces must be carefully examined because the lesions are not often easily discernible. The decision to biopsy recent lesions to prove their origin is controversial. Electrical burns may produce specific histologic changes, but these are not always present, and the absence of change in no way mitigates against the lesion being an electrical burn. The decision must be made on a case-by-case basis as to whether or not the pain and discomfort associated with a skin biopsy can be justified by the potential results of the procedure (see annex II, sect. 2).

## 6. Dental torture

213. Dental torture may be in the form of breaking or extracting teeth or through application of electrical current to the teeth. It may result in a loss or breaking of the teeth, swelling of the gums, bleeding, pain, gingivitis, stomatitis, mandibular fractures or loss of fillings from teeth. Temporomandibular joint syndrome will produce pain in the temporomandibular joint, limitation of jaw movement and, in some cases, subluxation of this joint due to muscle spasms occurring as a result of the electrical current or blows to the face.

## 7. Asphyxiation

214. Near asphyxiation by suffocation is an increasingly common method of torture. It usually leaves no mark, and recuperation is rapid. This method of torture was so widely used in Latin America, that its name in Spanish, *submarino*, has become part of human rights vocabulary. Normal respiration might be prevented through such methods as covering the head with a plastic bag, closure of the mouth and nose, pressure or ligature around the neck or forced aspiration of dust, cement, hot peppers, etc. This is also known as “dry *submarino*”. Various complications might develop, such as petechiae of the skin, nosebleeds, bleeding from the ears, congestion of the face, infections in the mouth and acute or chronic respiratory problems. Forcible immersion of the head in water, often contaminated with urine, faeces, vomit or other impurities, may result in near drowning or drowning. Aspiration of the water into the lungs may lead to pneumonia. This form of torture is called “wet *submarino*”. In hanging or in other ligature asphyxiation, patterned abrasions or contusions can often be found on the neck. The hyoid bone and laryngeal cartilage may be fractured by partial strangulation or from blows to the neck.

## 8. Sexual torture including rape

215. Sexual torture begins with forced nudity, which in many countries is a constant factor in torture situations. An individual is never as vulnerable as when naked and helpless. Nudity enhances the psychological terror of every aspect of torture, as there is always the background of potential abuse, rape or sodomy. Furthermore, verbal sexual threats, abuse and mocking are also part of sexual torture, as they enhance the humiliation and its degrading

aspects, all part and parcel of the procedure. The groping of women is traumatic in all cases and is considered to be torture.

216. There are some differences between sexual torture of men and sexual torture of women, but several issues apply to both. Rape is always associated with the risk of developing sexually transmitted diseases, particularly human immunodeficiency virus (HIV).<sup>89</sup> Currently, the only effective prophylaxis against HIV must be taken within hours of the incident, and it is not generally available in countries where torture occurs routinely. In most cases, there will be a lewd sexual component, and in other cases torture is targeted at the genitals. Electricity and blows are generally targeted on the genitals in men, with or without additional anal torture. The resulting physical trauma is enhanced by verbal abuse. There are often threats of loss of masculinity to men and consequent loss of respect in society. Prisoners may be placed naked in cells with family members, friends or total strangers, breaking cultural taboos. This can be made worse by the absence of privacy when using toilet facilities. Additionally, prisoners may be forced to abuse each other sexually, which can be particularly difficult to cope with emotionally. The fear of potential rape among women, given profound cultural stigma associated with rape, can add to the trauma. Not to be neglected are the trauma of potential pregnancy, which males, obviously, do not experience, the fear of losing virginity and the fear of not being able to have children (even if the rape can be hidden from a potential husband and the rest of society).

217. If in cases of sexual abuse the victim does not wish the event to be known due to sociocultural pressures or personal reasons, the physician who carries out the medical examination, investigative agencies and the courts have an obligation to cooperate in maintaining the victim's privacy. Establishing a rapport with torture survivors who have recently been sexually assaulted requires special psychological education and appropriate psychological support. Any treatment that would increase the psychological trauma of a torture survivor should be avoided. Before starting the examination, permission must be obtained from the individual for any kind of examination, and this should be confirmed by the victim before the more intimate parts of the examination. The individual should be informed about the importance of the examination and its possible findings in a clear and comprehensible manner.

### (a) Review of symptoms

218. A thorough history of the alleged assault should be recorded as described earlier in this manual (see section B above). There are, however, some specific questions that are relevant only to an allegation of sexual abuse. These seek to elicit current symptoms resulting from a recent assault, for example bleeding, vaginal or anal discharge and location of pain, bruises or sores. In cases of sexual assault in the past, questions should be directed to ongoing symptoms that resulted from the

<sup>89</sup> I. Lunde and J. Ortmann, “Sexual torture and the treatment of its consequences”, *Torture and Its Consequences, Current Treatment Approaches*, M. Başoğlu, ed. (Cambridge, Cambridge University Press, 1992), pp. 310-331.

assault, such as urinary frequency, incontinence or dysuria, irregularity of menstruation, subsequent history of pregnancy, abortion or vaginal haemorrhage, problems with sexual activity, including intercourse and anal pain, bleeding, constipation or incontinence.

219. Ideally, there should be adequate physical and technical facilities for appropriate examination of survivors of sexual violation by a team of experienced psychiatrists, psychologists, gynaecologists and nurses, who are trained in the treatment of survivors of sexual torture. An additional purpose of the consultation after sexual assault is to offer support, advice and, if appropriate, reassurance. This should cover issues such as sexually transmitted diseases, HIV, pregnancy, if the victim is a woman, and permanent physical damage, because torturers often tell victims that they will never normally function sexually again, which can become a self-fulfilling prophecy.

(b) *Examination following a recent assault*

220. It is rare that a victim of rape during torture is released while it is still possible to identify acute signs of the assault. In these cases, there are many issues to be aware of that may impede the medical evaluation. Recently assaulted victims may be troubled and confused about seeking medical or legal help due to their fears, sociocultural concerns or the destructive nature of the abuse. In such cases, a doctor should explain to the victim all possible medical and judicial options and should act in accordance with the victim's wishes. The duties of the physician include obtention of voluntary informed consent for the examination, recording of all medical findings of abuse and obtention of samples for forensic examination. Whenever possible, the examination should be performed by an expert in documenting sexual assault. Otherwise, the examining physician should speak to an expert or consult a standard text on clinical forensic medicine.<sup>90</sup> When the physician is of a different gender from the victim, he or she should be offered the opportunity of having a chaperone of the same gender in the room. If an interpreter is used, then the interpreter may also fulfil the role of the chaperone. Given the sensitive nature of investigation into sexual assaults, a relative of the victim is not normally an ideal person to use in this role (see chapter IV, sect. I). The patient should be comfortable and relaxed before the examination. A thorough physical examination should be performed, including meticulous documentation of all physical findings, including size, location and colour, and, whenever possible, these findings should be photographed and evidence collected of specimens from the examination.

221. The physical examination should not initially be directed to the genital area. Any deformities should be noted. Particular attention must be given to ensure a thorough examination of the skin, looking for cutaneous lesions that could have resulted from an assault. These include bruises, lacerations, ecchymoses and petechiae from sucking or biting. This may help the patient to be more relaxed for a complete examination. When genital lesions are minimal, lesions located on other parts of the

body may be the most significant evidence of an assault. Even during examination of the female genitalia immediately after rape, there is identifiable damage in less than 50 per cent of the cases. Anal examination of men and women after anal rape shows lesions in less than 30 per cent of cases. Clearly, where relatively large objects have been used to penetrate the vagina or anus, the probability of identifiable damage is much greater.

222. Where a forensic laboratory is available, the facility should be contacted before the examination to discuss which types of specimen can be tested, and, therefore, which samples should be taken and how. Many laboratories provide kits to permit physicians to take all the necessary samples from individuals alleging sexual assault. If there is no laboratory available, it may still be worthwhile to obtain wet swabs and dry them later in the air. These samples can be used later for DNA testing. Sperm can be identified for up to five days from samples taken with a deep vaginal swab and after up to three days using a rectal sample. Strict precautions must be taken to prevent allegations of cross-contamination when samples have been taken from several different victims, particularly if they are taken from alleged perpetrators. There must be complete protection and documentation of the chain of custody for all forensic samples.

(c) *Examination after the immediate phase*

223. Where the alleged assault occurred more than a week earlier and there are no signs of bruises or lacerations, there is less immediacy in conducting a pelvic examination. Time can be taken to try to find the most qualified person to document findings and the best environment in which to interview the individual. However, it may still be beneficial to photograph residual lesions properly, if this is possible.

224. The background should be recorded as described above, then examination and documentation of the general physical findings. In women who have delivered babies before the rape, and particularly in those who have delivered them afterwards, pathognomonic findings are not likely, although an experienced female physician can tell a considerable amount from the demeanour of a woman when she is describing her history.<sup>91</sup> It may take some time before the individual is willing to discuss those aspects of the torture that he or she finds most embarrassing. Similarly, patients may wish to postpone the more intimate parts of the examination to a subsequent consultation, if time and circumstances permit.

(d) *Follow-up*

225. Many infectious diseases can be transmitted by sexual assault, including sexually transmitted diseases such as gonorrhoea, chlamydia, syphilis, HIV, hepatitis B and C, herpes simplex and *Condyloma acuminatum* (venereal warts), vulvovaginitis associated with sexual abuse, such as trichomoniasis, *Moniliasis vaginitis*, *Gardnerella vaginitis* and *Enterobius vermicularis* (pinworms), as well as urinary tract infections.

<sup>90</sup> See J. Howitt and D. Rogers, "Adult sexual offences and related matters", *Journal of Clinical Forensic Medicine*, W. D. S. McLay, ed. (London, Greenwich Medical Media, 1996), pp. 193-218.

<sup>91</sup> G. Hinshelwood, *Gender-based persecution* (Toronto, United Nations Expert Group Meeting on Gender-based Persecution, 1997).

226. Appropriate laboratory tests and treatment should be prescribed in all cases of sexual abuse. In the case of gonorrhoea and chlamydia, concomitant infection of the anus or oropharynx should be considered at least for examination purposes. Initial cultures and serologic tests should be obtained in cases of sexual assault, and appropriate therapy initiated. Sexual dysfunction is common among survivors of torture, particularly among victims who have suffered sexual torture or rape, but not exclusively. Symptoms may be physical or psychological in origin or a combination of both and include:

- (i) Aversion to members of the opposite sex or decreased interest in sexual activity;
- (ii) Fear of sexual activity because a sexual partner will know that the victim has been sexually abused or fear of having been damaged sexually. Torturers may have threatened this and instilled fear of homosexuality in men who have been anally abused. Some heterosexual men have had an erection and, on occasion, have ejaculated during non-consensual anal intercourse. They should be reassured that this is a physiological response;
- (iii) Inability to trust a sexual partner;
- (iv) Disturbance in sexual arousal and erectile dysfunction;
- (v) Dyspareunia (painful sexual intercourse in women) or infertility due to acquired sexually transmitted disease, direct trauma to reproductive organs or poorly performed abortions of pregnancies following rape.

(e) *Genital examination of women*

227. In many cultures, it is completely unacceptable to penetrate the vagina of a woman who is a virgin with anything, including a speculum, finger or swab. If the woman demonstrates clear evidence of rape on external inspection, it may be unnecessary to conduct an internal pelvic examination. Genital examination findings may include:

- (i) Small lacerations or tears of the vulva. These may be acute and are caused by excessive stretching. They normally heal completely, but, if repeatedly traumatized, there may be scarring;
- (ii) Abrasions of the female genitalia. Abrasions can be caused by contact with rough objects such as fingernails or rings;
- (iii) Vaginal lacerations. These are rare, but, if present, may be associated with atrophy of the tissues or previous surgery. They cannot be differentiated from incisions caused by inserted sharp objects.

228. It is rare to find any physical evidence when examining female genitalia more than one week after an assault. Later on, when the woman may have had subsequent sexual activity, whether consensual or not, or given birth, it may be almost impossible to attribute any findings to a specific incident of alleged abuse. Therefore, the most significant component of a medical evaluation may

be the examiner's assessment of background information (for example, correlation between allegations of abuse and acute injuries observed by the individual) and demeanour of the individual, bearing in mind the cultural context of the woman's experience.

(f) *Genital examination of men*

229. Men who have been subjected to torture of the genital region, including the crushing, wringing or pulling of the scrotum or direct trauma to that region, usually complain of pain and sensitivity in the acute period. Hyperaemia, marked swelling and ecchymosis can be observed. The urine may contain a large number of erythrocytes and leucocytes. If a mass is detected, it should be determined whether it is a hydrocele, haematocele or inguinal hernia. In the case of an inguinal hernia, the examiner cannot palpate the spermatic cord above the mass. With a hydrocele or a haematocele, normal spermatic cord structures are usually palpable above the mass. A hydrocele results from excessive accumulation of fluid within the tunica vaginalis due to inflammation of the testis and its appendages or to diminished drainage secondary to lymphatic or venous obstruction in the cord or retroperitoneal space. A haematocele is an accumulation of blood within the tunica vaginalis, secondary to trauma. Unlike the hydrocele, it does not transilluminate.

230. Testicular torsion may also result from trauma to the scrotum. With this injury, the testis becomes twisted at its base, obstructing blood flow to the testis. This causes severe pain and swelling and constitutes a surgical emergency. Failure to reduce the torsion immediately will lead to infarction of the testis. Under conditions of detention, where medical care may be denied, late sequelae of this lesion may be observed.

231. Individuals who were subject to scrotal torture may suffer from chronic urinary tract infection, erectile dysfunction or atrophy of the testes. Symptoms of PTSD are not uncommon. In the chronic phase, it may be impossible to distinguish between scrotal pathology caused by torture and that caused by other disease processes. Failure to discover any physical abnormalities on full urological examination suggests that urinary symptoms, impotence or other sexual problems may be explained on psychological grounds. Scars on the skin of the scrotum and penis may be very difficult to visualize. For this reason, the absence of scarring at these specific locations does not demonstrate the absence of torture. On the other hand, the presence of scarring usually indicates that substantial trauma was sustained.

(g) *Examination of the anal region*

232. After anal rape or insertion of objects into the anus of either gender, pain and bleeding can occur for days or weeks. This often leads to constipation, which can be exacerbated by the poor diet in many places of detention. Gastrointestinal and urinary symptoms may also occur. In the acute phase, any examination beyond visual inspection may require local or general anaesthesia and should be performed by a specialist. In the chronic phase, several symptoms may persist, and they should be investigated. There may be anal scars of unusual size or position, and these should be documented. Anal fissures may persist for many years, but it is normally impossible to

differentiate between those caused by torture and those caused by other mechanisms. On examination of the anus, the following findings should be looked for and documented:

- (i) Fissures tend to be non-specific findings as they can occur in a number of “normal” situations (constipation, poor hygiene). However, when seen in an acute situation (i.e. within 72 hours) fissures are a more specific finding and can be considered evidence of penetration;
- (ii) Rectal tears with or without bleeding may be noted;
- (iii) Disruption of the rugal pattern may manifest as smooth fan-shaped scarring. When these scars are seen out of midline (i.e. not at 12 or 6 o’clock), they can be an indication of penetrating trauma;
- (iv) Skin tags, which can be the result of healing trauma;
- (iv) Purulent discharge from the anus. Cultures should be taken for gonorrhoea and chlamydia in all cases of alleged rectal penetration, regardless of whether a discharge is noted.

## **E. Specialized diagnostic tests**

233. Diagnostic tests are not an essential part of the clinical assessment of a person alleging having been tortured. In many cases, a medical history and physical examination are sufficient. However, there are circumstances in which such tests are valuable supporting evidence. For example, where there is a legal case against members of the authorities or a claim for compensation. In these cases, a positive test might make the difference between a case succeeding or failing. Additionally, if diagnostic tests are performed for therapeutic reasons, the results should be added to the clinical report. It must be recognized that the absence of a positive diagnostic test result, as with physical findings, must not be used to suggest that torture has not occurred. There are many situations in which diagnostic tests are not available for technical reasons, but their absence should never invalidate an otherwise properly written report. It is inappropriate to use limited diagnostic facilities to document injuries for legal reasons alone, when there are greater clinical needs for those facilities (for further details, see annex II).

## CHAPTER VI

### PSYCHOLOGICAL EVIDENCE OF TORTURE

#### A. General considerations

##### 1. *The central role of the psychological evaluation*

234. It is a widely held view that torture is an extraordinary life experience capable of causing a wide range of physical and psychological suffering. Most clinicians and researchers agree that the extreme nature of the torture event is powerful enough on its own to produce mental and emotional consequences, regardless of the individual's pre-torture psychological status. The psychological consequences of torture, however, occur in the context of personal attribution of meaning, personality development and social, political and cultural factors. For this reason, it cannot be assumed that all forms of torture have the same outcome. For example, the psychological consequences of a mock execution are not the same as those due to a sexual assault, and solitary confinement and isolation are not likely to produce the same effects as physical acts of torture. Likewise, one cannot assume that the effects of detention and torture on an adult will be the same as those on a child. Nevertheless, there are clusters of symptoms and psychological reactions that have been observed and documented in torture survivors with some regularity.

235. Perpetrators often attempt to justify their acts of torture and ill-treatment by the need to gather information. Such conceptualizations obscure the purpose of torture and its intended consequences. One of the central aims of torture is to reduce an individual to a position of extreme helplessness and distress that can lead to a deterioration of cognitive, emotional and behavioural functions.<sup>92</sup> Thus, torture is a means of attacking an individual's fundamental modes of psychological and social functioning. Under such circumstances, the torturer strives not only to incapacitate a victim physically but also to disintegrate the individual's personality. The torturer attempts to destroy a victim's sense of being grounded in a family and society as a human being with dreams, hopes and aspirations for the future. By dehumanizing and breaking the will of their victims, torturers set horrific examples for those who later come in contact with the victim. In this way, torture can break or damage the will and coherence of entire communities. In addition, torture can profoundly damage intimate relationships between spouses, parents, children, other family members and relationships between the victims and their communities.

<sup>92</sup> G. Fischer and N. F. Gurr, "Grenzverletzungen: Folter und sexuelle Traumatisierung", *Praxis der Psychotherapie—Ein integratives Lehrbuch für Psychoanalyse und Verhaltenstherapie*, W. Senf and M. Broda, eds. (Stuttgart: Thieme, 1996).

236. It is important to recognize that not everyone who has been tortured develops a diagnosable mental illness. However, many victims experience profound emotional reactions and psychological symptoms. The main psychiatric disorders associated with torture are PTSD and major depression. While these disorders are present in the general population, their prevalence is much higher among traumatized populations. The unique cultural, social and political implications that torture has for each individual influence his or her ability to describe and speak about it. These are important factors that contribute to the impact that torture inflicts psychologically and socially and that must be considered when performing an evaluation of an individual from another culture. Cross-cultural research reveals that phenomenological or descriptive methods are the most rational approaches to use when attempting to evaluate psychological or psychiatric disorders. What is considered disordered behaviour or a disease in one culture may not be viewed as pathological in another.<sup>93, 94, 95</sup> Since the Second World War, progress has been made towards understanding the psychological consequences of violence. Certain psychological symptoms and clusters of symptoms have been observed and documented among survivors of torture and other types of violence.

237. In recent years, the diagnosis of PTSD has been applied to an increasingly broad array of individuals suffering from the impact of widely varying types of violence. However, the utility of this diagnosis in non-Western cultures has not been established. Nevertheless, evidence suggests that there are high rates of PTSD and depression symptoms among traumatized refugee populations from many different ethnic and cultural backgrounds.<sup>96, 97, 98</sup> The World Health Organization's cross-

<sup>93</sup> A. Kleinman, "Anthropology and psychiatry: the role of culture in cross-cultural research on illness and care", paper delivered at the World Psychiatric Association regional symposium on psychiatry and its related disciplines, 1986.

<sup>94</sup> H. T. Engelhardt, "The concepts of health and disease", *Evaluation and Explanation in the Biomedical Sciences*, H. T. Engelhardt and S. F. Spicker, eds. (Dordrecht, D. Reidel Publishing Co., 1975), pp. 125-141.

<sup>95</sup> J. Westermeyer, "Psychiatric diagnosis across cultural boundaries", *American Journal of Psychiatry*, vol. 142 (7) (1985), pp. 798-805.

<sup>96</sup> R. F. Mollica and others, "The effect of trauma and confinement on functional health and mental health status of Cambodians living in Thailand-Cambodia border camps", *Journal of the American Medical Association (JAMA)*, vol. 270 (1993), pp. 581-586.

<sup>97</sup> J. D. Kinzie and others, "The prevalence of posttraumatic stress disorder and its clinical significance among Southeast Asian refugees", *American Journal of Psychiatry*, vol. 147 (7) (1990), pp. 913-917.

<sup>98</sup> K. Alden and others, "Burmese political dissidents in Thailand: trauma and survival among young adults in exile", *American Journal of Public Health*, vol. 86 (1996), pp. 1561-1569.

cultural study of depression provides helpful information.<sup>99</sup> While some symptoms may be present across different cultures, they may not be the symptoms that concern the individual the most.

## 2. *The context of the psychological evaluation*

238. Evaluations take place in a variety of political contexts. This results in important differences in the manner in which an evaluation should be conducted. The physician or psychologist must adapt the following guidelines to the particular situation and purpose of the evaluation (see chapter III, sect. C.2).

239. Whether or not certain questions can be asked safely will vary considerably and depends on the degree to which confidentiality and security can be ensured. For example, an examination in a prison by a visiting physician, that is limited to 15 minutes, cannot follow the same course as a forensic examination in a private office that may last for several hours. Additional problems arise when trying to assess whether psychological symptoms or behaviours are pathological or adaptive. When a person is examined while in detention or living under considerable threat or oppression, some symptoms may be adaptive. For example, diminished interest in activities and feelings of detachment or estrangement would be understandable in a person in solitary confinement. Likewise, hypervigilance and avoidance behaviours may be necessary for persons living in repressive societies.<sup>100</sup> The limitations of certain conditions for interviews, however, do not preclude aspiring to application of the guidelines set forth in this manual. It is especially important in difficult circumstances that governments and authorities involved be held to these standards as much as possible.

## B. **Psychological consequences of torture**

### 1. *Cautionary remarks*

240. Before entering into a technical description of symptoms and psychiatric classifications, it should be noted that psychiatric classifications are generally considered to be Western medical concepts and that their application to non-Western populations presents, either implicitly or explicitly, certain difficulties. It can be argued that Western cultures suffer from an undue medicalization of psychological processes. The idea that mental suffering represents a disorder that resides in an individual and features a set of typical symptoms may be unacceptable to many members of non-Western societies. Nonetheless, there is considerable evidence of biological changes that occur in PTSD and, from that perspective,

PTSD is a diagnosable syndrome amenable to treatment biologically and psychologically.<sup>101</sup> As much as possible, the evaluating physician or psychologist should attempt to relate to mental suffering in the context of the individual's beliefs and cultural norms. This includes respect for the political context as well as cultural and religious beliefs. Given the severity of torture and its consequences, when performing a psychological evaluation, an attitude of informed learning should be adopted rather than one of rushing to diagnose and classify. Ideally, this attitude will communicate to the victim that his or her complaints and suffering are being recognized as real and expectable under the circumstances. In this sense, a sensitive empathic attitude may offer the victim some relief from the experience of alienation.

## 2. *Common psychological responses*

### (a) *Re-experiencing the trauma*

241. A victim may have flashbacks or intrusive memories, in which the traumatic event is happening all over again, even while the person is awake and conscious, or recurrent nightmares, which include elements of the traumatic event in their original or symbolic form. Distress at exposure to cues that symbolize or resemble the trauma is frequently manifested by a lack of trust and fear of persons in authority, including physicians and psychologists. In countries or situations where authorities participate in human rights violations, lack of trust and fear of authority figures should not be assumed to be pathological.

### (b) *Avoidance and emotional numbing*

- (i) Avoidance of any thought, conversation, activity, place or person that arouses a recollection of the trauma;
- (ii) Profound emotional constriction;
- (iii) Profound personal detachment and social withdrawal;
- (iv) Inability to recall an important aspect of the trauma.

### (c) *Hyperarousal*

- (i) Difficulty either falling or staying asleep;
- (ii) Irritability or outbursts of anger;
- (iii) Difficulty concentrating;
- (iv) Hypervigilance, exaggerated startled response;
- (v) Generalized anxiety;
- (vi) Shortness of breath, sweating, dry mouth or dizziness and gastrointestinal distress.

<sup>99</sup> N. Sartorius, "Cross-cultural research on depression", *Psychopathology*, vol. 19 (2) (1987), pp. 6-11.

<sup>100</sup> M. A. Simpson, "What went wrong?: diagnostic and ethical problems in dealing with the effects of torture and repression in South Africa", *Beyond Trauma: Cultural and Societal Dynamics*, R. J. Kleber, C. R. Figley, B. P. R. Gersons, eds. (New York, Plenum Press, 1995), pp.188-210.

<sup>101</sup> M. Friedman and J. Jaranson, "The applicability of the post-traumatic stress disorder concept to refugees", *Amidst Peril and Pain: The Mental Health and Well-being of the World's Refugees*, A. Marsella and others, eds. (Washington, D. C., American Psychological Association, 1994), pp. 207-227.

(d) *Symptoms of depression*

242. The following symptoms of depression may be present: depressed mood, anhedonia (markedly diminished interest or pleasure in activities), appetite disturbance or weight loss, insomnia or hypersomnia, psychomotor agitation or retardation, fatigue and loss of energy, feelings of worthlessness and excessive guilt, difficulty paying attention, concentrating or recalling from memory, thoughts of death and dying, suicidal ideation or attempted suicide.

(e) *Damaged self-concept and foreshortened future*

243. The victim has a subjective feeling of having been irreparably damaged and having undergone an irreversible personality change.<sup>102</sup> He or she has a sense of foreshortened future without expectation of a career, marriage, children or normal lifespan.

(f) *Dissociation, depersonalization and atypical behaviour*

244. Dissociation is a disruption in the integration of consciousness, self-perception, memory and actions. A person may be cut off or unaware of certain actions or may feel split in two as if observing him or herself from a distance. Depersonalization is feeling detached from oneself or one's body. Impulse control problems result in behaviours that the survivor considers highly atypical with respect to his or her pre-trauma personality. A previously cautious individual may engage in high-risk behaviour.

(g) *Somatic complaints*

245. Somatic symptoms such as pain, headache or other physical complaints, with or without objective findings, are common problems among torture victims. Pain may be the only manifest complaint and may shift in location and vary in intensity. Somatic symptoms can be directly due to physical consequences of torture or psychological in origin. For example, pain of all kinds may be a direct physical consequence of torture or of psychological origin. Typical somatic complaints include back pain, musculoskeletal pain and headaches, often from head injuries. Headaches are very common among torture survivors and often lead to chronic post-traumatic headaches. They may also be caused or exacerbated by tension and stress.

(h) *Sexual dysfunction*

246. Sexual dysfunction is common among survivors of torture, particularly among those who have suffered sexual torture or rape, but not exclusively (see chapter V, sect. D.8).

(i) *Psychosis*

247. Cultural and linguistic differences may be confused with psychotic symptoms. Before labelling some-

one as psychotic, the symptoms must be evaluated within the individual's unique cultural context. Psychotic reactions may be brief or prolonged, and the symptoms may occur while the person is detained and tortured or afterwards. The following findings are possible:

- (i) Delusions;
- (ii) Auditory, visual, tactile and olfactory hallucinations;
- (iii) Bizarre ideation and behaviour;
- (iv) Illusions or perceptual distortions that may take the form of pseudo-hallucinations and border on true psychotic states. False perceptions and hallucinations that occur on falling asleep or on waking are common among the general population and do not denote psychosis. It is not uncommon for torture victims to report occasionally hearing screams, their name being called or seeing shadows, but not to have florid signs or symptoms of psychosis;
- (v) Paranoia and delusions of persecution;
- (vi) Recurrence of psychotic disorders or mood disorders with psychotic features may develop among those who have a past history of mental illness. Individuals with a past history of bipolar disorder, recurrent major depression with psychotic features, schizophrenia and schizoaffective disorder may experience an episode of that disorder.

(j) *Substance abuse*

248. Alcohol and drug abuse often develop secondarily in torture survivors as a way of obliterating traumatic memories, regulating affects and managing anxiety.

(k) *Neuropsychological impairment*

249. Torture can cause physical trauma that leads to various levels of brain impairment. Blows to the head, suffocation and prolonged malnutrition may have long-term neurological and neuropsychological consequences that may not be readily assessed during the course of a medical examination. As in all cases of brain impairment that cannot be documented through head imaging or other medical procedures, neuropsychological assessment and testing may be the only reliable way of documenting the effects. Frequently, the target symptoms for such assessments have significant overlap with the symptomatology arising from PTSD and major depressive disorder. Fluctuations or deficits in level of consciousness, orientation, attention, concentration, memory and executive functioning may result from functional disturbances as well as have organic causes. Therefore, specialized skill in neuropsychological assessment and awareness of problems in cross-cultural validation of neuropsychological instruments are necessary when such distinctions are to be made (see section C.4 below).

### 3. *Diagnostic classifications*

250. While the chief complaints and most prominent findings among torture survivors are widely diverse and relate to the individual's unique life experiences and his or

<sup>102</sup> N. R. Holtan, "How medical assessment of victims of torture relates to psychiatric care", *Caring for Victims of Torture*, J. M. Jaranson and M. K. Popkin, eds. (Washington, D. C., American Psychiatric Press, 1998), pp. 107-113.



her cultural, social and political context, it is wise for evaluators to become familiar with the most commonly diagnosed disorders among trauma and torture survivors. Also, it is not uncommon for more than one mental disorder to be present, as there is considerable co-morbidity among trauma-related mental disorders. Various manifestations of anxiety and depression are the most common symptoms resulting from torture. Not infrequently, the symptomatology described above will be classified within the categories of anxiety and mood disorders. The two prominent classification systems are the International Classification of Disease (ICD-10)<sup>103</sup> classification of mental and behavioural disorders and the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV).<sup>104</sup> For complete descriptions of diagnostic categories, the reader should refer to ICD-10 and DSM-IV. This review will focus on the most common trauma-related diagnoses: PTSD, major depression and enduring personality changes.

#### (a) *Depressive disorders*

251. Depressive states are almost ubiquitous among survivors of torture. In the context of evaluating the consequences of torture, it is problematic to assume that PTSD and major depressive disorder are two separate disease entities with clearly distinguishable aetiologies. Depressive disorders include major depressive disorder, single episode or major depressive disorder and recurrent (more than one episode). Depressive disorders can be present with or without psychotic, catatonic, melancholic or atypical features. According to DSM-IV, in order to make a diagnosis of major depressive episode, five or more of the following symptoms must be present during the same two-week period and represent a change from previous functioning (at least one of the symptoms must be depressed mood or loss of interest or pleasure): (1) depressed mood; (2) markedly diminished interest or pleasure in all or almost all activities; (3) weight loss or change of appetite; (4) insomnia or hypersomnia; (5) psychomotor agitation or retardation; (6) fatigue or loss of energy; (7) feelings of worthlessness or excessive or inappropriate guilt; (8) diminished ability to think or concentrate; and (9) recurrent thoughts of death or suicide. To make this diagnosis the symptoms must cause significant distress or impaired social or occupational functioning, not be due to a physiological disorder and unaccounted for by another DSM-IV diagnosis.

#### (b) *Post-traumatic stress disorder*

252. The diagnosis most commonly associated with the psychological consequences of torture is PTSD. The association between torture and this diagnosis has become very strong in the minds of health providers, immigration courts and the informed lay public. This has created the mistaken and simplistic impression that PTSD is the main psychological consequence of torture.

253. The DSM-IV definition of PTSD relies heavily on the presence of memory disturbances in relation to the trauma, such as intrusive memories, nightmares and the inability to recall important aspects of the trauma. The individual may be unable to recall with precision specific details of the torture events but will be able to recall the major themes of the torture experiences. For example, the victim may be able to recall being raped on several occasions but not be able to give the exact dates, locations and details of the setting or the perpetrators. Under such circumstances, the inability to recall precise details supports, rather than discounts, the credibility of a survivor's story. Major themes in the story will be consistent upon re-interviewing. The ICD-10 diagnosis of PTSD is very similar to that of DSM-IV. According to DSM-IV, PTSD can be acute, chronic or delayed. The symptoms must be present for more than one month and the disturbance must cause significant distress or impairment in functioning. In order to diagnose PTSD, the individual must have been exposed to a traumatic event that involved life-threatening experiences for the victim or others and produced intense fear, helplessness or horror. The event must be re-experienced persistently in one or more of the following ways: intrusive distressing recollections of the event, recurrent distressing dreams of the event, acting or feeling as if the event were happening again including hallucinations, flashbacks and illusions, intense psychological distress at exposure to reminders of the event and physiological reactivity when exposed to cues that resemble or symbolize aspects of the event.

254. The individual must persistently demonstrate avoidance of stimuli associated with the traumatic event or show general numbing of responsiveness as indicated by at least three of the following: (1) efforts to avoid thoughts, feelings or conversations associated with the trauma; (2) efforts to avoid activities, places or people that remind the victim of the trauma; (3) inability to recall an important aspect of the event; (4) diminished interest in significant activities; (5) detachment or estrangement from others; (6) restricted affect; and (7) foreshortened sense of future. Another reason to make a DSM-IV diagnosis of PTSD is the persistence of symptoms of increased arousal that were not present before the trauma, as indicated by at least two of the following: difficulty falling or staying asleep, irritability or angry outbursts, difficulty concentrating, hypervigilance and exaggerated startle response.

255. Symptoms of PTSD can be chronic or fluctuate over extended periods of time. During some intervals, symptoms of hyperarousal and irritability dominate the clinical picture. At these times, the survivor will usually also report increased intrusive memories, nightmares and flashbacks. At other times, the survivor may appear relatively asymptomatic or emotionally constricted and withdrawn. It must be kept in mind that not meeting diagnostic criteria of PTSD does not mean that torture was not inflicted. According to ICD-10, in a certain proportion of cases PTSD may follow a chronic course over many years with eventual transition to an enduring personality change.

<sup>103</sup> World Health Organization, *The ICD-10 Classification of Mental and Behavioural Disorders* (Geneva, 1994).

<sup>104</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-IV-TR*, 4th ed. (Washington, D.C., 1994).

### (c) *Enduring personality change*

256. After catastrophic or prolonged extreme stress, disorders of adult personality may develop in persons with no previous personality disorder. The types of extreme stress that can change the personality include concentration camp experiences, disasters, prolonged captivity with an imminent possibility of being killed, exposure to life-threatening situations, such as being a victim of terrorism, and torture. According to ICD-10, the diagnosis of an enduring change in personality should be made only when there is evidence of a definite, significant and persistent change in the individual's pattern of perceiving, relating or thinking about the environment and him or herself, associated with inflexible and maladaptive behaviours not present before the traumatic experience. The diagnosis excludes changes that are a manifestation of another mental disorder or a residual symptom of any antecedent mental disorder, as well as personality and behavioural changes due to brain disease, dysfunction or damage.

257. To make the ICD-10 diagnosis of enduring personality change after catastrophic experience, the changes in personality must be present for at least two years following exposure to catastrophic stress. ICD-10 specifies that the stress must be so extreme that "it is not necessary to consider personal vulnerability in order to explain its profound effect on the personality". This personality change is characterized by a hostile or distrustful attitude towards the world, social withdrawal, feelings of emptiness or hopelessness, a chronic feeling of "being on edge", as if constantly threatened, and estrangement.

### (d) *Substance abuse*

258. Clinicians have observed that alcohol and drug abuse often develop secondarily in torture survivors as a way of suppressing traumatic memories, regulating unpleasant affects and managing anxiety. Although comorbidity of PTSD with other disorders is common, systematic research has seldom studied the abuse of substances by torture survivors. The literature on populations that suffer from PTSD may include torture survivors, such as refugees, prisoners of war and veterans of armed conflicts, and may provide some insight. Studies of these groups reveal that prevalence of substance abuse varies by ethnic or cultural group. Former prisoners of war with PTSD were at increased risk of substance abuse, and combat veterans have high rates of co-morbidity of PTSD and substance abuse.<sup>105, 106, 107, 108, 109, 110, 111, 112</sup> In sum-

mary, there is considerable evidence from other populations at risk of PTSD that substance abuse is a potential co-morbid diagnosis for torture survivors.

### (e) *Other diagnoses*

259. As is evident from the catalogue of symptoms described in this section, there are other diagnoses to be considered in addition to PTSD, such as major depressive disorder and enduring personality change. The other possible diagnoses include but are not limited to:

- (i) Generalized anxiety disorder features excessive anxiety and worry about a variety of different events or activities, motor tension and increased autonomic activity;
- (ii) Panic disorder is manifested by recurrent and unexpected attacks of intense fear or discomfort, including symptoms such as sweating, choking, trembling, rapid heart rate, dizziness, nausea, chills or hot flushes;
- (iii) Acute stress disorder has essentially the same symptoms as PTSD but is diagnosed within one month of exposure to the traumatic event;
- (iv) Somatoform disorders featuring physical symptoms that cannot be accounted for by a medical condition;
- (v) Bipolar disorder featuring manic or hypomanic episodes with elevated, expansive or irritable mood, grandiosity, decreased need for sleep, flight of ideas, psychomotor agitation and associated psychotic phenomena;
- (vi) Disorders due to a general medical condition often in the form of brain impairment with resultant fluctuations or deficits in level of consciousness, orientation, attention, concentration, memory and executive functioning;
- (vii) Phobias such as social phobia and agoraphobia.

## C. The psychological/psychiatric evaluation

### 1. *Ethical and clinical considerations*

260. Psychological evaluations can provide critical evidence of abuse among torture victims for several reasons: torture often causes devastating psychological symptoms, torture methods are often designed to leave no physical lesions and physical methods of torture may result in physical findings that either resolve or lack specificity.

<sup>110</sup> R. A. Kulka and others, *Trauma and the Vietnam War Generation: Report of Findings from the National Vietnam Veterans Readjustment Study* (New York, Brunner/Mazel, 1990).

<sup>111</sup> B. K. Jordan and others, "Lifetime and current prevalence of specific psychiatric disorders among Vietnam veterans and controls", *Archives of General Psychiatry*, vol. 48, No. 3 (1991), pp. 207-215.

<sup>112</sup> A. Y. Shalev, A. Bleich and R. J. Ursano, "Posttraumatic stress disorder: somatic comorbidity and effort tolerance", *Psychosomatics*, vol. 31 (1990), pp.197-203.

<sup>105</sup> P. J. Farias, "Emotional distress and its socio-political correlates in Salvadoran refugees: analysis of a clinical sample", *Culture, Medicine and Psychiatry*, vol. 15 (1991), pp. 167-192.

<sup>106</sup> A. Dadfar, "The Afghans: bearing the scars of a forgotten war", *Amidst Peril and Pain: The Mental Health and Well-being of the World's Refugees*, A. Marsella and others (Washington, D. C., American Psychological Association, 1994).

<sup>107</sup> G. W. Beebe, "Follow-up studies of World War II and Korean war prisoners: II. Morbidity, disability, and maladjustments", *American Journal of Epidemiology*, vol. 101 (1975), pp. 400-422.

<sup>108</sup> B. E. Engdahl and others, "Comorbidity and course of psychiatric disorders in a community sample of former prisoners of war", *American Journal of Psychiatry*, vol. 155 (1998), pp. 1740-1745.

<sup>109</sup> T. M. Keane and J. Wolfe, "Comorbidity in post-traumatic stress disorder: an analysis of community and clinical studies", *Journal of Applied Social Psychology*, vol. 20 (21) (1990), pp. 1776-1788.

261. Psychological evaluations provide useful evidence for medico-legal examinations, political asylum applications, establishing conditions under which false confessions may have been obtained, understanding regional practices of torture, identifying the therapeutic needs of victims and as testimony in human rights investigations. The overall goal of a psychological evaluation is to assess the degree of consistency between an individual's account of torture and the psychological findings observed during the course of the evaluation. To this end, the evaluation should provide a detailed description of the individual's history, a mental status examination, an assessment of social functioning and the formulation of clinical impressions (see chapters III, sect. C, and IV, sect. E). A psychiatric diagnosis should be made, if appropriate. Because psychological symptoms are so prevalent among survivors of torture, it is highly advisable for any evaluation of torture to include a psychological assessment.

262. The assessment of psychological status and the formulation of a clinical diagnosis should always be made with an awareness of the cultural context. Awareness of culture-specific syndromes and native language-bound idioms of distress through which symptoms are communicated is of paramount importance for conducting the interview and formulating the clinical impression and conclusion. When the interviewer has little or no knowledge of the victim's culture, the assistance of an interpreter is essential. Ideally, an interpreter from the victim's country knows the language, customs, religious traditions and other beliefs that must be taken into account during the investigation. The interview may induce fear and mistrust on the part of the victim and possibly remind him or her of previous interrogations. To reduce the effects of re-traumatization, the clinician should communicate a sense of understanding of the individual's experiences and cultural background. It is inappropriate to observe the strict "clinical neutrality" that is used in some forms of psychotherapy, during which the clinician is inactive and says little. The clinician should communicate that he or she is an ally of the individual and adopt a supportive, non-judgemental approach.

## 2. *The interview process*

263. The clinician should introduce the interview process in a manner that explains in detail the procedures to be followed (questions asked about psychosocial history, including history of torture and current psychological functioning) and that prepares the individual for the difficult emotional reactions that the questions may provoke. The individual needs to be given an opportunity to request breaks, interrupt the interview at any time and be able to leave if the stress becomes intolerable, with the option of a later appointment. Clinicians need to be sensitive and empathic in their questioning, while remaining objective in their clinical assessment. At the same time, the interviewer should be aware of potential personal reactions to the survivor and the descriptions of torture that might influence the interviewer's perceptions and judgements.

264. The interview process may remind the survivor of interrogation during torture. Therefore, strong negative

feelings towards the clinician may develop, such as fear, rage, revulsion, helplessness, confusion, panic or hatred. The clinician should allow for the expression and explanation of such feelings and express understanding for the individual's difficult predicament. In addition, the possibility that the person may still be persecuted or oppressed has to be kept in mind. When necessary, questions about forbidden activities should be avoided. It is important to consider the reasons for the psychological evaluation, as they will determine the level of confidentiality to which the expert is bound. If an evaluation of the credibility of an individual's report of torture is requested within the framework of a judicial procedure by a State authority, the person to be evaluated must be told that this implies lifting medical confidentiality for all the information presented in the report. However, if the request for the psychological evaluation comes from the tortured person, the expert must respect medical confidentiality.

265. Clinicians who conduct physical or psychological evaluations should be aware of the potential emotional reactions that evaluations of severe trauma may elicit in the interviewee and interviewer. These emotional reactions are known as transference and countertransference. Mistrust, fear, shame, rage and guilt are among the typical reactions that torture survivors experience, particularly when being asked to recount or remember details of their trauma. Transference refers to the feelings a survivor has towards the clinician that relate to past experiences but which are misunderstood as directed towards the clinician personally. In addition, the clinician's emotional response to the torture survivor, known as countertransference, may affect the psychological evaluation. Transference and countertransference are mutually interdependent and interactive.

266. The potential impact of transference reactions on the evaluation process becomes evident when it is considered that an interview or examination that involves recounting and remembering the details of a traumatic history will result in exposure to distressing and unwanted memories, thoughts and feelings. Thus, even though a torture victim may consent to an evaluation with the hope of benefiting from it, the resulting exposure may renew the trauma experience itself. This may include the following phenomena.

267. The evaluator's questions may be experienced as forced exposure akin to an interrogation. The evaluator may be suspected of having voyeuristic or sadistic motivations, and the interviewee may ask him or herself questions such as: "Why does he or she make me reveal every last terrible detail of what happened to me? Why would a normal person choose to listen to stories like mine in order to make a living? The evaluator must have some strange kind of motivation." There may be prejudices towards the evaluator because he or she has not been arrested and tortured. This may lead the subject to perceive the evaluator as being on the side of the enemy.

268. The evaluator is perceived as a person in a position of authority, which is often the case, and for that reason may not be trusted with certain aspects of the trauma history. Alternatively, as is often the case with subjects still in custody, the subject may be too trusting in situations where the interviewer cannot guarantee that there

will be no reprisals. Every precaution should be taken to ensure that prisoners do not put themselves at risk unnecessarily, naively trusting the outsider to protect them. Torture victims may fear that information that is revealed in the context of an evaluation cannot be safely kept from persecuting governments. Fear and mistrust may be particularly strong in cases where physicians or other health workers have been participants in the torture.

269. In many circumstances, the evaluator will be a member of the majority culture and ethnicity, whereas the subject, in the situation of the interview, will belong to a minority group or culture. This dynamic of inequality may reinforce the perceived and real imbalance of power and may increase the potential sense of fear, mistrust and forced submission in the subject. In some cases, particularly with subjects still in custody, this dynamic may relate more to the interpreter than to the evaluator. Ideally, therefore, the interpreter should also be an outsider and not be recruited locally, so that he or she can be seen by all to be as independent as the investigator. Of course, a family member on whom the authorities can later apply pressure to find out what was discussed in the evaluation should not be used as an interpreter.

270. If the evaluator and the victim are of the same gender, the interview may be more readily perceived as directly resembling the torture situation than if the genders were different. For example, a woman who was raped or tortured in prison by a male guard is likely to experience more distress, mistrust and fear when facing a male evaluator than she might with a female interviewer. The opposite is true for men who have been assaulted sexually. They may be ashamed to tell the details of their torture to a female evaluator. Experience has shown, particularly in cases of victims still in custody, that in all but the most traditionally fundamentalist societies (where it is out of the question for a male to even interview, let alone examine, a woman), it may be much more important that the interviewer be a physician to whom the victim can ask precise questions, rather than not being a male as in a case of rape. Victims of rape have been known to say nothing to non-medical female investigators, but to request to talk to a physician, even if male, so as to be able to ask specific medical questions. Typical questions are about possible sequelae, such as being pregnant, being able to conceive later on or about the future of sexual relations between spouses. In the context of evaluations conducted for legal purposes, the necessary attention to detail and precise questioning about history are easily perceived as a sign of mistrust or doubt on the part of the examiner.

271. Because of the psychological pressures mentioned earlier, survivors may be re-traumatized and overwhelmed by memories and, as a result, affect or mobilize strong defences that result in profound withdrawal and affective flattening during examination or interview. For the purposes of documentation, the withdrawal and flattening present special difficulties because torture victims may be unable to communicate their history and current suffering effectively, although it would be most beneficial for them to do so.

272. Countertransference reactions are often unconscious, and when a person is unaware of countertransfer-

ence, it becomes a problem. Having feelings when listening to individuals speak of their torture is to be expected, although these feelings can interfere with the clinician's effectiveness, but when understood they can guide the clinician. Physicians and psychologists involved in the evaluation and treatment of torture victims agree that awareness and understanding of typical countertransference reactions are crucial because countertransference can have significantly limiting effects on the ability to evaluate and document the physical and psychological consequences of torture. Effective documentation of torture and other forms of ill-treatment requires an understanding of personal motivations for working in this area. There is a consensus that professionals who continuously conduct this kind of examination should obtain supervision and professional support from peers who are experienced in this field. Common countertransference reactions include:

(a) Avoidance, withdrawal and defensive indifference in reaction to being exposed to disturbing material. This may lead to forgetting some details and underestimating the severity of physical or psychological consequences;

(b) Disillusionment, helplessness, hopelessness and overidentification that may lead to symptoms of depression or vicarious traumatization, such as nightmares, anxiety and fear;

(c) Omnipotence and grandiosity in the form of feeling like a saviour, the great expert on trauma or the last hope for the survivor's recovery and well-being;

(d) Feelings of insecurity about professional skills when faced with the gravity of the reported history or suffering. This may manifest as lack of confidence in the ability to do justice to the survivor and unrealistic preoccupation with idealized medical norms;

(e) Feelings of guilt over not sharing the torture survivor's experience and pain or over the awareness of what has not been done on a political level may result in overly sentimental or idealized approaches to the survivor;

(f) Anger and rage towards torturers and persecutors are expectable, but may undermine the ability to maintain objectivity when they are driven by unrecognized personal experiences and thus become chronic or excessive;

(g) Anger or repugnance against the victim may arise as a result of feeling exposed to unaccustomed levels of anxiety. This may also arise as a result of feeling used by the victim when the clinician experiences doubt about the truth of the alleged torture history and the victim stands to benefit from an evaluation that documents the consequences of the alleged incident;

(h) Significant differences between the cultural value systems of the clinician and the individual alleging torture may include belief in myths about ethnic groups, condescending attitudes and underestimation of the individual's sophistication or capacity for insight. Conversely, clinicians who are members of the same ethnic group as a victim might form a non-verbalized alliance that can also affect the objectivity of the evaluation.

273. Most clinicians agree that many countertransference reactions are not merely examples of distortion but are important sources of information about the psychological state of the torture victim. The clinician's effectiveness can be compromised when countertransference is acted upon rather than reflected upon. Clinicians engaged in the evaluation and treatment of torture victims are advised to examine countertransference and obtain supervision and consultation from a colleague, if possible.

274. Circumstances may require that interviews be conducted by a clinician from a cultural or linguistic group different from that of the survivor. In such cases, there are two possible approaches; each with advantages and disadvantages. The interviewer can use literal, word-for-word translations provided by an interpreter (see chapter IV, sect. I). Alternatively, the interviewer can use a bicultural approach to interviewing. This approach consists of using an interviewing team composed of the investigating clinician and an interpreter, who provides linguistic interpretation and facilitates an understanding of cultural meanings attached to events, experiences, symptoms and idioms. Because the clinician often does not recognize relevant cultural, religious and social factors, a skilled interpreter will be able to point out and explain these issues to the clinician. If the interviewer is relying strictly on literal, word-for-word interpretation, this type of in-depth interpretation of information will not be available. On the other hand, if interpreters are expected to point out relevant cultural, religious and social factors to the clinician, it is crucial that they do not attempt to influence in any way the tortured person's responses to the clinician's questions. When literal translation is not used, the clinician needs to be sure that the interviewee's responses, as communicated by the interpreter, represent exclusively what the person said without additions or deletions by the interpreter. Regardless of the approach, the interpreter's identity and ethnic, cultural and political affiliation are important considerations in the choice of an interpreter. The torture victim will have to trust the interpreter to understand what he or she is saying and to communicate it accurately to the investigating clinician. Under no circumstances should the interpreter be a law enforcement official or government employee. A family member should never be used as an interpreter, in order to respect privacy. The investigating team must choose an independent interpreter.

### 3. *Components of the psychological/psychiatric evaluation*

275. The introduction should contain mention of the referral source, a summary of collateral sources (such as medical, legal and psychiatric records) and a description of the methods of assessment used (interviews, symptom inventories, checklists and neuropsychological testing).

#### (a) *History of torture and ill-treatment*

276. Every effort should be made to document the full history of torture, persecution and other relevant traumatic experiences (see chapter IV, sect. E). This part of the evaluation is often exhausting for the person being evaluated. Therefore, it may be necessary to proceed in

several sessions. The interview should start with a general summary of events before eliciting the details of the torture experiences. The interviewer needs to know the legal issues at hand because that will determine the nature and amount of information necessary to achieve documentation of the facts.

#### (b) *Current psychological complaints*

277. An assessment of current psychological functioning constitutes the core of the evaluation. As severely brutalized prisoners of war and rape victims show a lifetime prevalence of PTSD of between 80 and 90 per cent, specific questions about the three DSM-IV categories of PTSD (re-experiencing of the traumatic event, avoidance or numbing of responsiveness, including amnesia, and increased arousal) need to be asked.<sup>113, 114</sup> Affective, cognitive and behavioural symptoms should be described in detail, and the frequency, as well as examples, of nightmares, hallucinations and startle response should be stated. An absence of symptoms can be due to the episodic or often delayed nature of PTSD or to denial of symptoms because of shame.

#### (c) *Post-torture history*

278. This component of the psychological evaluation seeks information about current life circumstances. It is important to inquire about current sources of stress, such as separation or loss of loved ones, flight from the home country and life in exile. The interviewer should also inquire about the individual's ability to be productive, earn a living, care for his or her family and the availability of social supports.

#### (d) *Pre-torture history*

279. If relevant, describe the victim's childhood, adolescence, early adulthood, his or her family background, family illnesses and family composition. There should also be a description of the victim's educational and occupational history. Describe any history of past trauma, such as childhood abuse, war trauma or domestic violence, as well as the victim's cultural and religious background.

280. The description of pre-trauma history is important to assess mental health status and level of psychosocial functioning of the torture victim prior to the traumatic events. In this way, the interviewer can compare the current mental health status with that of the individual before torture. In evaluating background information, the interviewer should keep in mind that the duration and severity of responses to trauma are affected by multiple factors. These factors include, but are not limited to, the circumstances of the torture, the perception and interpretation of torture by the victim, the social context before, during and after torture, community and peer resources and values and attitudes about traumatic experiences, political and

<sup>113</sup> B. O. Rothbaum and others, "A prospective examination of post-traumatic stress disorder in rape victims", *Journal of Traumatic Stress*, vol. 5 (1992), pp. 455-475.

<sup>114</sup> P. B. Sutker and others, "Cognitive deficits and psychopathology among former prisoners of war and combat veterans of the Korean conflict", *American Journal of Psychiatry*, vol. 148 (1991), pp. 62-72.

cultural factors, severity and duration of the traumatic events, genetic and biological vulnerabilities, developmental phase and age of the victim, prior history of trauma and pre-existing personality. In many interview situations, because of time limitations and other problems, it may be difficult to obtain this information. It is important, nonetheless, to obtain enough data about the individual's previous mental health and psychosocial functioning to form an impression of the degree to which torture has contributed to psychological problems.

(e) *Medical history*

281. The medical history summarizes pre-trauma health conditions, current health conditions, body pain, somatic complaints, use of medication and its side effects, relevant sexual history, past surgical procedures and other medical data (see chapter V, sect. B).

(f) *Psychiatric history*

282. Inquiries should be made about a history of mental or psychological disturbances, the nature of problems and whether they received treatment or required psychiatric hospitalization. The inquiry should also cover prior therapeutic use of psychotropic medication.

(g) *Substance use and abuse history*

283. The clinician should inquire about substance use before and after the torture, changes in the pattern of use and whether substances are being used to cope with insomnia or psychological/psychiatric problems. These substances are not only alcohol, cannabis and opium but also regional substances of abuse such as betel nut and many others.

(h) *Mental status examination*

284. The mental status examination begins the moment the clinician meets the subject. The interviewer should make note of the person's appearance, such as signs of malnutrition, lack of cleanliness, changes in motor activity during the interview, use of language, presence of eye contact, ability to relate to the interviewer and the means the individual uses to establish communication. The following components should be covered, and all aspects of the mental status examination should be included in the report of the psychological evaluation; aspects such as general appearance, motor activity, speech, mood and affect, thought content, thought process, suicidal and homicidal ideation and a cognitive examination (orientation, long-term memory, intermediate recall and immediate recall).

(i) *Assessment of social function*

285. Trauma and torture can directly and indirectly affect a person's ability to function. Torture can also indirectly cause loss of functioning and disability, if the psychological consequences of the experience impair the individual's ability to care for himself or herself, earn a living, support a family and pursue an education. The clinician should assess the individual's current level of functioning by inquiring about daily activities, social role (as housewife, student, worker), social and recreational activ-

ities and perception of health status. The interviewer should ask the individual to assess his or her own health condition, to state the presence or absence of feelings of chronic fatigue and to report potential changes in overall functioning.

(j) *Psychological testing and the use of checklists and questionnaires*

286. Little published data exist on the use of psychological testing (projective and objective personality tests) in the assessment of torture survivors. Also, psychological tests of personality lack cross-cultural validity. These factors combine to limit severely the utility of psychological testing in the evaluation of torture victims. Neuropsychological testing may, however, be helpful in assessing cases of brain injury resulting from torture (see section C.4 below). An individual who has survived torture may have trouble expressing in words his or her experiences and symptoms. In some cases, it may be helpful to use trauma event and symptom checklists or questionnaires. If the interviewer believes it may be helpful to use these, there are numerous questionnaires available, although none are specific to torture victims.

(k) *Clinical impression*

287. In formulating a clinical impression for the purpose of reporting psychological evidence of torture, the following important questions should be asked:

- (i) Are the psychological findings consistent with the alleged report of torture?
- (ii) Are the psychological findings expected or typical reactions to extreme stress within the cultural and social context of the individual?
- (iii) Given the fluctuating course of trauma-related mental disorders over time, what is the time frame in relation to the torture events? Where is the individual in the course of recovery?
- (iv) What are the coexisting stressors impinging on the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role)? What impact do these issues have on the individual?
- (v) Which physical conditions contribute to the clinical picture? Pay special attention to head injury sustained during torture or detention;
- (vi) Does the clinical picture suggest a false allegation of torture?

288. Clinicians should comment on the consistency of psychological findings and the extent to which these findings correlate with the alleged abuse. The emotional state and expression of the person during the interview, his or her symptoms, the history of detention and torture and the personal history prior to torture should be described. Factors such as the onset of specific symptoms related to the trauma, the specificity of any particular psychological findings and patterns of psychological functioning should be noted. Additional factors should be considered, such as forced migration, resettlement, difficulty of acculturation, language problems, unemployment, loss of home, family and social status. The relation-

ship and consistency between events and symptoms should be evaluated and described. Physical conditions, such as head trauma or brain injury, may require further evaluation. Neurological or neuropsychological assessment may be recommended.

289. If the survivor has symptom levels consistent with a DSM-IV or ICD-10 psychiatric diagnosis, the diagnosis should be stated. More than one diagnosis may be applicable. Again, it must be stressed that even though a diagnosis of a trauma-related mental disorder supports the claim of torture, not meeting criteria for a psychiatric diagnosis does not mean the person was not tortured. A survivor of torture may not have the level of symptoms required to meet diagnostic criteria for a DSM-IV or ICD-10 diagnosis fully. In these cases, as with all others, the symptoms that the survivor has and the torture story that he or she claims to have experienced should be considered as a whole. The degree of consistency between the torture story and the symptoms that the individual reports should be evaluated and described in the report.

290. It is important to recognize that some people falsely allege torture for a range of reasons and that others may exaggerate a relatively minor experience for personal or political reasons. The investigator must always be aware of these possibilities and try to identify potential reasons for exaggeration or fabrication. The clinician should keep in mind, however, that such fabrication requires detailed knowledge about trauma-related symptoms that individuals rarely possess. Inconsistencies in testimony can occur for a number of valid reasons, such as memory impairment due to brain injury, confusion, dissociation, cultural differences in perception of time or fragmentation and repression of traumatic memories. Effective documentation of psychological evidence of torture requires clinicians to have a capacity to evaluate consistencies and inconsistencies in the report. If the interviewer suspects fabrication, additional interviews should be scheduled to clarify inconsistencies in the report. Family or friends may be able to corroborate details of the story. If the clinician conducts additional examinations and still suspects fabrication, the clinician should refer the individual to another clinician and ask for the colleague's opinion. The suspicion of fabrication should be documented with the opinion of two clinicians.

#### (1) *Recommendations*

291. The recommendations resulting from the psychological evaluation depend on the question posed at the time the evaluation was requested. The issues under consideration may concern legal and judicial matters, asylum, resettlement or a need for treatment. Recommendations can be for further assessment, such as neuropsychological testing, medical or psychiatric treatment, or a need for security or asylum.

### 4. *Neuropsychological assessment*

292. Clinical neuropsychology is an applied science concerned with the behavioural expression of brain dysfunction. Neuropsychological assessment, in particular, is concerned with the measurement and classification of behavioural disturbances associated with organic brain

impairment. The discipline has long been recognized as useful in discriminating between neurological and psychological conditions and in guiding treatment and rehabilitation of patients suffering from the consequences of various levels of brain damage. Neuropsychological evaluations of torture survivors are performed infrequently and to date there are no neuropsychological studies of torture survivors available in the literature. The following remarks are, therefore, limited to a discussion of general principles to guide health providers in understanding the utility of, and indications for, neuropsychological assessment of subjects suspected of being tortured. Before discussing the issues of utility and indications, it is essential to recognize the limitations of neuropsychological assessment in this population.

#### (a) *Limitations of neuropsychological assessment*

293. There are a number of common factors complicating the assessment of torture survivors in general that are outlined elsewhere in this manual. These factors apply to neuropsychological assessment in the same way as to a medical or psychological examination. Neuropsychological assessments may be limited by a number of additional factors, including lack of research on torture survivors, reliance on population-based norms, cultural and linguistic differences and re-traumatization of those who have experienced torture.

294. As mentioned above, very few references exist in the literature concerning the neuropsychological assessment of torture victims. The pertinent body of literature concerns various types of head trauma and the neuropsychological assessment of PTSD in general. Therefore, the following discussion and subsequent interpretations of neuropsychological assessments are necessarily based on the application of general principles used with other subject populations.

295. Neuropsychological assessment as it has been developed and practised in Western countries relies heavily on an actuarial approach. This approach typically involves comparing the results of a battery of standardized tests to population-based norms. Although norm-referenced interpretations of neuropsychological assessments may be supplemented by a Lurian approach of qualitative analysis, particularly when the clinical situation demands it, a reliance on the actuarial approach predominates.<sup>115, 116</sup> Moreover, a reliance on test scores is greatest when brain impairment is mild to moderate in severity, rather than severe, or when neuropsychological deficits are thought to be secondary to a psychiatric disorder.

296. Cultural and linguistic differences may significantly limit the utility and applicability of neuropsychological assessment among suspected torture victims. Neuropsychological assessments are of questionable validity when standard translations of tests are unavailable and the clinical examiner is not fluent in the subject's

<sup>115</sup> A. R. Luria and L. V. Majovski, "Basic approaches used in American and Soviet clinical neuropsychology", *American Psychologist*, vol. 32 (11) (1977), pp. 959-968.

<sup>116</sup> R. J. Ivnik, "Overstatement of differences", *American Psychologist*, vol. 33 (8) (1978), pp. 766-767.

language. Unless standardized translations of tests are available and examiners are fluent in the subject's language, verbal tasks cannot be administered at all and cannot be interpreted in a meaningful way. This means that only non-verbal tests can be used, and this precludes comparison between verbal and non-verbal faculties. In addition, an analysis of the lateralization (or localization) of deficits is more difficult. This analysis is often useful, however, because of the brain's asymmetrical organization, with the left hemisphere typically being dominant for speech. If population-based norms are unavailable for the subject's cultural and linguistic group, neuropsychological assessment is also of questionable validity. An estimate of IQ is one of the central benchmarks that allow examiners to place neuropsychological test scores into proper perspective. Within the population of the United States, for example, these estimates are often derived from verbal subsets using the Wechsler scales, particularly the information subscale, because in the presence of organic brain impairment, acquired factual knowledge is less likely to suffer deterioration than other tasks and be more representative of past learning ability than other measures. Measurement may also be based on educational and work history and demographic data. Obviously, neither one of these two considerations applies to subjects for whom population-based norms have not been established. Therefore, only very coarse estimates concerning pre-trauma intellectual functioning can be made. As a result, neuropsychological impairment that is anything less than severe or moderate may be difficult to interpret.

297. Neuropsychological assessments may re-traumatize those who have experienced torture. Great care must be taken in order to minimize any potential re-traumatization of the subject in any form of diagnostic procedure (see chapter IV, sect. H). To cite only one obvious example specific to neuropsychological testing, it would be potentially very damaging to proceed with a standard administration of the Halstead-Reitan Battery, in particular the Tactual Performance Test (TPT), and routinely blindfold the subject. For most torture victims who have experienced blindfolding during detention and torture, and even for those who were not blindfolded, it would be very traumatic to introduce the experience of helplessness inherent in this procedure. In fact, any form of neuropsychological testing in itself may be problematic, regardless of the instrument used. Being observed, timed with a stopwatch and asked to give maximum effort on an unfamiliar task, in addition to being asked to perform, rather than having a dialogue, may prove to be too stressful or reminiscent of the torture experience.

#### (b) *Indications for neuropsychological assessment*

298. In evaluating behavioural deficits in suspected torture victims, there are two primary indications for neuropsychological assessment: brain injury and PTSD plus related diagnoses. While both sets of conditions overlap in some aspects, and will often coincide, it is only the former that is a typical and traditional application of clinical neuropsychology, whereas the latter is relatively new, not well researched and rather problematic.

299. Brain injury and resulting brain damage may result from various types of head trauma and metabolic disturbances inflicted during periods of persecution, detention and torture. This may include gunshot wounds, the effects of poisoning, malnutrition as a result of starvation or forced ingestion of harmful substances, the effects of hypoxia or anoxia resulting from asphyxiation or near drowning and, most commonly, from blows to the head suffered during beatings. Blows to the head are frequently inflicted during periods of detention and torture. For example, in one sample of torture survivors, blows to the head were the second most frequently cited form of bodily abuse (45 per cent) behind blows to the body (58 per cent).<sup>117</sup> The potential for brain damage is high among torture victims.

300. Closed head injuries resulting in mild to moderate levels of long-term impairment are perhaps the most commonly assessed cause of neuropsychological abnormality. While signs of injury may include scars on the head, brain lesions cannot usually be detected by diagnostic imaging of the brain. Mild to moderate levels of brain damage might be overlooked or underestimated by mental health professionals because symptoms of depression and PTSD are likely to figure prominently in the clinical picture, resulting in less attention being paid to the potential effect of head trauma. Commonly, the subjective complaints of survivors include difficulties with attention, concentration and short-term memory, which can be the result of either brain impairment or PTSD. Since these complaints are common in survivors suffering from PTSD, the question whether they are actually due to head injury may not even be asked.

301. The diagnostician must rely, in an initial phase of the examination, on reported history of head trauma and the course of symptomatology. As is usually the case with brain-injured subjects, information from third parties, particularly relatives, may prove helpful. It must be remembered that brain-injured subjects often have great difficulty articulating or even appreciating their limitations because they are, so to speak, "inside" the problem. In gathering first impressions regarding the difference between organic brain impairment and PTSD, an assessment concerning the chronicity of symptoms is a helpful starting point. If symptoms of poor attention, concentration and memory are observed to fluctuate over time and to co-vary with levels of anxiety and depression, this is more likely due to the phasic nature of PTSD. On the other hand, if impairment seems to appear chronic, lacks fluctuation and is confirmed by family members, the possibility of brain impairment should be entertained, even in the initial absence of a clear history of head trauma.

302. Once there is a suspicion of organic brain impairment, the first step for a mental health professional is to consider a referral to a physician for further neurological examination. Depending on initial findings, the physician may then consult a neurologist or order diagnostic tests. An extensive medical work-up, specific neurological consultation and neuropsychological evaluation

<sup>117</sup> H. C. Traue, G. Schwarz-Langer and N. F. Gurriss, "Extremtraumatisierung durch Folter: Die psychotherapeutische Arbeit der Behandlungszentren für Folteropfer", *Verhaltenstherapie und Verhaltensmedizin*, vol. 18 (1) (1997), pp. 41-62.



are among the possibilities to be considered. The use of neuropsychological evaluation procedures is usually indicated if there is a lack of gross neurological disturbance, reported symptoms are predominantly cognitive in nature or a differential diagnosis between brain impairment and PTSD has to be made.

303. The selection of neuropsychological tests and procedures is subject to the limitations specified above and, therefore, cannot follow a standard battery format, but rather must be case-specific and sensitive to individual characteristics. The flexibility required in the selection of tests and procedures demands considerable experience, knowledge and caution on the part of the examiner. As has been pointed out above, the range of instruments to be used will often be limited to non-verbal tasks, and the psychometric characteristics of any standardized tests will most likely suffer when population-based norms do not apply to an individual subject. An absence of verbal measures represents a very serious limitation. Many areas of cognitive functioning are mediated through language, and systematic comparisons between various verbal and non-verbal measures are typically used in order to arrive at conclusions regarding the nature of deficits.

304. What complicates matters further is evidence that significant inter-group differences in performances of non-verbal tasks have been found between relatively closely related cultures. For example, research compared the performance of randomly selected, community-based samples of 118 English-speaking and 118 Spanish-speaking elders on a brief neuropsychological test battery.<sup>118</sup> The samples were randomly selected and demographically matched. Yet, while scores on verbal measures were similar, the Spanish-speaking subjects scored significantly lower on almost all non-verbal measures. These results suggest that caution is warranted when using non-verbal and verbal measures to assess non-English-speaking individuals, when tests are prepared for English-speaking subjects.

305. The choice of instruments and procedures in neuropsychological assessment of suspected torture victims must be left to the individual clinician, who will have to select them in accordance with the demands and possibilities of the situation. Neuropsychological tests cannot be used properly without extensive training and knowledge in brain-behaviour relations. Comprehensive lists of neuropsychological procedures and tests and their proper application can be found in standard references.<sup>119</sup>

#### (c) *Post-traumatic stress disorder*

306. The considerations offered above should make it clear that great caution is needed when attempting neuropsychological assessment of brain impairment in suspected torture victims. This must be even more strongly

the case in attempting to document PTSD in suspected survivors through neuropsychological assessment. Even in the case of assessing PTSD subjects for whom population-based norms are available, there are considerable difficulties to consider. PTSD is a psychiatric disorder and traditionally has not been the focus of neuropsychological assessment. Furthermore, PTSD does not conform to the classical paradigm of an analysis of identifiable brain lesions that can be confirmed by medical techniques. With an increased emphasis on and understanding of the biological mechanisms involved in psychiatric disorders generally, neuropsychological paradigms have been invoked more frequently than in the past. However, as has been pointed out, "... comparatively little has been written to date on PTSD from a neuropsychological perspective".<sup>120</sup>

307. There is great variability among the samples used for the study of neuropsychological measures in post-traumatic stress. This may account for the variability of the cognitive problems reported from these studies. It was pointed out that "clinical observations suggest that PTSD symptoms show the most overlap with the neurocognitive domains of attention, memory and executive functioning". This is consistent with complaints heard frequently from survivors of torture. Subjects complain of difficulties in concentrating and feeling unable to retain information and engage in planned, goal-directed activity.

308. Neuropsychological assessment methods appear able to identify the presence of neurocognitive deficits in PTSD, even though the specificity of these deficits is more difficult to establish. Some studies have documented the presence of deficits in PTSD subjects when compared to normal controls but they have failed to discriminate these subjects from matched psychiatric controls.<sup>121, 122</sup> In other words, it is likely that neurocognitive deficits on test performances will be evident in cases of PTSD, but insufficient for diagnosing it. As in many other types of assessment, interpretation of test results must be integrated into a larger context of interview information and possibly personality testing. In that sense, specific neuropsychological assessment methods can make a contribution to the documentation of PTSD in the same manner that they do for other psychiatric disorders associated with known neurocognitive deficits.

309. Despite significant limitations, neuropsychological assessment may be useful in evaluating individuals suspected of having brain injury and in distinguishing brain injury from PTSD. Neuropsychological assessment may also be used to evaluate specific symptoms, such as problems with memory that occur in PTSD and related disorders.

<sup>120</sup> J. A. Knight, "Neuropsychological assessment in posttraumatic stress disorder", *Assessing Psychological Trauma and PTSD*, J. P. Wilson and T. M. Keane, eds. (New York, Guilford Press, 1997).

<sup>121</sup> J. E. Dalton, S. L. Pederson and J. J. Ryan, "Effects of post-traumatic stress disorder on neuropsychological test performance", *International Journal of Clinical Neuropsychology*, vol. 11 (3) (1989), pp. 121-124.

<sup>122</sup> T. Gil and others, "Cognitive functioning in post-traumatic stress disorder", *Journal of Traumatic Stress*, vol. 3, No. 1 (1990), pp. 29-45.

<sup>118</sup> D. M. Jacobs and others, "Cross-cultural neuropsychological assessment: a comparison of randomly selected, demographically matched cohorts of English and Spanish-speaking older adults", *Journal of Clinical and Experimental Neuropsychology*, vol. 19 (No. 3) (1997), pp. 331-339.

<sup>119</sup> O. Spreen and E. Strauss, *A Compendium of Neuropsychological Tests*, 2nd ed. (New York, Oxford University Press, 1998).

## 5. Children and torture

310. Torture can impact a child directly or indirectly. The impact can be due to the child's having been tortured or detained, the torture of parents or close family members or witnessing torture and violence. When individuals in a child's environment are tortured, the torture will inevitably have an impact on the child, albeit indirect, because torture affects the entire family and community of torture victims. A complete discussion of the psychological impact of torture on children and complete guidelines for conducting an evaluation of a child who has been tortured is beyond the scope of this manual. Nevertheless, several important points can be summarized.

311. First, when evaluating a child who is suspected of having undergone or witnessed torture, the clinician must make sure that the child receives support from caring individuals and that he or she feels secure during the evaluation. This may require a parent or trusted care provider to be present during the evaluation. Second, the clinician must keep in mind that children do not often express their thoughts and emotions regarding trauma verbally, but rather behaviourally.<sup>123</sup> The degree to which children are able to verbalize thought and affect depends on the child's age, developmental level and other factors, such as family dynamics, personality characteristics and cultural norms.

312. If a child has been physically or sexually assaulted, it is important, if at all possible, for the child to be seen by an expert in child abuse. Genital examination of children, likely to be experienced as traumatic, should be performed by clinicians experienced in interpreting the findings. Sometimes it is appropriate to videotape the examination so that other experts can give opinions on the physical findings without the child having to be examined again. It may be inappropriate to perform a full genital or anal examination without a general anaesthetic. Furthermore, the examiner should be aware that the examination itself may be reminiscent of the assault and it is possible that the child may make a spontaneous outcry or psychologically decompensate during the examination.

### (a) Developmental considerations

313. A child's reactions to torture depend on age, developmental stage and cognitive skills. The younger the child, the more his or her experience and understanding of the traumatic event will be influenced by the immediate reactions and attitudes of caregivers following the event.<sup>124</sup> For children under the age of three who have experienced or witnessed torture, the protective and reassuring role of their caregivers is crucial.<sup>125</sup> The reactions of very young children to traumatic experiences

typically involve hyperarousal, such as restlessness, sleep disturbance, irritability, heightened startle reactions and avoidance. Children over three often tend to withdraw and refuse to speak directly about traumatic experiences. The ability for verbal expression increases during development. A marked increase occurs around the concrete operational stage (8-9 years old), when children develop the ability to provide a reliable chronology of events. During this stage, concrete operations and temporal and spatial capacities develop.<sup>126</sup> These new skills are still fragile, and it is not usually until the beginning of the formal operational stage (12 years old) that children are consistently able to construct a coherent narrative. Adolescence is a turbulent developmental period. The effects of torture can vary widely. Torture experiences may cause profound personality changes in adolescents resulting in antisocial behaviour.<sup>127</sup> Alternatively, the effects of torture on adolescents may be similar to those seen in younger children.

### (b) Clinical considerations

314. Symptoms of PTSD may appear in children. The symptoms can be similar to those observed in adults, but the clinician must rely more heavily on observations of the child's behaviour than on verbal expression.<sup>128, 129, 130, 131</sup> For example, the child may demonstrate symptoms of re-experiencing as manifested by monotonous, repetitive play representing aspects of the traumatic event, visual memories of the events in and out of play, repeated questions or declarations about the traumatic event and nightmares. The child may develop bed-wetting, loss of control of bowel movements, social withdrawal, restricted affect, attitude changes towards self and others and feelings that there is no future. He or she may experience hyperarousal and have night terrors, problems going to bed, sleep disturbance, heightened startle response, irritability and significant disturbances in attention and concentration. Fears and aggressive behaviour that were non-existent before the traumatic event may appear as aggressiveness towards peers, adults or animals, fear of the dark, fear of going to the toilet alone and phobias. The child may demonstrate sexual behaviour that is inappropriate for his or her age and somatic reactions. Anxiety symptoms, such as exaggerated fear of strangers, separation anxiety, panic, agitation, temper tantrums and uncontrolled crying may appear. The child may also develop eating problems.

### (c) Role of the family

315. The family plays an important dynamic role in persisting symptomatology among children. In order to preserve cohesion in the family, dysfunctional behaviours

<sup>123</sup> C. Schlar, "Evaluation and documentation of psychological evidence of torture", unpublished paper, 1999.

<sup>124</sup> S. von Overbeck Ottino, "Familles victimes de violences collectives et en exil : quelle urgence, quel modèle de soins ? Le point de vue d'une pédopsychiatre", *Revue française de psychiatrie et de psychologie médicale*, vol. 14 (1998), pp. 35-39.

<sup>125</sup> V. Grappe, "La guerre en ex-Yougoslavie: un regard sur les enfants réfugiés", *Psychiatrie humanitaire en ex-Yougoslavie et en Arménie. Face au traumatisme*, M. R. Moro and S. Lebovici, eds. (Paris, Presses universitaires de France, 1995).

<sup>126</sup> J. Piaget, *La naissance de l'intelligence chez l'enfant* (Neuchâtel, Delachaux et Niestlé, 1977).

<sup>127</sup> See footnote 125.

<sup>128</sup> L. C. Terr, "Childhood traumas: an outline and overview", *American Journal of Psychiatry*, vol. 148 (1991), pp. 10-20.

<sup>129</sup> National Center for Infants, Toddlers and Families, *Zero to Three* (1994).

<sup>130</sup> F. Sironi, "On torture un enfant, ou les avatars de l'ethnocentrisme psychologique", *Enfances*, No. 4 (1995), pp. 205-215.

<sup>131</sup> L. Bailly, *Les catastrophes et leurs conséquences psychotraumatiques chez l'enfant* (Paris, ESF, 1996).

and delegation of roles may occur. Family members, often children, can be assigned the role of patient and develop severe disorders. A child may be overly protected or important facts about the trauma may be hidden. Alternatively, the child can be parentified and expected to care for the parents. When the child is not the direct victim of torture but only indirectly affected, adults often tend to underestimate the impact on the child's psyche and devel-

opment. When loved ones around a child have been persecuted, raped and tortured or the child has witnessed severe trauma or torture, he or she may develop dysfunctional beliefs such as that he or she is responsible for the bad events or that he or she has to bear the parent's burdens. This type of belief can lead to long-term problems with guilt, loyalty conflicts, personal development and maturing into an independent adult.

## ANNEX I

### **Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment\***

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

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

(b) Identification of measures needed to prevent recurrence;

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

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

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

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

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

5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investiga-

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\* The Commission on Human Rights, in its resolution 2000/43, and the General Assembly, in its resolution 55/89, drew the attention of Governments to the Principles and strongly encouraged Governments to reflect upon the Principles as a useful tool in efforts to combat torture.

<sup>a</sup> Under certain circumstances, professional ethics may require information to be kept confidential. These requirements should be respected.

tions are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.<sup>b</sup>

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

6. (a) Medical experts involved in the investigation of torture or ill-treatment shall behave at all times in conformity with the highest ethical standards and, in particular, shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

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

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

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

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

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

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

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

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<sup>b</sup> See footnote (a) above.

## ANNEX II

### Diagnostic tests

Diagnostic tests are being developed and evaluated all the time. The following tests were considered to be of value at the time of writing of this manual. However, when additional supporting evidence is required, investigators should attempt to find up-to-date sources of information, for example by approaching one of the specialized centres for the documentation of torture (see chapter V, sect. E).

#### 1. Radiological imaging

In the acute phase of injury, various imaging modalities may be quite useful in providing additional documentation of skeletal and soft tissue injury. Once the physical injuries of torture have healed, however, the residual sequelae are generally no longer detectable by the same imaging methods. This is often true even when the survivor continues to suffer significant pain or disability from his or her injuries. Reference has already been made to various radiological studies in the discussion of the examination of the patient or in the context of various forms of torture. The following is a summary of the application of these methods. However, the more sophisticated and expensive technology is not universally available or at least not to a person in custody.

Radiological and imaging diagnostic examinations include routine radiographs (X-rays), radioisotopic scintigraphy, computerized tomography (CT), nuclear magnetic resonance imaging (MRI) and ultrasonography (USG). Each has advantages and disadvantages. X-rays, scintigraphy and CT use ionizing radiation, which may be a concern in cases of pregnant women and children. MRI uses a magnetic field. Potential biologic effects on foetuses and children are theoretical, but thought to be minimal. Ultrasound uses sound waves, and no biologic risk is known.

X-rays are readily available. Excluding the skull, all injured areas should have routine radiographs as the initial examination. While routine radiographs will demonstrate facial fractures, CT is a superior examination as it demonstrates more fractures, fragment displacement and associated soft tissue injury and complications. When periosteal damage or minimal fractures are suspected, bone scintigraphy should be used in addition to X-rays. A percentage of X-rays will be negative even when there is an acute fracture or early osteomyelitis. It is possible for a fracture to heal, leaving no radiographic evidence of previous injury. This is especially true in children. Routine radiographs are not the ideal examination for evaluation of soft tissue.

Scintigraphy is an examination of high sensitivity, but low specificity. It is an inexpensive and effective examination used to screen the entire skeleton for disease processes such as osteomyelitis or trauma. Testicular torsion can also be evaluated, but ultrasound is better suited to this task. Scintigraphy is not a method to identify soft tissue trauma. Scintigraphy can detect an acute fracture within 24 hours, but it generally takes two to three days and may occasionally take a week or more, particularly in the case of the elderly. The scan generally returns to normal after two years. However, it may remain positive for years in cases of fractures and cured osteomyelitis. The use of bone scintigraphy to detect fractures at the epiphysis or metadiaphysis (ends of long bones) in children is very difficult because of the normal uptake of the radiopharmaceutical at the epiphysis. Scintigraphy is often able to detect rib fractures that are not apparent on routine X-ray films.

#### (a) Application of bone scintigraphy to the diagnosis of *falanga*

Bone scans can be performed either with delayed images at about three hours or as a three-phase examination. The three phases are the radionuclide angiogram (arterial phase), blood pool images (venous phase, which is soft tissue) and delayed phase (bone phase). Patients examined soon after *falanga* should have two bone scans performed at one-week intervals. A negative first delayed scan and positive second scan indicate exposure to *falanga* within days before the first scan. In acute cases, two negative bone scans at an interval of one week do not necessarily mean that *falanga* did not occur, but that the severity of the *falanga* applied was below the sensitivity level of the scintigraphy. Initially, if three-phase scanning is done, increased uptake in the radionuclide angiogram phase and the blood pool images and no increase uptake in the bone phase would indicate hyperaemia compatible with soft tissue injury. Trauma in the foot bones and soft tissue can also be detected with MRI.<sup>a</sup>

#### (b) Ultrasound

Ultrasound is inexpensive and without biological hazard. The quality of an examination depends on the skill of the operator. Where CT is not available, ultrasound is used to evaluate acute abdominal trauma. Tendonopathy can also be evaluated by ultrasound, and it is a method of choice for testicular abnormalities. Shoulder ultrasound is carried out in the acute and chronic periods following

<sup>a</sup> See chapter V, footnotes 76 and 83; also refer to standard radiology and nuclear medicine texts for further information.

suspension torture. In the acute period, oedema, fluid collection on and around the shoulder joint, lacerations and haematomas of the rotator cuffs can be observed by ultrasound. Re-examination with ultrasound and finding that the evidence in the acute period disappears over time strengthen the diagnosis. In such cases, MRI, scintigraphy and other radiological examinations should be carried out together, and their correlation should be examined. Even without positive results from other examinations, ultrasound findings alone are adequate to prove suspension torture.

### (c) *Computerized tomography*

CT is excellent for imaging soft tissue and bone. However, MRI is better for soft tissue than bone. MRI may detect an occult fracture before it can be imaged by either routine radiographs or scintigraphy. Use of open scanners and sedation may alleviate anxiety and claustrophobia, which are prevalent among torture survivors. CT is also excellent for diagnosing and evaluating fractures, especially temporal and facial bones. Other advantages include alignment and displacement of fragments, especially spinal, pelvic, shoulder and acetabular fractures. It cannot identify bone bruising. CT with and without intravenous infusion of a contrast agent should be the initial examination for acute, sub-acute and chronic central nervous system (CNS) lesions. If the examination is negative, equivocal or does not explain the survivor's CNS complaints or symptoms, proceed to MRI. CT with bone windows and a pre- and post-contrast examination should be the initial examination for temporal bone fractures. Bone windows may demonstrate fractures and ossicular disruption. The pre-contrast examination may demonstrate fluid and cholesteatoma. Contrast is recommended because of the common vascular anomalies that occur in this area. For rhinorrhea, injection of a contrast agent into the spinal canal should follow a temporal bone. MRI may also demonstrate the tear responsible for leakage of the fluid. When rhinorrhea is suspected, a CT of the face with soft tissue and bone windows should be performed. Then a CT should be obtained after a contrast agent is injected into the spinal canal.

### (d) *Magnetic resonance imaging*

MRI is more sensitive than CT in detecting CNS abnormalities. The time course of CNS haemorrhage is divided into immediate, hyperacute, acute, sub-acute and chronic phases and CNS haemorrhage has ranges that correlate with imaging characteristics of the haemorrhage. Thus, the imaging findings may allow estimation of the timing of head injuries and correlation to alleged incidents. CNS haemorrhage may completely resolve or produce sufficient haemosiderin deposits for the CT to be positive even years later. Haemorrhage in soft tissue, especially in muscle, usually resolves completely, leaving no trace, but, in rare cases, it can ossify. This is called heterotrophic bone formation or *Myositis ossificans* and is detectable with CT.

## 2. *Biopsy of electric shock injury*

Electric shock injuries may, but do not necessarily, exhibit microscopic changes that are highly diagnostic

and specific for electric current trauma. Absence of these specific changes in a biopsy specimen does not mitigate against a diagnosis of electric shock torture, and judicial authorities must not be permitted to make such an assumption. Unfortunately, if a court requests a petitioner alleging electric shock torture to submit to a biopsy for confirmation of the allegations, refusal to consent to the procedure or a negative result is bound to have a prejudicial impact on the court. Furthermore, clinical experience with biopsy diagnosis of torture-related electrical injury is limited, and the diagnosis can usually be made with confidence from the history and physical examination alone.

This procedure is, therefore, one that should be done in a clinical research setting and not promoted as a diagnostic standard. In giving informed consent for biopsy, the person must be informed of the uncertainty of the results and permitted to weigh the potential benefit against the impact upon an already traumatized psyche.

### (a) *Rationale for biopsy*

There has been extensive laboratory research measuring the effects of electric shocks on the skin of anaesthetized pigs.<sup>b,c,d,e,f,g</sup> This work has shown that there are histologic findings specific to electrical injury that can be established by microscopic examination of punch biopsies of the lesions. However, further discussion of this research, which may have significant clinical application, is beyond the scope of this publication. The reader is referred to the footnote references for additional information.

Few cases of electric shock torture of humans have been studied histologically.<sup>h,i,j,k</sup> Only in one case, where

<sup>b</sup> H. K. Thomsen and others, "Early epidermal changes in heat and electrically injured pigskin: a light microscopic study", *Forensic Science International*, vol. 17 (1981), pp. 133-143.

<sup>c</sup> Ibid., "The effect of direct current, sodium hydroxide and hydrochloric acid on pig epidermis: a light microscopic and electron microscopic study", *Acta Pathol. Microbiol. Immunol. Scand*, vol. 91 (1983), pp. 307-316.

<sup>d</sup> H. K. Thomsen, "Electrically induced epidermal changes: a morphological study of porcine skin after transfer of low-moderate amounts of electrical energy", dissertation (University of Copenhagen, F.A.D.L., 1984), pp. 1-78.

<sup>e</sup> T. Karlsmark and others, "Tracing the use of torture: electrically induced calcification of collagen in pigskin", *Nature*, vol. 301 (1983), pp. 75-78.

<sup>f</sup> Ibid., "Electrically induced collagen calcification in pigskin: a histopathologic and histochemical study", *Forensic Science International*, vol. 39 (1988), pp. 163-174.

<sup>g</sup> T. Karlsmark, "Electrically induced dermal changes: a morphological study of porcine skin after transfer of low to moderate amounts of electrical energy", dissertation, University of Copenhagen, *Danish Medical Bulletin*, vol. 37 (1990), pp. 507-520.

<sup>h</sup> L. Danielsen and others, "Diagnosis of electrical skin injuries: a review and a description of a case", *American Journal of Forensic Medical Pathology*, vol. 12 (1991), pp. 222-226.

<sup>i</sup> F. Öztöpe and others, "Signs of electrical torture on the skin", *Treatment and Rehabilitation Center Report 1994* (Human Rights Foundation of Turkey), vol. 11 (1994), pp. 97-104.

<sup>j</sup> L. Danielsen, T. Karlsmark, H. K. Thomsen, "Diagnosis of skin lesions following electrical torture", *Rom. J. Leg. Med.*, vol. 5 (1997), pp. 15-20.

<sup>k</sup> H. Jacobsen, "Electrically induced deposition of metal on the human skin", *Forensic Science International*, vol. 90 (1997), pp. 85-92.

lesions were probably excised seven days after the injury, were alterations in the skin believed to be diagnostic of the electrical injuries observed (deposition of calcium salts on dermal fibres in viable tissue located around necrotic tissue). Lesions excised a few days after alleged electrical torture in other cases have shown segmental changes and deposits of calcium salts on cellular structures highly consistent with the influence of an electrical current, but they are not diagnostic since deposits of calcium salts on dermal fibres were not observed. A biopsy taken one month after alleged electrical torture showed a conical scar, 1-2 millimetres wide, with an increased number of fibroblasts and tightly packed, thin collagen fibres, arranged parallel to the surface, consistent with but not diagnostic of electrical injury.

#### (b) *Method*

After receiving informed consent from the patient, and before biopsy, the lesion must be photographed using accepted forensic methods. Under local anaesthesia, a 3-4 millimetre punch biopsy is obtained, and placed in buffered formalin or a similar fixative. Skin biopsy should be performed as soon as possible after injury. Since electrical trauma is usually confined to the epidermis and superficial dermis, the lesions may quickly disappear. Biopsies can be taken from more than one lesion, but the potential distress to the patient must be taken into ac-

count.<sup>1</sup> Biopsy material should be examined by a pathologist experienced in dermatopathology.

#### (c) *Diagnostic findings for electrical injury*

Diagnostic findings for electrical injury include vesicular nuclei in epidermis, sweat glands and vessel walls (only one differential diagnosis: injuries via basic solutions) and deposits of calcium salts distinctly located on collagen and elastic fibres (the differential diagnosis, *Calcinosis cutis*, is a rare disorder only found in 75 of 220,000 consecutive human skin biopsies, and the calcium deposits are usually massive without distinct location on collagen and elastic fibres).<sup>m</sup>

Typical, but not diagnostic, findings for electrical injury are lesions appearing in conical segments, often 1-2 millimetres wide, deposits of iron or copper on epidermis (from the electrode) and homogenous cytoplasm in epidermis, sweat glands and vessel walls. There may also be deposits of calcium salts on cellular structures in segmental lesions or no abnormal histologic observations.

<sup>1</sup> S. Gürpınar and S. Korur Fincancı, "İnsan Hakları İhlalleri ve Hekim Sorumluluğu" (Human rights violations and responsibility of the physician), *Birinci Basamak İçin Adli Tıp El Kitabı* (Handbook of Forensic Medicine for General Practitioners) (Ankara, Turkish Medical Association, 1999).

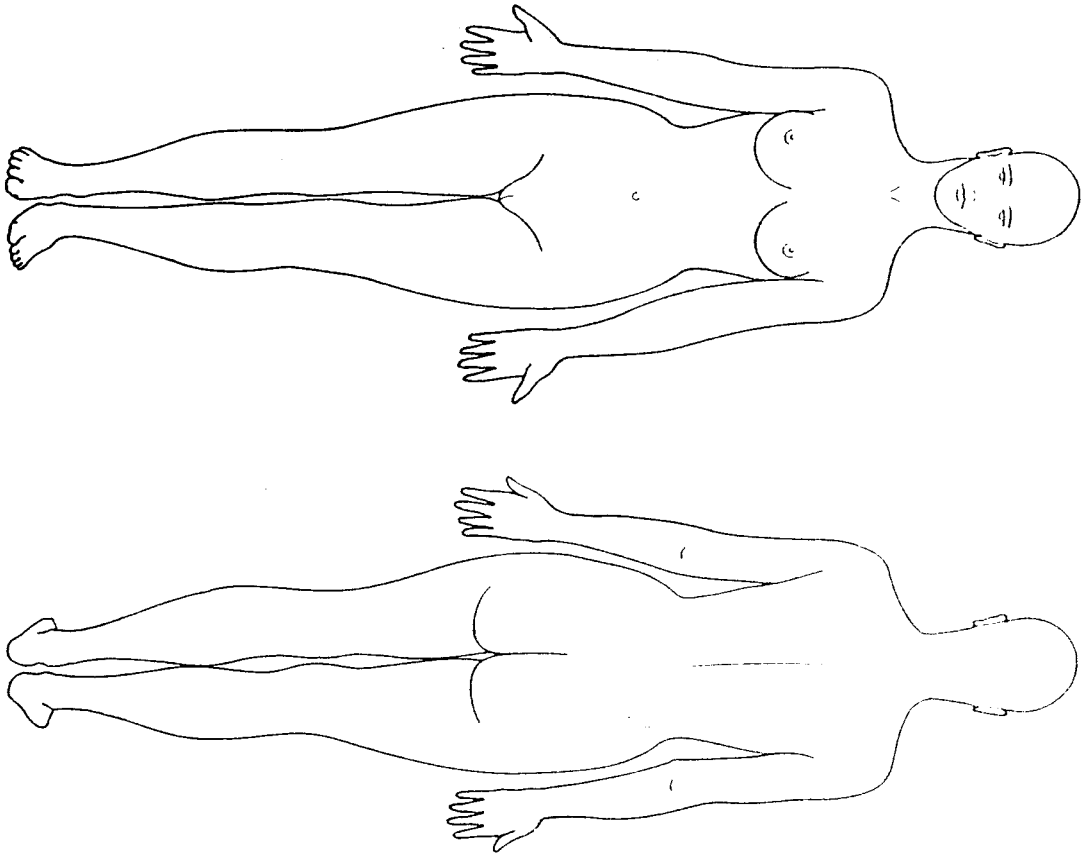
<sup>m</sup> See footnote (h) above.



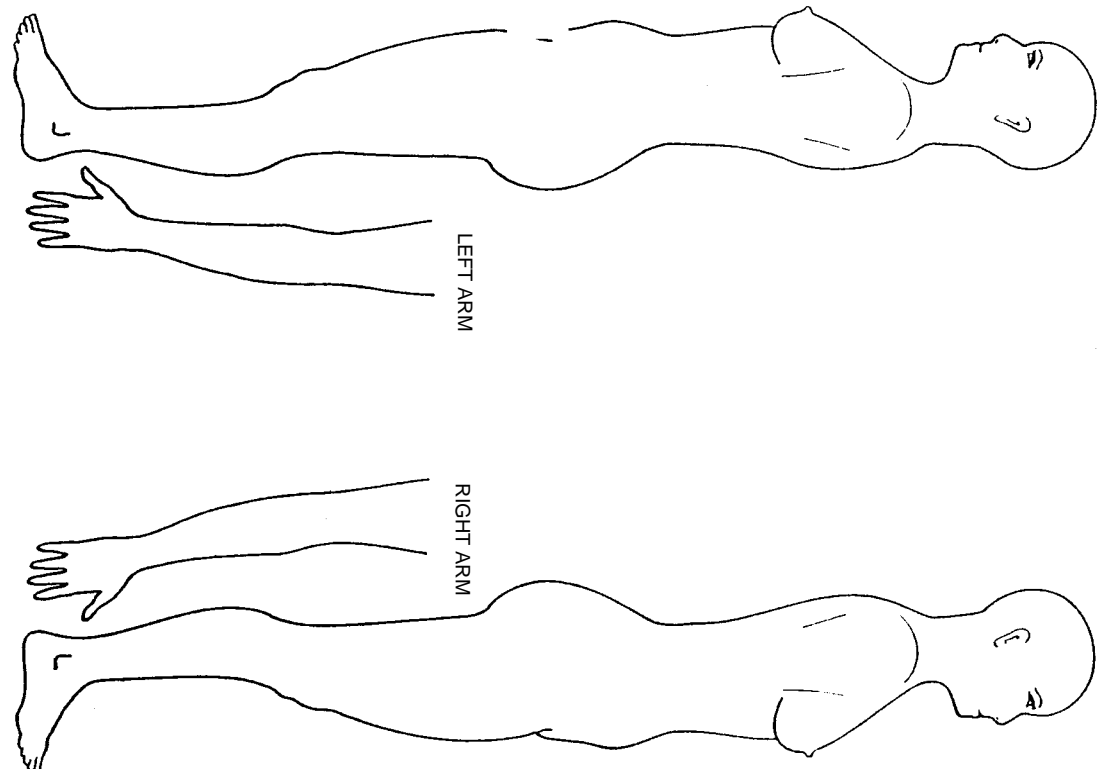
ANNEX III

Anatomical drawings for documentation of torture and ill-treatment

FULL BODY, FEMALE—ANTERIOR AND POSTERIOR VIEWS



FULL BODY, FEMALE—LATERAL VIEW



Name \_\_\_\_\_

Case No. \_\_\_\_\_

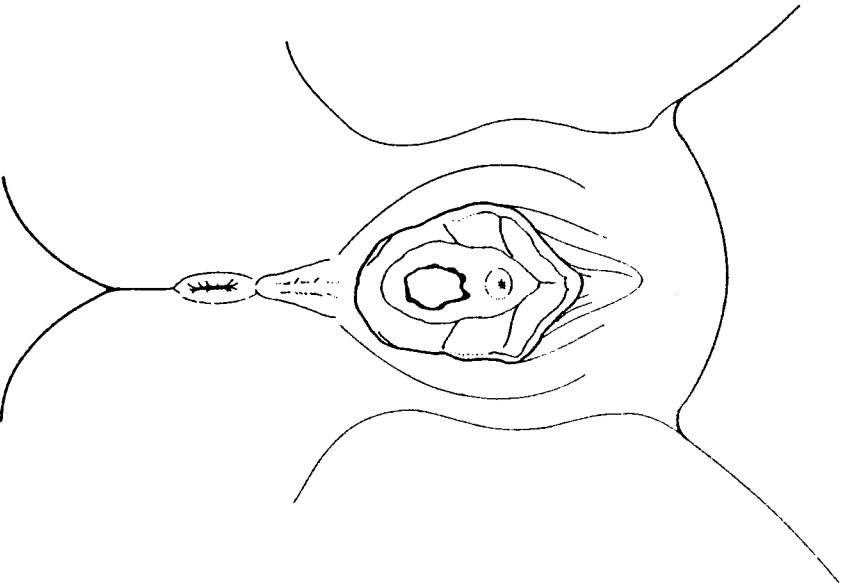
Date \_\_\_\_\_

Name \_\_\_\_\_

Case No. \_\_\_\_\_

Date \_\_\_\_\_

PERINEUM—FEMALE

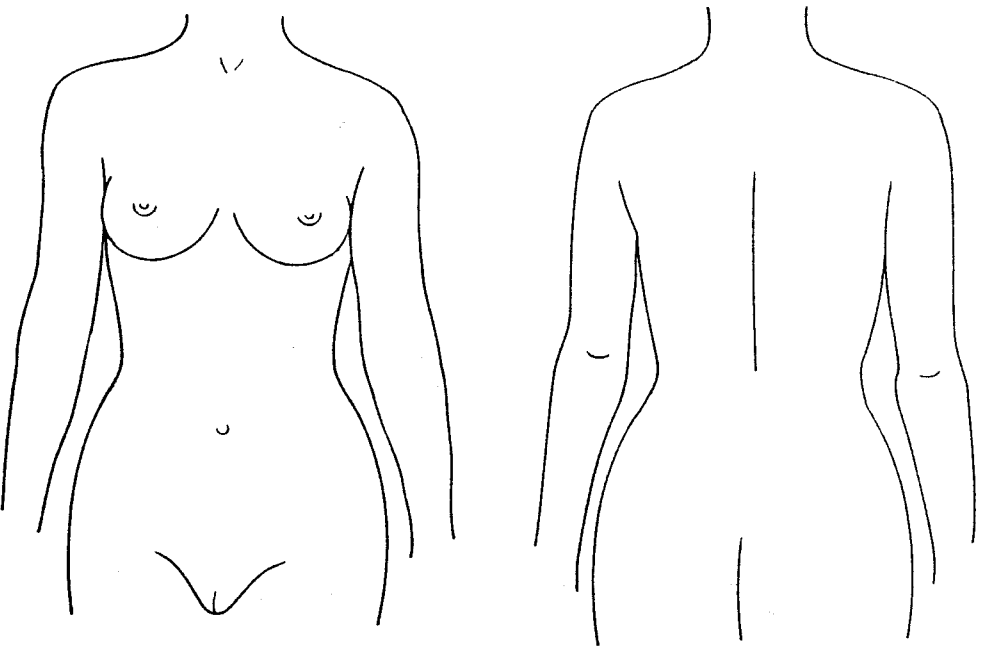


Name \_\_\_\_\_

Case No. \_\_\_\_\_

Date \_\_\_\_\_

THORACIC ABDOMINAL, FEMALE—ANTERIOR AND POSTERIOR VIEWS

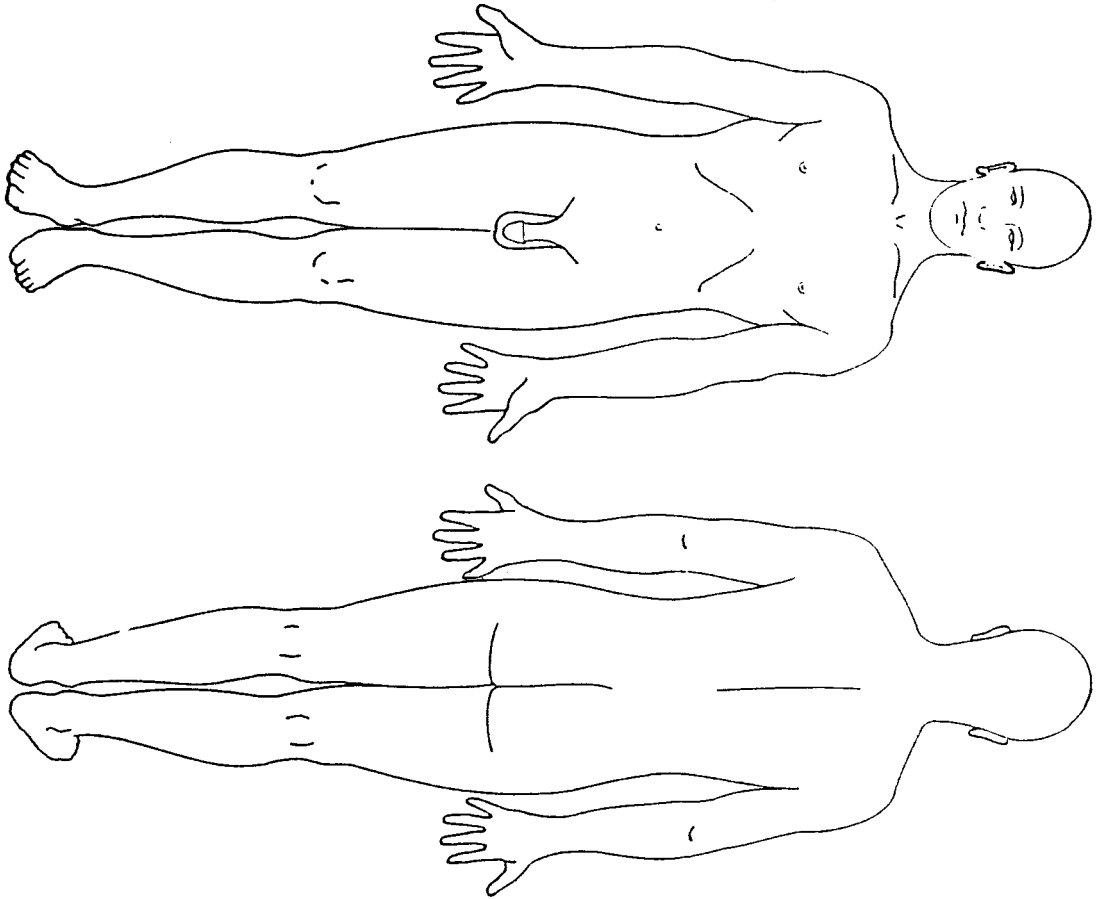


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Case No. \_\_\_\_\_

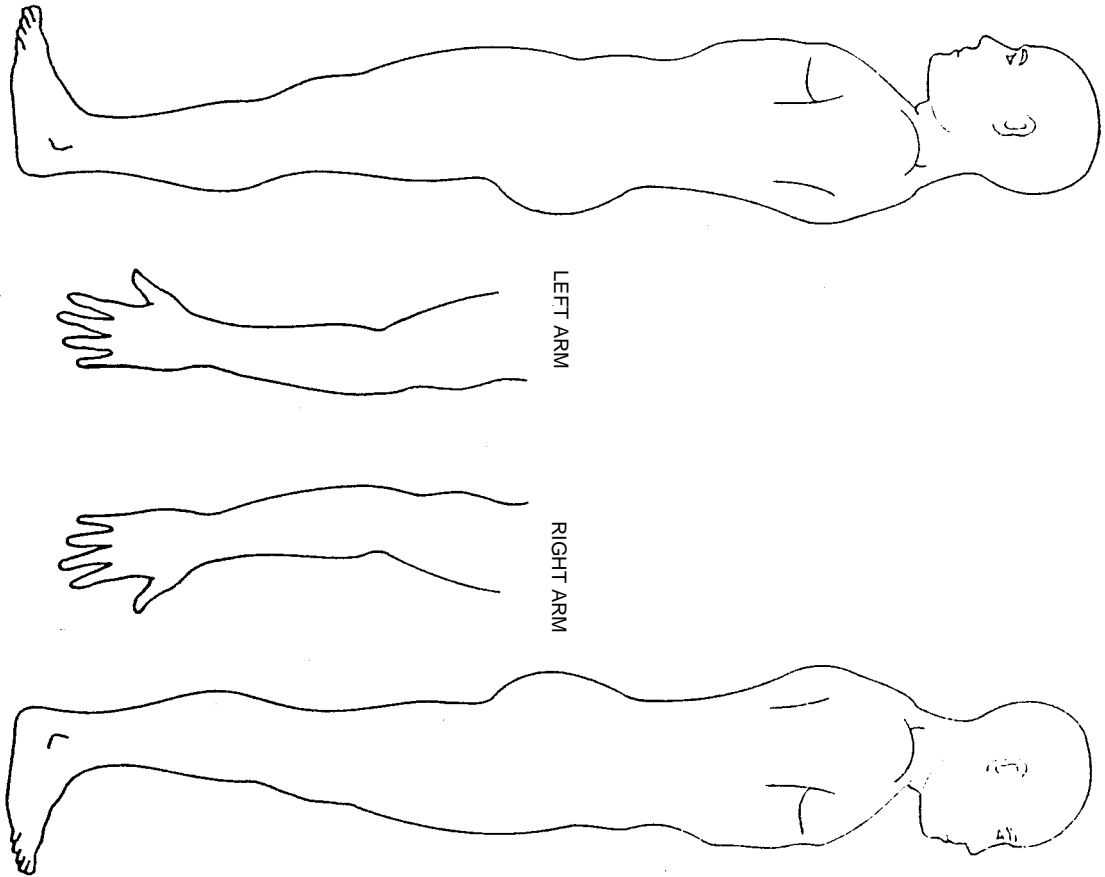
Date \_\_\_\_\_

FULL BODY, MALE—ANTERIOR AND POSTERIOR VIEWS (VENTRAL AND DORSAL)



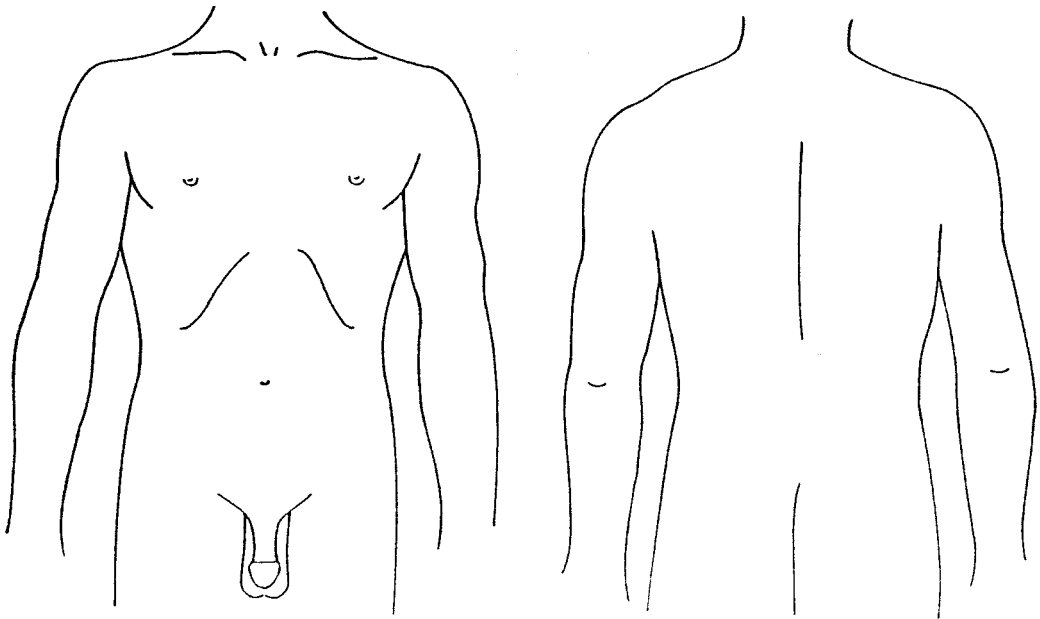
Name \_\_\_\_\_ Case No. \_\_\_\_\_  
Date \_\_\_\_\_

FULL BODY, MALE—LATERAL VIEW



Name \_\_\_\_\_ Case No. \_\_\_\_\_  
Date \_\_\_\_\_

THORACIC ABDOMINAL, MALE—ANTERIOR AND POSTERIOR VIEWS

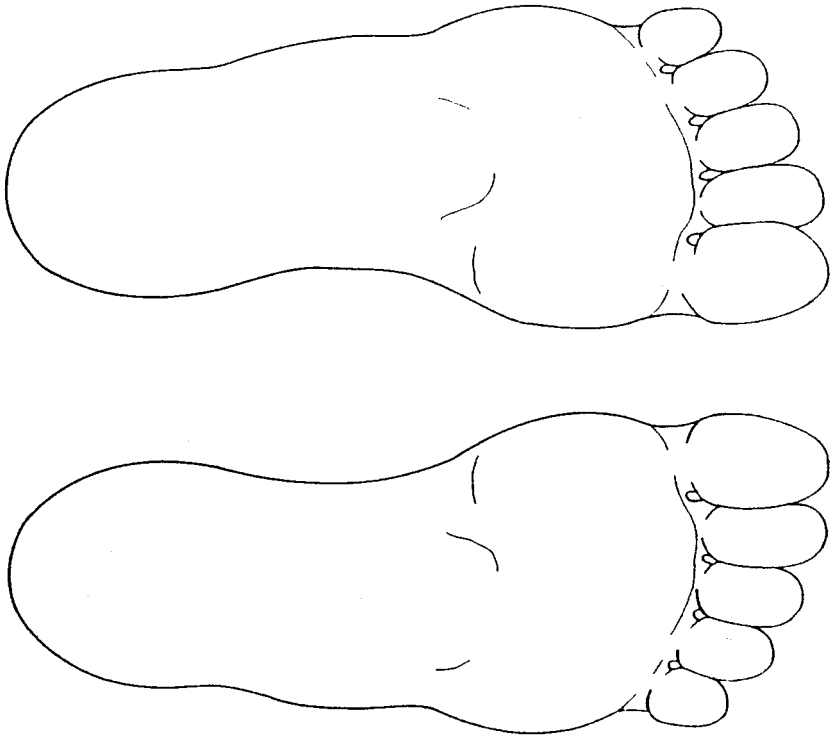


Name \_\_\_\_\_

Case No. \_\_\_\_\_

Date \_\_\_\_\_

FEET—LEFT AND RIGHT PLANTAR SURFACES

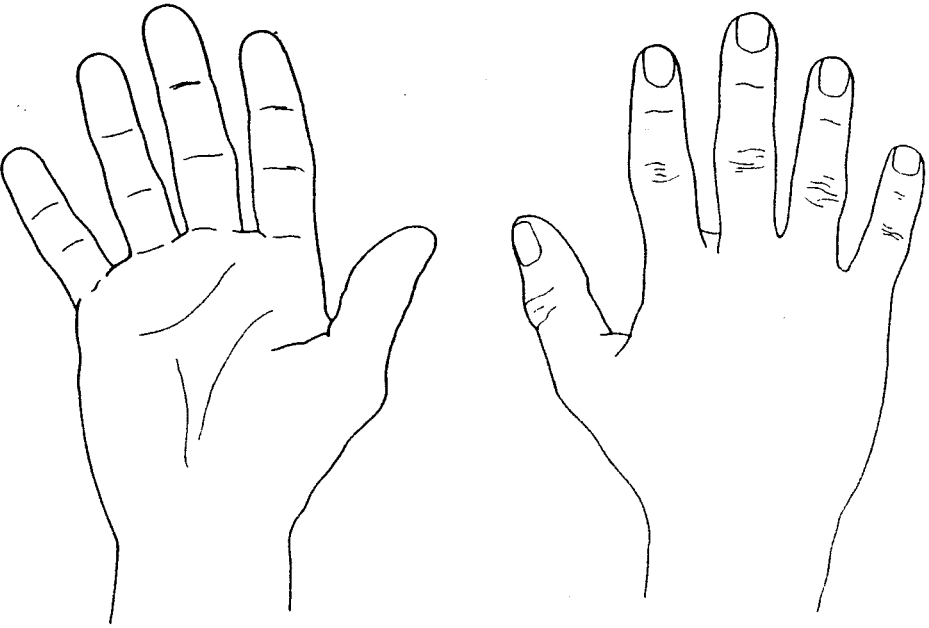


Name \_\_\_\_\_

Case No. \_\_\_\_\_

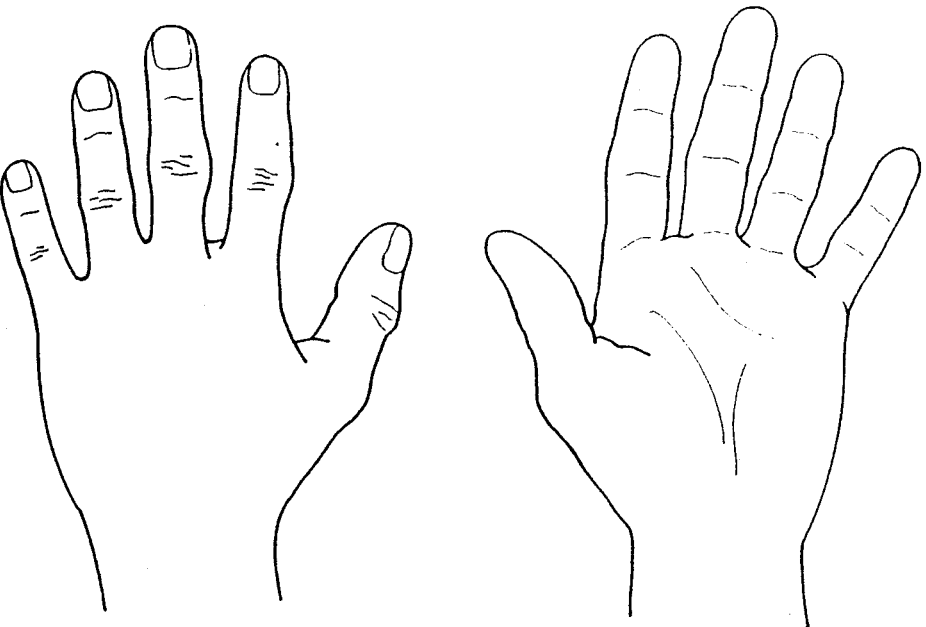
Date \_\_\_\_\_

RIGHT HAND—PALMAR AND DORSAL

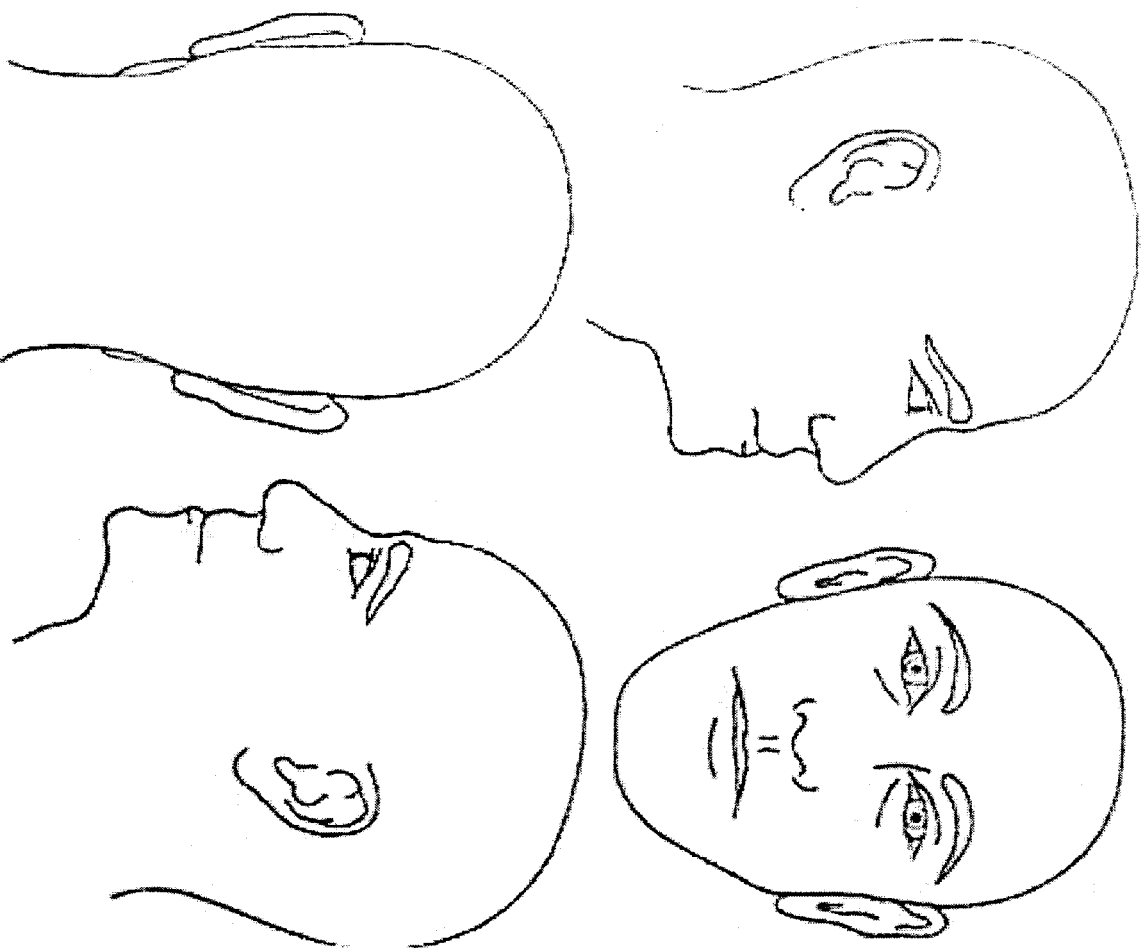
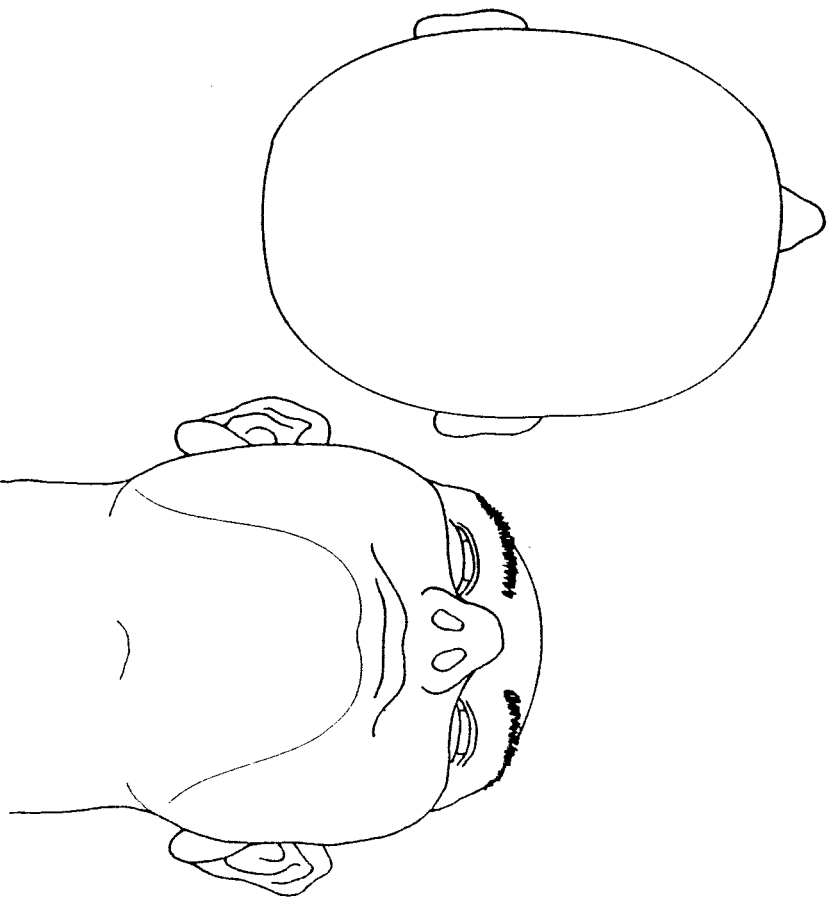


Name \_\_\_\_\_ Case No. \_\_\_\_\_  
Date \_\_\_\_\_

LEFT HAND—PALMAR AND DORSAL



Name \_\_\_\_\_ Case No. \_\_\_\_\_  
Date \_\_\_\_\_



Name \_\_\_\_\_

Case No. \_\_\_\_\_

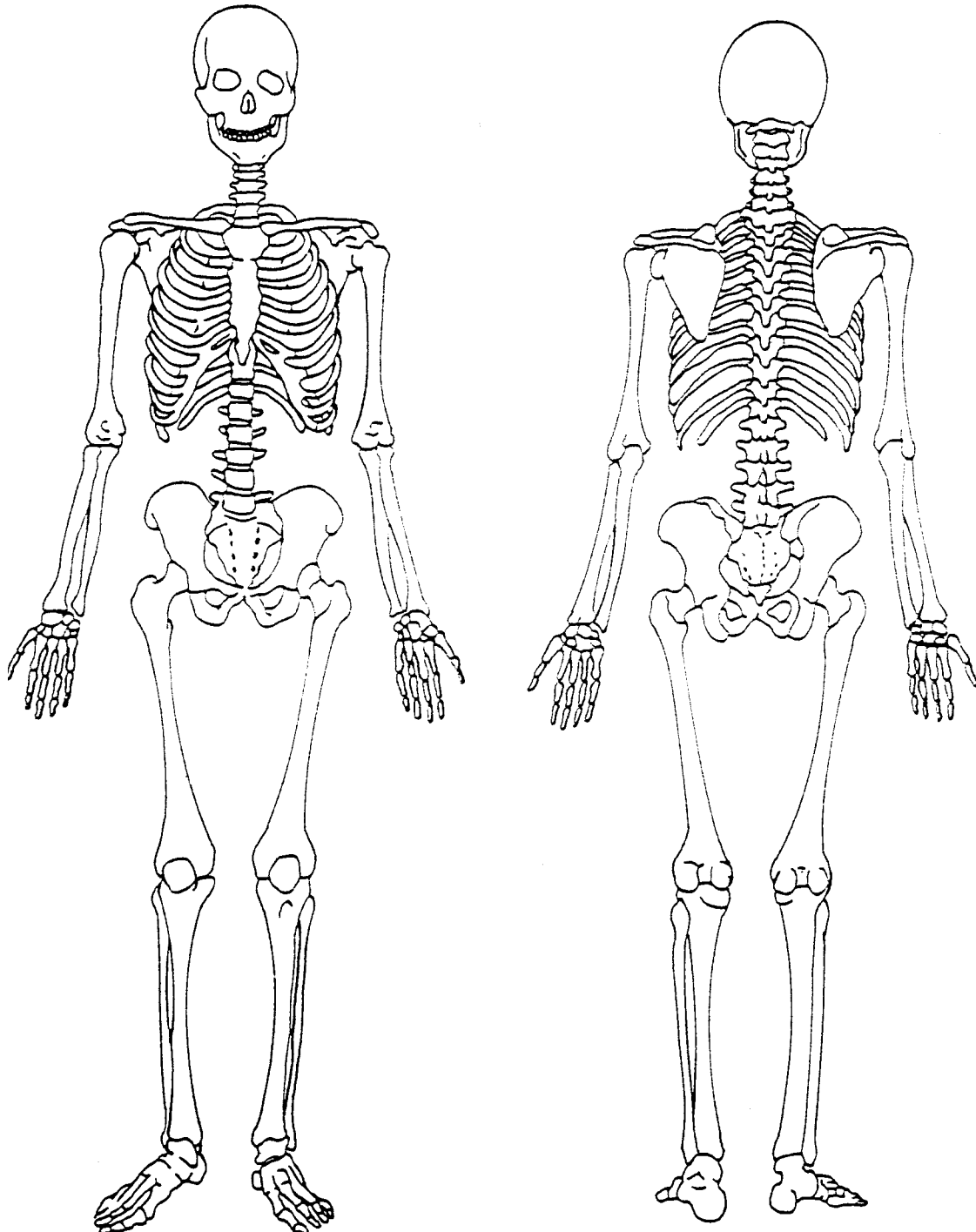
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Name \_\_\_\_\_

Case No. \_\_\_\_\_

Date \_\_\_\_\_

SKELETON—ANTERIOR AND POSTERIOR VIEWS



Name \_\_\_\_\_

Case No. \_\_\_\_\_

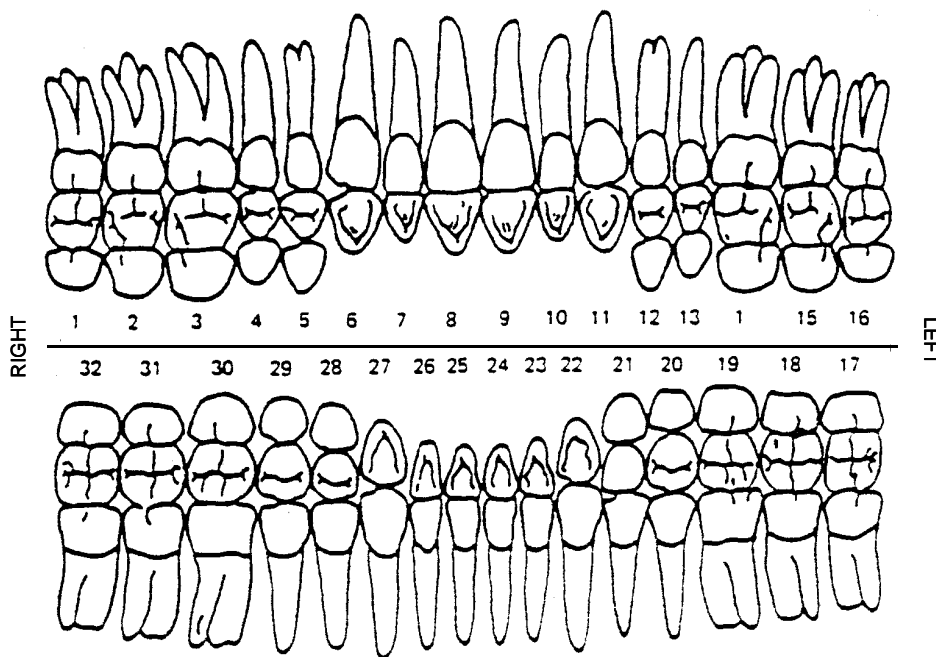
Date \_\_\_\_\_

MARK ALL EXISTING RESTORATIONS AND MISSING TEETH ON THIS CHART

Estimated Age \_\_\_\_\_

Sex \_\_\_\_\_

Race \_\_\_\_\_



Circle descriptive term

Prosthetic appliances present  
Maxilla

Full denture

Partial denture

Fixed bridge

Mandible

Full denture

Partial denture

Fixed bridge

Describe completely all prosthetic appliances or fixed bridges

Stains on teeth

Slight

Moderate

Severe

MARK ALL CARIES ON THIS CHART  
Outline all caries and "X" out all missing teeth

Circle descriptive term

Relationship

Normal

Undershot

Overbite

Periodontal Condition

Excellent

Average

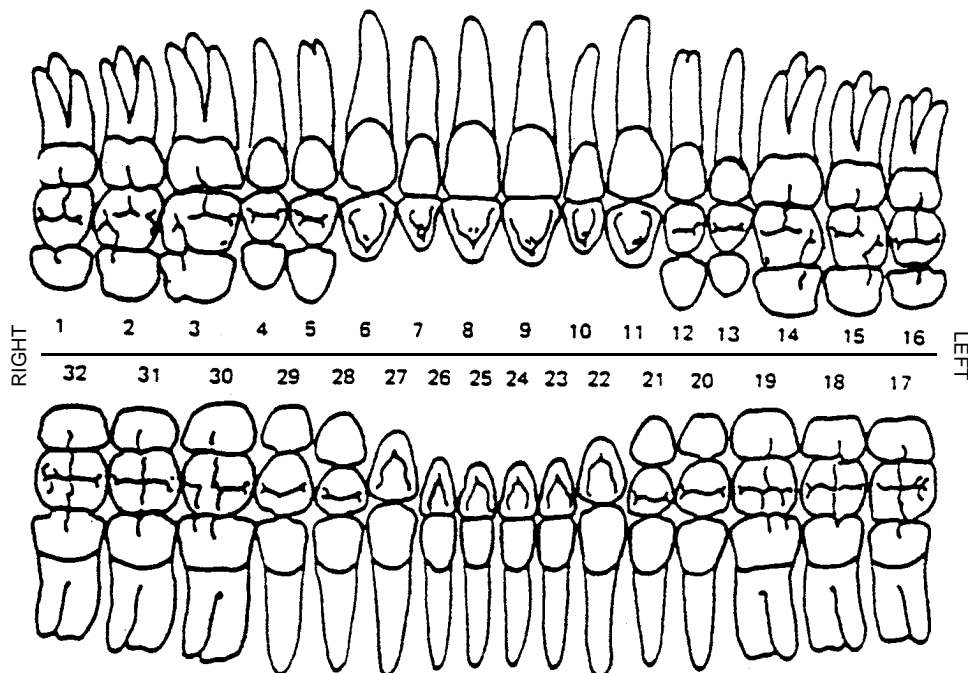
Poor

Calculus

Slight

Moderate

Severe





## ANNEX IV

### Guidelines for the medical evaluation of torture and ill-treatment

The following guidelines are based on the *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. These guidelines are not intended to be a fixed prescription, but should be applied taking into account the purpose of the evaluation and after an assessment of available resources. Evaluation of physical and psychological evidence of torture and ill-treatment may be conducted by one or more clinicians, depending on their qualifications.

#### I. Case information

Date of exam: ..... Exam requested by (name/position): .....

Case or report No.: ..... Duration of evaluation: ..... hours, ..... minutes

Subject's given name: ..... Birth date: ..... Birth place: .....

Subject's family name: ..... Gender: male/female: .....

Reason for exam: ..... Subject's ID No.: .....

Clinician's name: ..... Interpreter (yes/no), name: .....

Informed consent: yes/no      If no informed consent, why?: .....

Subject accompanied by (name/position): .....

Persons present during exam (name/position): .....

Subject restrained during exam: yes/no; If "yes", how/why? .....

Medical report transferred to (name/position/ID No.): .....

Transfer date: ..... Transfer time: .....

Medical evaluation/investigation conducted without restriction (for subjects in custody): yes/no

Provide details of any restrictions: .....

#### II. Clinician's qualifications (for judicial testimony)

Medical education and clinical training

Psychological/psychiatric training

Experience in documenting evidence of torture and ill-treatment

Regional human rights expertise relevant to the investigation

Relevant publications, presentations and training courses

Curriculum vitae.

### **III. Statement regarding veracity of testimony** (for judicial testimony)

For example: “I personally know the facts stated below, except those stated on information and belief, which I believe to be true. I would be prepared to testify to the above statements based on my personal knowledge and belief.”

### **IV. Background information**

General information (age, occupation, education, family composition, etc.)

Past medical history

Review of prior medical evaluations of torture and ill-treatment

Psychosocial history pre-arrest.

### **V. Allegations of torture and ill-treatment**

1. Summary of detention and abuse
2. Circumstances of arrest and detention
3. Initial and subsequent places of detention (chronology, transportation and detention conditions)
4. Narrative account of ill-treatment or torture (in each place of detention)
5. Review of torture methods.

### **VI. Physical symptoms and disabilities**

Describe the development of acute and chronic symptoms and disabilities and the subsequent healing processes.

1. Acute symptoms and disabilities
2. Chronic symptoms and disabilities.

### **VII. Physical examination**

1. General appearance
2. Skin
3. Face and head
4. Eyes, ears, nose and throat
5. Oral cavity and teeth
6. Chest and abdomen (including vital signs)
7. Genito-urinary system
8. Musculoskeletal system
9. Central and peripheral nervous system.

### **VIII. Psychological history/examination**

1. Methods of assessment
2. Current psychological complaints
3. Post-torture history
4. Pre-torture history
5. Past psychological/psychiatric history
6. Substance use and abuse history
7. Mental status examination
8. Assessment of social functioning
9. Psychological testing: (see chapter VI, sect. C.1, for indications and limitations)
10. Neuropsychological testing (see chapter VI, sect. C.4, for indications and limitations).

## **IX. Photographs**

## **X. Diagnostic test results** (see annex II for indications and limitations)

## **XI. Consultations**

## **XII. Interpretation of findings**

1. Physical evidence
  - A. Correlate the degree of consistency between the history of acute and chronic physical symptoms and disabilities with allegations of abuse.
  - B. Correlate the degree of consistency between physical examination findings and allegations of abuse. (Note: The absence of physical findings does not exclude the possibility that torture or ill-treatment was inflicted.)
  - C. Correlate the degree of consistency between examination findings of the individual with knowledge of torture methods and their common after-effects used in a particular region.
2. Psychological evidence
  - A. Correlate the degree of consistency between the psychological findings and the report of alleged torture.
  - B. Provide an assessment of whether the psychological findings are expected or typical reactions to extreme stress within the cultural and social context of the individual.
  - C. Indicate the status of the individual in the fluctuating course of trauma-related mental disorders over time, i.e. what is the time frame in relation to the torture events and where in the course of recovery is the individual?
  - D. Identify any coexisting stressors impinging on the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role, etc.) and the impact these may have on the individual.
  - E. Mention physical conditions that may contribute to the clinical picture, especially with regard to possible evidence of head injury sustained during torture or detention.

## **XIII. Conclusions and recommendations**

1. Statement of opinion on the consistency between all sources of evidence cited above (physical and psychological findings, historical information, photographic findings, diagnostic test results, knowledge of regional practices of torture, consultation reports, etc.) and allegations of torture and ill-treatment.
2. Reiterate the symptoms and disabilities from which the individual continues to suffer as a result of the alleged abuse.
3. Provide any recommendations for further evaluation and care for the individual.

## **XIV. Statement of truthfulness** (for judicial testimony)

For example: "I declare under penalty of perjury, pursuant to the laws of ..... (country), that the foregoing is true and correct and that this affidavit was executed on ..... (date) at ..... (city), ..... (State or province)."

## **XV. Statement of restrictions on the medical evaluation/investigation** (for subjects in custody)

For example: "The undersigned clinicians personally certify that they were allowed to work freely and independently and permitted to speak with and examine (the subject) in private, without any restriction or reservation, and without any form of coercion being used by the detaining authorities"; or "The undersigned clinician(s) had to carry out his/her/their evaluation with the following restrictions: ....."

## **XVI. Clinician's signature, date, place**

## **XVII. Relevant annexes**

A copy of the clinician's curriculum vitae, anatomical drawings for identification of torture and ill-treatment, photographs, consultations and diagnostic test results, among others.



# General Assembly

Distr.: General  
8 January 2016

Seventieth session  
Agenda item 106

## Resolution adopted by the General Assembly on 17 December 2015

[on the report of the Third Committee (A/70/490)]

### 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

*The General Assembly,*

*Guided* by the principal purposes of the United Nations, as set out in the Preamble to the Charter of the United Nations and the Universal Declaration of Human Rights,<sup>1</sup> and inspired by the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, without distinction of any kind, and in the equal rights of men and women and of nations large and small, to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained and to promote social progress and better standards of life in larger freedom,

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

*Bearing in mind* the long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights, and emphasizing the fundamental importance of human rights in the daily administration of criminal justice and crime prevention,

*Aware* that the Standard Minimum Rules for the Treatment of Prisoners<sup>2</sup> have been the universally acknowledged minimum standards for the detention of prisoners and that they have been of significant value and influence, as a guide, in the development of correctional laws, policies and practices since their adoption by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in 1955,

<sup>1</sup> Resolution 217 A (III).

<sup>2</sup> *Human Rights: A Compilation of International Instruments*, Volume I (First Part), *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34.

15-16929 (E)



Please recycle



*Mindful* that, in the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,<sup>3</sup> Member States recognized that an effective, fair, accountable and humane criminal justice system was based on the commitment to uphold the protection of human rights in the administration of justice and the prevention and control of crime, and acknowledged the value and impact of the United Nations standards and norms in crime prevention and criminal justice in designing and implementing national crime prevention and criminal justice policies, procedures and programmes,

*Taking into account* the progressive development of international law pertaining to the treatment of prisoners since 1955, including in international instruments such as the International Covenant on Civil and Political Rights,<sup>4</sup> the International Covenant on Economic, Social and Cultural Rights<sup>4</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>5</sup> and the Optional Protocol thereto,<sup>6</sup>

*Recalling* the United Nations standards and norms in crime prevention and criminal justice related to the treatment of prisoners and to alternatives to imprisonment adopted since 1955, in particular the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners,<sup>7</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>8</sup> the Basic Principles for the Treatment of Prisoners,<sup>9</sup> the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>10</sup> and the basic principles on the use of restorative justice programmes in criminal matters,<sup>11</sup>

*Bearing in mind* the need for vigilance with regard to the specific situation of children, juveniles and women in the administration of justice, in particular while they are deprived of their liberty, as called for in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),<sup>12</sup> the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),<sup>13</sup> the United Nations Rules for the Protection of Juveniles Deprived of their Liberty<sup>14</sup> and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),<sup>15</sup>

*Recalling* the United Nations standards and norms in crime prevention and criminal justice adopted since 1955 that provide additional guidance on the treatment of prisoners, including the Code of Conduct for Law Enforcement

<sup>3</sup> Resolution 65/230, annex.

<sup>4</sup> See resolution 2200 A (XXI), annex.

<sup>5</sup> United Nations, *Treaty Series*, vol. 1465, No. 24841.  
Ibid., vol. 2375, No. 24841.

<sup>7</sup> Economic and Social Council resolution 1984/47, annex.

<sup>8</sup> Resolution 43/173, annex.

<sup>9</sup> Resolution 45/111, annex.

<sup>10</sup> Resolution 45/110, annex.

<sup>11</sup> Economic and Social Council resolution 2002/12, annex.

<sup>12</sup> Resolution 40/33, annex.

<sup>13</sup> Resolution 45/112, annex.

<sup>14</sup> Resolution 45/113, annex.

<sup>15</sup> Resolution 65/229, annex.

Officials,<sup>16</sup> the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment,<sup>17</sup> the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,<sup>18</sup> the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>19</sup> and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,<sup>20</sup>

*Aware* of regional principles and standards related to the treatment of prisoners, including the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, the revised European Prison Rules, the Kampala Declaration on Prison Conditions in Africa,<sup>21</sup> the Arusha Declaration on Good Prison Practice<sup>22</sup> and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,

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

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

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

- (a) Respect for prisoners’ inherent dignity and value as human beings (rules 6, para. 1; 57–59; and 60, para. 1),
- (b) Medical and health services (rules 22–26; 52; 62; and 71, para. 2),
- (c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet (rules 27, 29, 31 and 32),
- (d) Investigation of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners (rule 7 and proposed rules 44 bis and 54 bis),

<sup>16</sup> Resolution 34/169, annex.

<sup>17</sup> Resolution 37/194, annex.

<sup>18</sup> *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex.

<sup>19</sup> Resolution 55/89, annex.

<sup>20</sup> Resolution 67/187, annex.

<sup>21</sup> Economic and Social Council resolution 1997/36, annex.

<sup>22</sup> Economic and Social Council resolution 1999/27, annex.

- (e) Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances (rules 6 and 7),
- (f) The right of access to legal representation (rules 30; 35, para. 1; 37; and 93),
- (g) Complaints and independent inspection (rules 36 and 55),
- (h) The replacement of outdated terminology (rules 22–26, 62, 82 and 83 and various others),
- (i) Training of relevant staff to implement the Standard Minimum Rules (rule 47),

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

*Mindful further* of the extensive consultative process culminating in the recommendations of the Expert Group, a process spanning a period of five years, consisting of technical and expert pre-consultations, meetings in Vienna, Buenos Aires and Cape Town, South Africa, and the active participation and input of Member States from all regions, assisted by representatives of the United Nations crime prevention and criminal justice programme network and other United Nations entities, including the Office of the United Nations High Commissioner for Human Rights, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Office on Drugs and Crime, intergovernmental organizations, including the International Committee of the Red Cross, specialized agencies in the United Nations system, including the World Health Organization, and non-governmental organizations and individual experts in the field of correctional science and human rights,

*Recalling* its resolution 69/172 of 18 December 2014, entitled “Human rights in the administration of justice”, in which it recognized the importance of the principle that, except for those lawful limitations that are demonstrably necessitated by the fact of incarceration, persons deprived of their liberty shall retain their non-derogable human rights and all other human rights and fundamental freedoms, recalled that the social rehabilitation and reintegration of persons deprived of their liberty shall be among the essential aims of the criminal justice system, ensuring, as far as possible, that offenders are able to lead a law-abiding and self-supporting life upon their return to society, and took note of, inter alia, general comment No. 21 on the humane treatment of persons deprived of their liberty, adopted by the Human Rights Committee,<sup>23</sup>

1. *Expresses its gratitude and appreciation* to the Government of South Africa for hosting the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Cape Town, South Africa, from 2 to 5 March 2015 and for providing financial support and leadership throughout the review process, and notes with appreciation the consensus achieved on the nine thematic areas and the rules identified for revision by the Expert Group at its previous meetings;<sup>24</sup>

<sup>23</sup> *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI.B.*

<sup>24</sup> See [E/CN.15/2015/17](#).

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

3. *Acknowledges* the valuable work accomplished by the bureau of the meeting of the Expert Group held in Vienna in 2014 in preparing, with the assistance of the Secretariat, the documentation for the meeting of the Expert Group held in Cape Town in 2015, in particular the revised consolidated working paper;<sup>25</sup>

4. *Notes* that in the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Doha from 12 to 19 April 2015,<sup>26</sup> the Thirteenth Congress welcomed the work of the Expert Group, and took note of the draft updated Standard Minimum Rules for the Treatment of Prisoners, as finalized by the Expert Group at its meeting held in Cape Town in March 2015;

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

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

7. *Decides* to extend the scope of Nelson Mandela International Day, observed each year on 18 July,<sup>27</sup> to be also utilized in order to promote humane conditions of imprisonment, to raise awareness about prisoners being a continuous part of society and to value the work of prison staff as a social service of particular importance, and to this end invites Member States, regional organizations and organizations of the United Nations system to celebrate this occasion in an appropriate manner;

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

9. *Encourages* Member States to endeavour to improve conditions in detention, consistent with the Nelson Mandela Rules and all other relevant and applicable United Nations standards and norms in crime prevention and criminal justice, to continue exchanging good practices in order to identify challenges faced in implementing the Rules and to share their experiences in dealing with those challenges;

<sup>25</sup> UNODC/CCPCJ/EG.6/2015/2.

<sup>26</sup> Resolution 70/174, annex.

<sup>27</sup> See resolution 64/13.



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

11. *Encourages* Member States to promote the implementation of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty<sup>14</sup> and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);<sup>15</sup>

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

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

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

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

16. *Commends* the Commission on Crime Prevention and Criminal Justice for its continuing contributions to the improvement of the administration of justice through the development and refinement of international standards and norms in the field of crime prevention and criminal justice, and calls upon Member States to continue their efforts in this regard;

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

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

19. *Affirms* the important role of the United Nations crime prevention and criminal justice programme network, intergovernmental organizations and non-governmental organizations in consultative status with the Economic and

Social Council in the revision process and in contributing to the dissemination, promotion and practical application of the Nelson Mandela Rules in accordance with the procedures for their effective implementation.

*80th plenary meeting  
17 December 2015*

## **Annex**

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

#### **Preliminary observation 1**

The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.

#### **Preliminary observation 2**

1. In view of the great variety of legal, social, economic and geographical conditions in the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

2. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

#### **Preliminary observation 3**

1. Part I of the rules covers the general management of prisons, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to “security measures” or corrective measures ordered by the judge.

2. Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

#### **Preliminary observation 4**

1. The rules do not seek to regulate the management of institutions set aside for young persons such as juvenile detention facilities or correctional schools, but in general part I would be equally applicable in such institutions.

2. The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

## **I. Rules of general application**

### **Basic principles**

#### *Rule 1*

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

#### *Rule 2*

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

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

#### *Rule 3*

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

#### *Rule 4*

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

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

#### *Rule 5*

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

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

### **Prisoner file management**

#### *Rule 6*

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

#### *Rule 7*

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

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

#### *Rule 8*

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

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

*Rule 9*

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

*Rule 10*

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

**Separation of categories***Rule 11*

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

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

**Accommodation***Rule 12*

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

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

*Rule 13*

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

*Rule 14*

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

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

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

*Rule 15*

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

*Rule 16*

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

*Rule 17*

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

**Personal hygiene**

*Rule 18*

1. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

2. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be able to shave regularly.

**Clothing and bedding**

*Rule 19*

1. Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating.

2. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

3. In exceptional circumstances, whenever a prisoner is removed outside the prison for an authorized purpose, he or she shall be allowed to wear his or her own clothing or other inconspicuous clothing.

*Rule 20*

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

*Rule 21*

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

**Food***Rule 22*

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

**Exercise and sport***Rule 23*

1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.

**Health-care services***Rule 24*

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

*Rule 25*

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

*Rule 26*

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

2. Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.

*Rule 27*

1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.

*Rule 28*

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

*Rule 29*

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

- (a) Internal or external childcare facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent;

- (b) Child-specific health-care services, including health screenings upon admission and ongoing monitoring of their development by specialists.

2. Children in prison with a parent shall never be treated as prisoners.

*Rule 30*

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

- (a) Identifying health-care needs and taking all necessary measures for treatment;

- (b) Identifying any ill-treatment that arriving prisoners may have been subjected to prior to admission;

- (c) Identifying any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and undertaking all appropriate individualized measures or treatment;

- (d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;

- (e) Determining the fitness of prisoners to work, to exercise and to participate in other activities, as appropriate.



*Rule 31*

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

*Rule 32*

1. The relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community, in particular:

(a) The duty of protecting prisoners' physical and mental health and the prevention and treatment of disease on the basis of clinical grounds only;

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

(c) The confidentiality of medical information, unless maintaining such confidentiality would result in a real and imminent threat to the patient or to others;

(d) An absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation that may be detrimental to a prisoner's health, such as the removal of a prisoner's cells, body tissues or organs.

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

*Rule 33*

The physician shall report to the prison director whenever he or she considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

*Rule 34*

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

*Rule 35*

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

(a) The quantity, quality, preparation and service of food;

(b) The hygiene and cleanliness of the institution and the prisoners;

(c) The sanitation, temperature, lighting and ventilation of the prison;

(d) The suitability and cleanliness of the prisoners' clothing and bedding;

(e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

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

### **Restrictions, discipline and sanctions**

#### *Rule 36*

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

#### *Rule 37*

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

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

#### *Rule 38*

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

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

#### *Rule 39*

1. No prisoner shall be sanctioned except in accordance with the terms of the law or regulation referred to in rule 37 and the principles of fairness and due process. A prisoner shall never be sanctioned twice for the same act or offence.

2. Prison administrations shall ensure proportionality between a disciplinary sanction and the offence for which it is established, and shall keep a proper record of all disciplinary sanctions imposed.

3. Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act

underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.

*Rule 40*

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

*Rule 41*

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

*Rule 42*

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

*Rule 43*

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:
  - (a) Indefinite solitary confinement;
  - (b) Prolonged solitary confinement;
  - (c) Placement of a prisoner in a dark or constantly lit cell;
  - (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
  - (e) Collective punishment.

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

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

*Rule 44*

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

*Rule 45*

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

2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice,<sup>28</sup> continues to apply.

*Rule 46*

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

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

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

**Instruments of restraint**

*Rule 47*

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

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<sup>28</sup> See rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (resolution 45/113, annex); and rule 22 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (resolution 65/229, annex).

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

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

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

#### *Rule 48*

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

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

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

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

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

#### *Rule 49*

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

### **Searches of prisoners and cells**

#### *Rule 50*

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

#### *Rule 51*

Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.

#### *Rule 52*

1. Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged

to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.

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

*Rule 53*

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

**Information to and complaints by prisoners**

*Rule 54*

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

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

*Rule 55*

1. The information referred to in rule 54 shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner does not understand any of those languages, interpretation assistance should be provided.
2. If a prisoner is illiterate, the information shall be conveyed to him or her orally. Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs.
3. The prison administration shall prominently display summaries of the information in common areas of the prison.

*Rule 56*

1. Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her.
2. It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present.
3. Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison

administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power.

4. The rights under paragraphs 1 to 3 of this rule shall extend to the legal adviser of the prisoner. In those cases where neither the prisoner nor his or her legal adviser has the possibility of exercising such rights, a member of the prisoner's family or any other person who has knowledge of the case may do so.

#### *Rule 57*

1. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.

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

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

### **Contact with the outside world**

#### *Rule 58*

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

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

(b) By receiving visits.

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

#### *Rule 59*

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

#### *Rule 60*

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

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

*Rule 61*

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

*Rule 62*

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

*Rule 63*

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

**Books**

*Rule 64*

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

**Religion**

*Rule 65*

1. If the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.
2. A qualified representative appointed or approved under paragraph 1 of this rule shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times.
3. Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his or her attitude shall be fully respected.



*Rule 66*

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

**Retention of prisoners' property***Rule 67*

1. All money, valuables, clothing and other effects belonging to a prisoner which he or she is not allowed to retain under the prison regulations shall on his or her admission to the prison be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.
2. On the release of the prisoner, all such articles and money shall be returned to him or her except in so far as he or she has been authorized to spend money or send any such property out of the prison, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him or her.
3. Any money or effects received for a prisoner from outside shall be treated in the same way.
4. If a prisoner brings in any drugs or medicine, the physician or other qualified health-care professionals shall decide what use shall be made of them.

**Notifications***Rule 68*

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

*Rule 69*

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

*Rule 70*

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

## **Investigations**

### *Rule 71*

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

### *Rule 72*

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

## **Removal of prisoners**

### *Rule 73*

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

## **Institutional personnel**

### *Rule 74*

1. The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends.
2. The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

3. To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison staff and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

#### *Rule 75*

1. All prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner.

2. Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties, which shall be reflective of contemporary evidence-based best practice in penal sciences. Only those candidates who successfully pass the theoretical and practical tests at the end of such training shall be allowed to enter the prison service.

3. The prison administration shall ensure the continuous provision of in service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.

#### *Rule 76*

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

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

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

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

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

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

#### *Rule 77*

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

#### *Rule 78*

1. So far as possible, prison staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

2. The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

*Rule 79*

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

*Rule 80*

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

*Rule 81*

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

*Rule 82*

1. Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.
2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.
3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.

**Internal and external inspections***Rule 83*

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

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

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

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

*Rule 84*

1. Inspectors shall have the authority:

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

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

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

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

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

*Rule 85*

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

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

**II. Rules applicable to special categories****A. Prisoners under sentence****Guiding principles***Rule 86*

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

*Rule 87*

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

*Rule 88*

1. The treatment of prisoners should emphasize not their exclusion from the community but their continuing part in it. Community agencies should therefore be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners.
2. There should be in connection with every prison social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

*Rule 89*

1. The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups. It is therefore desirable that such groups should be distributed in separate prisons suitable for the treatment of each group.
2. These prisons do not need to provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open prisons, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to the rehabilitation of carefully selected prisoners.
3. It is desirable that the number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed 500. In open prisons the population should be as small as possible.
4. On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

*Rule 90*

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

**Treatment**

*Rule 91*

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

them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

#### *Rule 92*

1. To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.

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

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

### **Classification and individualization**

#### *Rule 93*

1. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

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

#### *Rule 94*

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

### **Privileges**

#### *Rule 95*

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

## **Work**

### *Rule 96*

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

### *Rule 97*

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

### *Rule 98*

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

### *Rule 99*

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

### *Rule 100*

1. Preferably, institutional industries and farms should be operated directly by the prison administration and not by private contractors.
2. Where prisoners are employed in work not controlled by the prison administration, they shall always be under the supervision of prison staff. Unless the work is for other departments of the government, the full normal wages for such work shall be paid to the prison administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

### *Rule 101*

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



2. Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workers.

*Rule 102*

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

*Rule 103*

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

**Education and recreation***Rule 104*

1. Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterate prisoners and of young prisoners shall be compulsory and special attention shall be paid to it by the prison administration.
2. So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

*Rule 105*

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

**Social relations and aftercare***Rule 106*

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

*Rule 107*

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

*Rule 108*

1. Services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society shall ensure, so far as is possible and necessary, that released prisoners are provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.
2. The approved representatives of such agencies shall have all necessary access to the prison and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his or her sentence.
3. It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.

**B. Prisoners with mental disabilities and/or health conditions**

*Rule 109*

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

*Rule 110*

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

**C. Prisoners under arrest or awaiting trial**

*Rule 111*

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

*Rule 112*

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

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

*Rule 113*

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

*Rule 114*

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

*Rule 115*

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

*Rule 116*

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

*Rule 117*

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

*Rule 118*

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

*Rule 119*

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

*Rule 120*

1. The entitlements and modalities governing the access of an untried prisoner to his or her legal adviser or legal aid provider for the purpose of his or her defence shall be governed by the same principles as outlined in rule 61.

2. An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider.

**D. Civil prisoners**

*Rule 121*

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

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

*Rule 122*

Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights,<sup>29</sup> persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C, of these rules. Relevant provisions of part II, section A, of these rules shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

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<sup>29</sup> See resolution 2200 A (XXI), annex.

## **Basic Principles for the Treatment of Prisoners**

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

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.
5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.
6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.
10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
11. The above Principles shall be applied impartially.

and co-operation among States in accordance with the Charter;

4. *Takes note* of the report of the Sub-Committee on Good-Neighbourliness,<sup>53</sup> which functioned within the Sixth Committee during the forty-third session of the General Assembly;

5. *Decides* to continue and to complete at its forty-fifth session, on the basis of the present resolution and the report of the Sub-Committee, the task of identifying and clarifying the elements of good-neighbourliness and to begin the elaboration of a suitable international document on the development and strengthening of good-neighbourliness between States within the framework of a sub-committee on good-neighbourliness;

6. *Decides* to include in the provisional agenda of its forty-fifth session the item entitled "Development and strengthening of good-neighbourliness between States".

76th plenary meeting  
9 December 1988

#### 43/172. Report of the Committee on Relations with the Host Country

*The General Assembly,*

*Having considered* the report of the Committee on Relations with the Host Country,<sup>54</sup>

*Recalling* Article 105 of the Charter of the United Nations, the Convention on the Privileges and Immunities of the United Nations<sup>55</sup> and the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations,<sup>2</sup>

*Recalling also* that the problems related to the privileges and immunities of all missions accredited to the United Nations, the security of the missions and the safety of their personnel are of great importance and concern to Member States, as well as the primary responsibility of the host country,

*Recognizing* that effective measures should continue to be taken by the competent authorities of the host country, in particular to prevent any acts violating the security of missions and the safety of their personnel,

*Conscious* of the increased interest shown by Member States in participating in the work of the Committee,

1. *Endorses* the recommendations and conclusions of the Committee on Relations with the Host Country contained in paragraph 81 of its report;

2. *Reaffirms its condemnation* of any criminal acts violating the security of missions accredited to the United Nations and the safety of their personnel;

3. *Urges* the host country to take all necessary measures to continue to prevent criminal acts, including harassment and violations of the security of missions and the safety of their personnel or infringements of the inviolability of their property, in order to ensure the existence and functioning of all missions, including practicable measures to prohibit illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts and activities against the security and safety of such missions and representatives;

4. *Reiterates its request* to the parties concerned to follow consultations with a view to reaching solutions to the issues raised by certain Member States concerning the size of their missions, in accordance with the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations and in the spirit of co-operation;

5. *Urges* the host country, in the light of the consideration by the Committee of travel regulations issued by the host country, to continue to honour its obligations to facilitate the functioning of the United Nations and the missions accredited to it;

6. *Stresses* the importance of a positive perception of the work of the United Nations, expresses concern about a negative public image and, therefore, urges that efforts be continued to build up public awareness by explaining, through all available means, the importance of the role played by the United Nations and the missions accredited to it in the strengthening of international peace and security;

7. *Requests* the Secretary-General to remain actively engaged in all aspects of the relations of the United Nations with the host country and to continue to stress the importance of effective measures to avoid acts of terrorism, violence and harassment against the missions and their personnel, as well as the need for any pertinent legislation adopted by the host country to be in accord with the Agreement and its other relevant obligations;

8. *Requests* the Committee to continue its work, in conformity with General Assembly resolution 2819 (XXVI) of 15 December 1971;

9. *Decides* to include in the provisional agenda of its forty-fourth session the item entitled "Report of the Committee on Relations with the Host Country".

76th plenary meeting  
9 December 1988

#### 43/173. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

*The General Assembly,*

*Recalling* its resolution 35/177 of 15 December 1980, in which it referred the task of elaborating the draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment to the Sixth Committee and decided to establish an open-ended working group for that purpose,

*Taking note* of the report of the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>56</sup> which met during the forty-third session of the General Assembly and completed the elaboration of the draft Body of Principles,

*Considering* that the Working Group decided to submit the text of the draft Body of Principles to the Sixth Committee for its consideration and adoption,<sup>57</sup>

*Convinced* that the adoption of the draft Body of Principles would make an important contribution to the protection of human rights,

*Considering* the need to ensure the wide dissemination of the text of the Body of Principles,

<sup>53</sup> A/C.6/43/L.11; see also A/C.6/43/SC/CRP.3.

<sup>54</sup> *Official Records of the General Assembly, Forty-third Session, Supplement No. 26* and addendum (A/43/26 and Add.1).

<sup>55</sup> Resolution 22 A (I).

<sup>56</sup> A/C.6/43/L.9.

<sup>57</sup> *Ibid.*, para. 4.



1. Approves the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the text of which is annexed to the present resolution;

2. Expresses its appreciation to the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment for its important contribution to the elaboration of the Body of Principles;

3. Requests the Secretary-General to inform the States Members of the United Nations or members of specialized agencies of the adoption of the Body of Principles;

4. Urges that every effort be made so that the Body of Principles becomes generally known and respected.

76th plenary meeting  
9 December 1988

#### ANNEX

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

##### SCOPE OF THE BODY OF PRINCIPLES

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

##### USE OF TERMS

For the purposes of the Body of Principles:

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

##### Principle 1

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

##### Principle 2

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

##### Principle 3

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

##### Principle 4

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

##### Principle 5

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

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

##### Principle 6

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

##### Principle 7

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

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

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

##### Principle 8

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

##### Principle 9

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

##### Principle 10

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

##### Principle 11

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

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

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

##### Principle 12

1. There shall be duly recorded:

- (a) The reasons for the arrest;
- (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
- (c) The identity of the law enforcement officials concerned;
- (d) Precise information concerning the place of custody.

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

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

*Principle 13*

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

*Principle 14*

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

*Principle 15*

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

*Principle 16*

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

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

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

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

*Principle 17*

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

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

*Principle 18*

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

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

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

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

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

*Principle 19*

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

*Principle 20*

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

*Principle 21*

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

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

*Principle 22*

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

*Principle 23*

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

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

*Principle 24*

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

*Principle 25*

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

*Principle 26*

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

*Principle 27*

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

*Principle 28*

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

*Principle 29*

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

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places



of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

*Principle 30*

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

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

*Principle 31*

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

*Principle 32*

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

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

*Principle 33*

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

*Principle 34*

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the

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

*Principle 35*

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

2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

*Principle 36*

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

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

*Principle 37*

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

*Principle 38*

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

*Principle 39*

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

*General clause*

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.<sup>58</sup>

<sup>58</sup> See resolution 2200 A (XXI), annex.

## **United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)**

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

### **I. General principles**

#### **1. Fundamental aims**

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

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

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

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

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

#### **2. The scope of non-custodial measures**

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.

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

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

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

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

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

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

### **3 . Legal safeguards**

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

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

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

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

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

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

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

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

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

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

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

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

### **4 . Saving clause**

4.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

## **II . Pre-trial stage**

### **5. Pre-trial dispositions**

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime

prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

## **6. Avoidance of pre-trial detention**

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

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

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

## **III. Trial and sentencing stage**

### **7. Social inquiry reports**

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

### **8. Sentencing dispositions**

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

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

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

( m ) Some combination of the measures listed above.

#### **IV. Post-sentencing stage**

##### **9 . Post-sentencing dispositions**

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

9.2 Post-sentencing dispositions may include:

( a ) Furlough and half-way houses;

( b ) Work or education release;

( c ) Various forms of parole;

( d ) Remission;

( e ) Pardon.

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

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

#### **V. Implementation of non-custodial measures**

##### **10. Supervision**

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

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

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

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

##### **11 . Duration**

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

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

##### **12. Conditions**

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

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

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

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

### **13. Treatment process**

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

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

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

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

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

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

### **14. Discipline and breach of conditions**

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

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

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

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

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

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

## **VI. Staff**

### **15. Recruitment**

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

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

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

## **16 . Staff training**

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

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

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

## **VII . Volunteers and other community resources**

### **17. Public participation**

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

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

### **18 . Public understanding and cooperation**

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

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

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

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

### **19. Volunteers**

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by

them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

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

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

## **VIII. Research, planning, policy formulation and evaluation**

### **20. Research and planning**

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

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

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

### **21. Policy formulation and programme development**

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

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

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

### **22. Linkages with relevant agencies and activities**

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

### **23. International cooperation**

23.1 Efforts shall be made to promote scientific cooperation between countries in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

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



## Resolution

2010/16

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

*The Economic and Social Council*

*Recommends* to the General Assembly the adoption of the following draft resolution:

*“The General Assembly,*

*Recalling* the United Nations standards and norms in crime prevention and criminal justice primarily related to the treatment of prisoners, in particular the Standard Minimum Rules for the Treatment of Prisoners,<sup>1</sup> the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners,<sup>2</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>3</sup> and the Basic Principles for the Treatment of Prisoners,<sup>4</sup>

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

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

*Considering* the alternatives to imprisonment as provided for in the Tokyo Rules, and taking into consideration the gender specificities of, and the

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

<sup>2</sup> Resolution 1984/47, annex.

<sup>3</sup> General Assembly resolution 43/173, annex.

<sup>4</sup> General Assembly resolution 45/111, annex.

<sup>5</sup> General Assembly resolution 45/110, annex.

<sup>6</sup> Resolution 2002/12, annex.

consequent need to give priority to applying non-custodial measures to, women who have come into contact with the criminal justice system,

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

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

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

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

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

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

*Considering* that women prisoners belong to one of the vulnerable groups that have specific needs and requirements,

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

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<sup>7</sup> General Assembly resolution 55/59, annex

<sup>8</sup> General Assembly resolution 56/261, annex.

<sup>9</sup> General Assembly resolution 60/177, annex.

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

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

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

*Welcoming further* the collaboration between the World Health Organization Regional Office for Europe and the United Nations Office on Drugs and Crime, and taking note of the Kyiv Declaration on Women's Health in Prisons,<sup>11</sup>

*Taking note* of the Guidelines for the Alternative Care of Children,<sup>12</sup>

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

*Recalling also* that the participants of the four regional preparatory meetings for the Twelfth United Nations Congress on Crime Prevention and

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<sup>10</sup> United Nations publication, Sales No. E.08.IV.4.

<sup>11</sup> World Health Organization Regional Office for Europe and United Nations Office on Drugs and Crime, *Women's Health in Prison: Correcting Gender Inequity in Prison Health* (Copenhagen, 2009).

<sup>12</sup> General Assembly resolution 64/142, annex.

Criminal Justice welcomed the development of a set of supplementary rules specific to the treatment of women in detention and in custodial and non custodial settings,<sup>13</sup>

*Recalling further* the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,<sup>14</sup> in which Member States recommended that the Commission on Crime Prevention and Criminal Justice consider the draft United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders as a matter of priority for appropriate action,

1. *Notes with appreciation* the work of the expert group, at its meeting held in Bangkok from 23 to 26 November 2009, to develop supplementary rules specific to the treatment of women in detention and in custodial and non custodial settings, and the outcome of that meeting;<sup>15</sup>

2. *Expresses its gratitude* to the Government of Thailand for having acted as host to the meeting of the expert group and for the financial support provided for the organization of the meeting;

3. *Adopts* the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, annexed to the present resolution, and approves the recommendation of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice that the Rules should be known as ‘the Bangkok Rules’;

4. *Recognizes* that, in view of the great variety of legal, social, economic and geographical conditions in the world, not all of the rules can be applied equally in all places and at all times, and that they should, however, serve to stimulate a constant endeavour to overcome practical difficulties in their application, in the knowledge that they represent, as a whole, global aspirations amenable to the common goal of improving outcomes for women prisoners, their children and their communities;

5. *Encourages* Member States to adopt legislation to establish alternatives to imprisonment and to give priority to the financing of such systems, as well as to the development of the mechanisms needed for their implementation;

6. *Encourages* Member States that have developed legislation, procedures, policies or practices on women in prison or on alternatives to imprisonment for women offenders to make information available to other States and relevant international, regional and intergovernmental organizations, as well as non-

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

<sup>14</sup> A/CONF.213/18, chap. I, resolution 1.

<sup>15</sup> A/CONF.213/17.

governmental organizations, and to assist them in developing and implementing training or other activities in relation to such legislation, procedures, policies or practices;

7. *Invites* Member States to take into consideration the specific needs and realities of women as prisoners when developing relevant legislation, procedures, policies and action plans and to draw, as appropriate, on the Bangkok Rules;

8. *Also invites* Member States to collect, maintain, analyse and publish, a appropriate, specific data on women in prison and women offenders;

9. *Emphasizes* that, when sentencing or deciding on pretrial measures for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent;

10. *Requests* the United Nations Office on Drugs and Crime to provide technical assistance and advisory services to Member States, upon request, in order to develop or strengthen, as appropriate, legislation, procedures, policies and practices on women in prison and on alternatives to imprisonment for women offenders;

11. *Also requests* the United Nations Office on Drugs and Crime to take steps, as appropriate, to ensure broad dissemination of the Bangkok Rules, as a supplement to the Standard Minimum Rules for the Treatment of Prisoners<sup>16</sup> and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),<sup>81</sup> and to ensure the intensification of information activities in this area;

12. *Further requests* the United Nations Office on Drugs and Crime to increase its cooperation with other relevant United Nations entities, intergovernmental and regional organizations and non-governmental organizations in the provision of relevant assistance to countries and to identify needs and capacities of countries in order to increase country-to country and South-South cooperation;

13. *Invites* specialized agencies of the United Nations system and relevant regional and international intergovernmental and non-governmental organizations to engage in the implementation of the Bangkok Rules;

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

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<sup>16</sup> *Human Rights: A Compilation of International Instruments*, Volume I (First Part): *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34.

## Annex

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

1. The Standard Minimum Rules for the Treatment of Prisoners<sup>16</sup> apply to all prisoners without discrimination; therefore, the specific needs and realities of all prisoners, including of women prisoners, should be taken into account in their application. The Rules, adopted more than 50 years ago, did not, however, draw sufficient attention to women's particular needs. With the increase in the number of women prisoners worldwide, the need to bring more clarity to considerations that should apply to the treatment of women prisoners has acquired importance and urgency.

2. Recognizing the need to provide global standards with regard to the distinct considerations that should apply to women prisoners and offenders and taking into account a number of relevant resolutions adopted by different United Nations bodies, in which Member States were called on to respond appropriately to the needs of women offenders and prisoners, the present rules have been developed to complement and supplement, as appropriate, the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>17</sup> in connection with the treatment of women prisoners and alternatives to imprisonment for women offenders.

3. The present rules do not in any way replace the Standard Minimum Rules for the Treatment of Prisoners or the Tokyo Rules and, therefore, all relevant provisions contained in those two sets of rules continue to apply to all prisoners and offenders without discrimination. While some of the present rules bring further clarity to existing provisions in the Standard Minimum Rules for the Treatment of Prisoners and in the Tokyo Rules in their application to women prisoners and offenders, others cover new areas.

4. These rules are inspired by principles contained in various United Nations conventions and declarations and are therefore consistent with the provisions of existing international law. They are addressed to prison authorities and criminal justice agencies (including policymakers, legislators, the prosecution service, the judiciary and the probation service) involved in the administration of non-custodial sanctions and community-based measures.

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<sup>17</sup> General Assembly resolution 45/110, annex.

5. The specific requirements for addressing the situation of women offenders have been emphasized at the United Nations in various contexts. For example, in 1980, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a resolution on the specific needs of women prisoners, in which it recommended that, in the implementation of the resolutions adopted by the Sixth Congress directly or indirectly relevant to the treatment of offenders, recognition should be given to the specific problems of women prisoners and the need to provide the means for their solution; that, in countries where it was not yet done, programmes and services used as alternatives to imprisonment should be made available to women offenders on an equal basis with male offenders; and that the United Nations, the governmental and non-governmental organizations in consultative status with it and all other international organizations should make continuing efforts to ensure that the woman offender was treated fairly and equally during arrest, trial, sentence and imprisonment, particular attention being paid to the special problems which women offenders encounter, such as pregnancy and child care.<sup>18</sup>

6. The Seventh Congress,<sup>19</sup> the Eighth Congress<sup>20</sup> and the Ninth Congress<sup>21</sup> also made specific recommendations concerning women prisoners.

7. In the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century,<sup>22</sup> adopted also by the Tenth Congress, Member States committed themselves to taking into account and addressing, within the United Nations crime prevention and criminal justice programme, as well as within national crime prevention and criminal justice strategies, any disparate impact of programmes and policies on women and men (para. 11); and to the development of action-oriented policy recommendations based on the special needs of women as prisoners and offenders (para. 12). The plans of action for the implementation of the Vienna Declaration<sup>23</sup> contain a separate section (sect. XIII) devoted to specific recommended measures to follow up on the

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<sup>18</sup> Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August–5 September 1980: report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B, resolution 9 (on the fair treatment of women by the criminal justice system).

<sup>19</sup> Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August–6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E, resolution 6 (on the fair treatment of women by the criminal justice system).

<sup>20</sup> Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111, annex); Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C, resolutions 17 (on pretrial detention), 19 (on the management of criminal justice and development of sentencing policies) and 21 (on international and interregional cooperation in prison management and community-based sanctions and other matters).

<sup>21</sup> A/CONF.169/16/Rev.1, chap. I, resolutions 1 (on recommendations on the four substantive topics of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders), 5 (on the practical implementation of the Standard Minimum Rules for the Treatment of Prisoners) and 8 (on the elimination of violence against women).

<sup>22</sup> General Assembly resolution 55/59, annex.

<sup>23</sup> General Assembly resolution 56/261, annex.

commitments undertaken in paragraphs 11 and 12 of the Declaration, including that of States reviewing, evaluating and, if necessary, modifying their legislation, policies, procedures and practices relating to criminal matters, in a manner consistent with their legal systems, in order to ensure that women are treated fairly by the criminal justice system.

8. The General Assembly, in its resolution 58/183 of 22 December 2003, entitled “Human rights in the administration of justice”, called for increased attention to be devoted to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they could be addressed.

9. In its resolution 61/143 of 19 December 2006, entitled “Intensification of efforts to eliminate all forms of violence against women”, the General Assembly stressed that “violence against women” meant any act of genderbased violence resulting in, or likely to result in, physical, sexual or psychological harm or suffering to women, including arbitrary deprivation of liberty, whether occurring in public or in private life, and urged States to review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs discriminating against women or having a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they existed, complied with international human rights obligations, commitments and principles, including the principle of non-discrimination; to take positive measures to address structural causes of violence against women and to strengthen prevention efforts addressing discriminatory practices and social norms, including with regard to women in need of special attention, such as women in institutions or in detention; and to provide training and capacity-building on gender equality and women’s rights for law enforcement personnel and the judiciary. The resolution is an acknowledgement of the fact that violence against women has specific implications for women’s contact with the criminal justice system, as well as their right to be free of victimization while imprisoned. Physical and psychological safety is critical to ensuring human rights and improving outcomes for women offenders, of which the present rules take account.

10. Finally, in the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, adopted by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice on 25 April 2005,<sup>60</sup> Member States declared that they were committed to the development and maintenance of fair and efficient criminal justice institutions, including the humane treatment of all those in pretrial and correctional facilities, in accordance with applicable international standards (para. 8); and they recommended that the Commission on Crime Prevention and Criminal Justice should give consideration to reviewing the adequacy of standards and norms in relation to prison management and prisoners (para. 30).



11. As with the Standard Minimum Rules for the Treatment of Prisoners, in view of the great variety of legal, social, economic and geographical conditions worldwide, it is evident that not all of the following rules can be equally applied in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in how they are applied, in the knowledge that they represent, as a whole, the global aspirations considered by the United Nations as leading to the common goal of improving outcomes for women prisoners, their children and their communities.

12. Some of these rules address issues applicable to both men and women prisoners, including those relating to parental responsibilities, some medical services, searching procedures and the like, although the rules are mainly concerned with the needs of women and their children. However, as the focus includes the children of imprisoned mothers, there is a need to recognize the central role of both parents in the lives of children. Accordingly, some of these rules would apply equally to male prisoners and offenders who are fathers.

## **Introduction**

13. The following rules do not in any way replace the Standard Minimum Rules for the Treatment of Prisoners and the Tokyo Rules. Therefore, all provisions contained in those two sets of rules continue to apply to all prisoners and offenders without discrimination.

14. Section I of the present rules, covering the general management of institutions, is applicable to all categories of women deprived of their liberty, including criminal or civil, untried or convicted women prisoners, as well as women subject to “security measures” or corrective measures ordered by a judge.

15. Section II contains rules applicable only to the special categories dealt with in each subsection. Nevertheless, the rules under subsection A, applicable to prisoners under sentence, shall be equally applicable to the category of prisoners dealt with in subsection B, provided they do not conflict with the rules governing that category of women and are for their benefit.

16. Subsections A and B both provide additional rules for the treatment of juvenile female prisoners. It is important to note, however, that separate strategies and policies in accordance with international standards, in particular the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules),<sup>24</sup> the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),<sup>25</sup> the United Nations Rules for the Protection of Juveniles Deprived of their Liberty<sup>26</sup> and the Guidelines for Action

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<sup>24</sup> General Assembly resolution 40/33, annex

<sup>25</sup> General Assembly resolution 45/112, annex.

<sup>26</sup> General Assembly resolution 45/113, annex.

on Children in the Criminal Justice System,<sup>27</sup> need to be designed for the treatment and rehabilitation of this category of prisoners, while institutionalization shall be avoided to the maximum possible extent.

17. Section III contains rules covering the application of non-custodial sanctions and measures for women and juvenile female offenders, including on arrest and at the pretrial, sentencing and post-sentencing stages of the criminal justice process.

18. Section IV contains rules on research, planning, evaluation, public awareness-raising and sharing of information, and is applicable to all categories of female offenders covered in these rules.

## **I. Rules of general application**

### **1. Basic principle**

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

#### *Rule 1*

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

#### *Rule 2*

1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.

2. Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

### **3. Register**

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

#### *Rule 3*

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<sup>27</sup> Resolution 1997/30, annex.

1. The number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status.

2. All information relating to the children's identity shall be kept confidential, and the use of such information shall always comply with the requirement to take into account the best interests of the children.

#### **4. Allocation**

##### *Rule 4*

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

#### **5. Personal hygiene**

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

##### *Rule 5*

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

#### **6. Health-care services**

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

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

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

#### *Rule 6*

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

(a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling;

(b) Mental health care needs, including post-traumatic stress disorder and risk of suicide and self-harm;

(c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues;

(d) The existence of drug dependency;

(e) Sexual abuse and other forms of violence that may have been suffered prior to admission.

#### *Rule 7*

1. If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.

2. Whether or not the woman chooses to take legal action, prison authorities shall endeavour to ensure that she has immediate access to specialized psychological support or counselling.

3. Specific measures shall be developed to avoid any form of retaliation against those making such reports or taking legal action.

#### *Rule 8*

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

#### *Rule 9*

If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any

treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided.

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

*Rule 10*

1. Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prisoners.

2. If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination.

*Rule 11*

1. Only medical staff shall be present during medical examinations unless the doctor is of the view that exceptional circumstances exist or the doctor requests a member of the prison staff to be present for security reasons or the woman prisoner specifically requests the presence of a member of staff as indicated in rule 10, paragraph 2 above.

2. If it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.

**(c) Mental health and care**

*Rule 12*

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

*Rule 13*

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

#### **(d) HIV prevention, treatment, care and support**

##### *Rule 14*

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

#### **(e) Substance abuse treatment programmes**

##### *Rule 15*

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

#### **(f) Suicide and self-harm prevention**

##### *Rule 16*

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

#### **(g) Preventive health care services**

##### *Rule 17*

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

##### *Rule 18*

Preventive health care measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynaecological cancer, shall be

offered to women prisoners on an equal basis with women of the same age in the community.

## **7. Safety and security**

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

### **(a) Searches**

#### *Rule 19*

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

#### *Rule 20*

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

#### *Rule 21*

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

### **(b) Discipline and punishment**

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

#### *Rule 22*

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

#### *Rule 23*

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

### **(c) Instruments of restraint**

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

#### *Rule 24*

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

### **(d) Information to and complaints by prisoners; inspections**

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

#### *Rule 25*

1. Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation.

2. Women prisoners who have been subjected to sexual abuse, and especially those who have become pregnant as a result, shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid.

3. In order to monitor the conditions of detention and treatment of women prisoners, inspectorates, visiting or monitoring boards or supervisory bodies shall include women members.

### **8. Contact with the outside world**

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

#### *Rule 26*

Women prisoners' contact with their families, including their children, their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to



counterbalance disadvantages faced by women detained in institutions located far from their homes.

*Rule 27*

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

*Rule 28*

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

**9. Institutional personnel and training**

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

*Rule 29*

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

*Rule 30*

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

*Rule 31*

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

### *Rule 32*

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

### *Rule 33*

1. All staff assigned to work with women prisoners shall receive training relating to the gender-specific needs and human rights of women prisoners.

2. Basic training shall be provided for prison staff working in women's prisons on the main issues relating to women's health, in addition to first aid and basic medicine.

3. Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.

### *Rule 34*

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

### *Rule 35*

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

## **10. Juvenile female prisoners**

### *Rule 36*

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

*Rule 37*

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

*Rule 38*

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

*Rule 39*

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

## **II. Rules applicable to special categories**

### **A. Prisoners under sentence**

#### **1. Classification and individualization**

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

*Rule 40*

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

*Rule 41*

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

(a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women prisoners;

(b) Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other caretaking responsibilities, to be taken into account in the allocation and sentence planning process;

(c) Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs;

(d) Ensure that those with mental health care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.

## **2. Prison regime**

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

### *Rule 42*

1. Women prisoners shall have access to a balanced and comprehensive programme of activities, which take account of gender appropriate needs.

2. The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities.

3. Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison.

4. Particular efforts shall be made to provide appropriate services for women prisoners who have psychosocial support needs, especially those who have been subjected to physical, mental or sexual abuse.

## **Social relations and aftercare**

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

### *Rule 43*

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

*Rule 44*

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

*Rule 45*

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

*Rule 46*

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

*Rule 47*

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

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

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

*Rule 48*

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

2. Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.

3. The medical and nutritional needs of women prisoners who have recently given birth, but whose babies are not with them in prison, shall be included in treatment programmes.

*Rule 49*

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

*Rule 50*

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

*Rule 51*

1. Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services.

2. The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

*Rule 52*

1. Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.

2. The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.

3. After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

#### **4. Foreign nationals**

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

##### *Rule 53*

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

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

#### **5. Minorities and indigenous peoples**

##### *Rule 54*

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

##### *Rule 55*

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

#### **B. Prisoners under arrest or awaiting trial**

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

##### *Rule 56*

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

rule 58 below, with regard to alternatives to pretrial detention.)

### **III. Non-custodial measures**

#### *Rule 57*

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

#### *Rule 58*

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

#### *Rule 59*

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

#### *Rule 60*

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



#### *Rule 61*

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

#### *Rule 62*

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

### **1. Post-sentencing dispositions**

#### *Rule 63*

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

### **2. Pregnant women and women with dependent children**

#### *Rule 64*

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

### **3. Juvenile female offenders**

#### *Rule 65*

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

#### **4. Foreign nationals**

##### *Rule 66*

Maximum effort shall be made to ratify the United Nations Convention against Transnational Organized Crime<sup>28</sup> and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention<sup>29</sup> to fully implement their provisions so as to provide maximum protection to victims of trafficking in order to avoid secondary victimization of many foreign-national women.

#### **IV. Research, planning, evaluation and public awareness-raising**

##### **1. Research, planning and evaluation**

##### *Rule 67*

Efforts shall be made to organize and promote comprehensive, result oriented research on the offences committed by women, the reasons that trigger women's confrontation with the criminal justice system, the impact of secondary criminalization and imprisonment on women, the characteristics of women offenders, as well as programmes designed to reduce reoffending by women, as a basis for effective planning, programme development and policy formulation to respond to the social reintegration needs of women offenders.

##### *Rule 68*

Efforts shall be made to organize and promote research on the number of children affected by their mothers' confrontation with the criminal justice system, and imprisonment in particular, and the impact of this on the children, in order to contribute to policy formulation and programme development, taking into account the best interests of the children.

##### *Rule 69*

Efforts shall be made to review, evaluate and make public periodically the trends, problems and factors associated with offending behaviour in women and the effectiveness in responding to the social reintegration needs of women offenders, as well as their children, in order to reduce the stigmatization and negative impact of those women's confrontation with the criminal justice system on them.

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<sup>28</sup> United Nations, *Treaty Series*, vol. 2225, No. 39574.

<sup>29</sup> *Ibid.*, vol. 2237, No. 39574.

## **2. Raising public awareness, sharing information and training**

### *Rule 70*

1. The media and the public shall be informed about the reasons that lead to women's entrapment in the criminal justice system and the most effective ways to respond to it, in order to enable women's social reintegration, taking into account the best interests of their children.

2. Publication and dissemination of research and good practice examples shall form comprehensive elements of policies that aim to improve the outcomes and the fairness to women and their children of criminal justice responses to women offenders.

3. The media, the public and those with professional responsibility in matters concerning women prisoners and offenders shall be provided regularly with factual information about the matters covered in these rules and about their implementation.

4. Training programmes on the present rules and the results of research shall be developed and implemented for relevant criminal justice officials to raise their awareness and sensitize them to their provisions contained therein."

*45th plenary meeting  
22 July 2010*

## **United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")**

**Adopted by General Assembly resolution 40/33 of 29 November 1985**

### **Part one**

#### **GENERAL PRINCIPLES**

##### **1. Fundamental perspectives**

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

##### **Commentary**

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

## **2. Scope of the Rules and definitions used**

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

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

( a ) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

( b ) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

( c ) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

( a ) To meet the varying needs of juvenile offenders, while protecting their basic rights;

( b ) To meet the need of society;

To implement the following rules thoroughly and fairly.

### **Commentary**

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

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

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

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

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

#### Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

( a ) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

( b ) Juvenile welfare and care proceedings (rule 3.2);

( c ) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

### **4 . Age of criminal responsibility**

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

#### Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

### **5. Aims of juvenile justice**

5. 1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

#### Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

## **6. Scope of discretion**

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

### **Commentary**

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

## **7 . Rights of juveniles**

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

### **Commentary**

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments (See also rule 14.). The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

## **8. Protection of privacy**

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

### **Commentary**

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

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 2 1.)

## **9. Saving clause**

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

### **Commentary**

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards-such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application. (See also rule 27.)

## **Part two**

### **INVESTIGATION AND PROSECUTION**

## **10. Initial contact**

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.



13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

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

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

#### Commentary

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

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

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

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, inter alia , should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

### Part three

## ADJUDICATION AND DISPOSITION

### 14. Competent authority to adjudicate

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

#### Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who

preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

## **15. Legal counsel, parents and guardians**

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

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

### **Commentary**

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

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

## **16. Social inquiry reports**

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

### **Commentary**

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

## **17. Guiding principles in adjudication and disposition**

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

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

( b ) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

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

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

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

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

#### Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

( a ) Rehabilitation versus just desert;

( b ) Assistance versus repression and punishment;

( c ) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;

( d ) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 ( b ) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 ( b ) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed,

bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 ( c ) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

## **18. Various disposition measures**

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- ( a ) Care, guidance and supervision orders;
- ( b ) Probation;
- ( c ) Community service orders;
- ( d ) Financial penalties, compensation and restitution;
- ( e ) Intermediate treatment and other treatment orders;
- ( f ) Orders to participate in group counselling and similar activities;
- ( g ) Orders concerning foster care, living communities or other educational settings;
- ( h ) Other relevant orders.

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

### **Commentary**

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

## **19. Least possible use of institutionalization**

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

### **Commentary**

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

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

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

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

### **Commentary**

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

## **21. Records**

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

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

### **Commentary**

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the

interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

## **22. Need for professionalism and training**

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

### **Commentary**

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

## **Part four**

### **NON-INSTITUTIONAL TREATMENT**

## **23. Effective implementation of disposition**

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

### **Commentary**

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'exécution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

#### **24 . Provision of needed assistance**

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

##### **Commentary**

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

#### **25. Mobilization of volunteers and other community services**

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

##### **Commentary**

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

### **Part five**

## **INSTITUTIONAL TREATMENT**

#### **26. Objectives of institutional treatment**

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development .

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

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

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

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

#### Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

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

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

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

### **27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations**

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

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

#### Commentary

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had



a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

## **28. Frequent and early recourse to conditional release**

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

### **Commentary**

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

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

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

### **Commentary**

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide

guidance and structural support as an important step towards successful reintegration into society.

## **Part six**

### **RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION**

#### **30. Research as a basis for planning, policy formulation and evaluation**

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

#### **Commentary**

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

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



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45/112. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as other international instruments pertaining to the rights and well-being of young persons, including relevant standards established by the International Labour Organisation,

Bearing in mind also the Declaration of the Rights of the Child, the Convention on the Rights of the Child, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),

Recalling General Assembly resolution 40/33 of 29 November 1985, by which the Assembly adopted the Beijing Rules recommended by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling that the General Assembly, in its resolution 40/35 of 29 November 1985, called for the development of standards for the prevention of juvenile delinquency which would assist Member States in formulating and implementing specialized programmes and policies, emphasizing assistance, care and community involvement, and called upon the Economic and Social Council to report to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the progress achieved with respect to these standards, for review and action,

Recalling also that the Economic and Social Council, in section II of its resolution 1986/10 of 21 May 1986, requested the Eighth Congress to consider the draft standards for the prevention of juvenile delinquency, with a view to their adoption,

Recognizing the need to develop national, regional and international approaches and strategies for the prevention of juvenile delinquency,

Affirming that every child has basic human rights, including, in particular, access to free education,

conflict with the law but who are abandoned, neglected, abused, exposed to drug abuse, and are in marginal circumstances and in general at social risk,

Taking into account the benefits of progressive policies for the prevention of delinquency and for the welfare of the community,

1. Notes with satisfaction the substantive work accomplished by the Committee on Crime Prevention and Control and the Secretary General in the formulation of the guidelines for the prevention of juvenile delinquency;

2. Expresses appreciation for the valuable collaboration of the Arab Security Studies and Training Centre at Riyadh, in hosting the International Meeting of Experts on the Development of the United Nations Draft Guidelines for the Prevention of Juvenile Delinquency, held at Riyadh from 28 February to 1 March 1988, in co-operation with the United Nations Office at Vienna;

3. Adopts the United Nations Guidelines for the Prevention of Juvenile Delinquency contained in the annex to the present resolution, to be designated "the Riyadh Guidelines";

4. Calls upon Member States, in their comprehensive crime prevention plans, to apply the Riyadh Guidelines in national law, policy and practice and to bring them to the attention of relevant authorities, including policy makers, juvenile justice personnel, educators, the mass media, practitioners and scholars;

5. Requests the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Riyadh Guidelines in all of the official languages of the United Nations;

6. Requests the Secretary-General and invites all relevant United Nations offices and interested institutions, in particular, the United Nations Children's Fund, as well as individual experts, to make a concerted effort to promote the application of the Riyadh Guidelines;

7. Also requests the Secretary General to intensify research on particular situations of social risk and on the exploitation of children, including the use of children as instruments of criminality, with a view to developing comprehensive countermeasures and to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

8. Further requests the Secretary-General to issue a composite manual on juvenile justice standards, containing the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines on the Prevention of Juvenile Delinquency (The Riyadh Guidelines), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and a set of full commentaries on their provisions;

9. Urges all relevant bodies within the United Nations system to collaborate with the Secretary-General in taking appropriate measures to ensure the implementation of the present resolution;

10. Invites the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument with a view to promoting the application of its provisions;

11. Invites Member States to support strongly the organization of technical and scientific workshops, and pilot and demonstration projects on practical issues and policy matters relating to the application of the provisions of the Riyadh Guidelines and to the establishment of concrete measures for community-based services designed to respond to the special

needs, problems and concerns of young persons, and requests the Secretary-General to co-ordinate efforts in this respect;

12. Also invites Member States to inform the Secretary-General on the implementation of the Riyadh Guidelines and to report regularly to the Committee on Crime Prevention and Control on the results achieved;

13. Recommends that the Committee on Crime Prevention and Control request the Ninth Congress to review the progress made in the promotion and application of the Riyadh Guidelines and the recommendations contained in the present resolution, under a separate agenda item on juvenile justice and keep the matter under constant review.

#### ANNEX

#### United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

##### I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with

the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

#### II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of the Rights of the Child and the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

#### III. GENERAL PREVENTION

9. Comprehensive prevention plans should be instituted at every level of government and include the following:

(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;

(d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(e) Methods for effectively reducing the opportunity to commit delinquent acts;

(f) Community involvement through a wide range of services and programmes;

(g) Close interdisciplinary co-operation between national, state, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialized personnel at all levels.

#### IV. SOCIALIZATION PROCESSES



10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

#### A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

#### B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and



learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extra-curricular activities of interest to young persons, in co operation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision making.

#### C. Community

32. Community based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

#### D. Mass media

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the

existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavouredly, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

## V. SOCIAL POLICY

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Governments should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

## VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

## VII. RESEARCH, POLICY DEVELOPMENT AND CO-ORDINATION

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, educational and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific co-operation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and co ordination on various questions related to children, juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in co operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.



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45/113. United Nations Rules for the Protection of Juveniles  
Deprived of their Liberty

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child, as well as other international instruments relating to the protection of the rights and well-being of young persons,

Bearing in mind also the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind further the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the General Assembly by its resolution 43/173 of 9 December 1988 and contained in the annex thereto,

Recalling the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),

Recalling also resolution 21 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which the Congress called for the development of rules for the protection of juveniles deprived of their liberty,

Recalling further that the Economic and Social Council, in section II of its resolution 1986/10 of 21 May 1986, requested the Secretary-General to report on progress achieved in the development of the rules to the Committee on Crime Prevention and Control at its tenth session and requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the proposed rules with a view to their adoption,

Alarmed at the conditions and circumstances under which juveniles are being deprived of their liberty world wide,

Aware that juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights,

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Concerned that many systems do not differentiate between adults and juveniles at various stages of the administration of justice and that juveniles are therefore being held in gaols and facilities with adults,

1. Affirms that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period;

2. Recognizes that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights and well-being should be guaranteed during and after the period when they are deprived of their liberty;

3. Notes with appreciation the valuable work of the Secretariat and the collaboration which has been established between the Secretariat and experts, practitioners, intergovernmental organizations, the non-governmental community, particularly Amnesty International, Defence for Children International and Radda Barnen International (Swedish Save the Children Federation), and scientific institutions concerned with the rights of children and juvenile justice in the development of the United Nations draft Rules for the Protection of Juveniles Deprived of their Liberty;

4. Adopts the United Nations Rules for the Protection of Juveniles Deprived of their Liberty contained in the annex to the present resolution;

5. Calls upon the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders;

6. Invites Member States to adapt, wherever necessary, their national legislation, policies and practices, particularly in the training of all categories of juvenile justice personnel, to the spirit of the Rules, and to bring them to the attention of relevant authorities and the public in general;

7. Also invites Member States to inform the Secretary-General of their efforts to apply the Rules in law, policy and practice and to report regularly to the Committee on Crime Prevention and Control on the results achieved in their implementation;

8. Requests the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Rules in all of the official languages of the United Nations;

9. Requests the Secretary-General to conduct comparative research, pursue the requisite collaboration and devise strategies to deal with the different categories of serious and persistent young offenders, and to prepare a policy-oriented report thereon for submission to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

10. Also requests the Secretary-General and urges Member States to allocate the necessary resources to ensure the successful application and implementation of the Rules, in particular in the areas of recruitment, training and exchange of all categories of juvenile justice personnel;

11. Urges all relevant bodies of the United Nations system, in particular the United Nations Children's Fund, the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders and all concerned intergovernmental and non-governmental organizations, to collaborate with the Secretary-General and to take the necessary measures to ensure a concerted and sustained effort within their respective fields of technical competence to promote the application of the Rules.

Protection of Minorities of the Commission on Human Rights to consider this new international instrument, with a view to promoting the application of its provisions;

13. Requests the Ninth Congress to review the progress made on the promotion and application of the Rules and on the recommendations contained in the present resolution, under a separate agenda item on juvenile justice.

#### ANNEX

### United Nations Rules for the Protection of Juveniles Deprived of their Liberty

#### I. FUNDAMENTAL PERSPECTIVES

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

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

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

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

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, ...

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

## II. SCOPE AND APPLICATION OF THE RULES

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

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

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

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

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

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

## III. JUVENILES UNDER ARREST OR AWAITING TRIAL

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

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of...



necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

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

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

#### IV. THE MANAGEMENT OF JUVENILE FACILITIES

##### A. Records

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

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

##### B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

(a) Information on the identity of the juvenile;

(b) The fact of and reasons for commitment and the authority therefor;

(c) The day and hour of admission, transfer and release;

(d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;

(e) Details of known physical and mental health problems, including drug and alcohol abuse.

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

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and

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public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

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

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

#### C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

#### D. Physical environment and accommodation

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

32. The design of detention facilities for juveniles and the physical

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stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, account being taken of local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

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

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

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

#### E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.



detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

#### F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

#### G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or

#### H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

#### I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a

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

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

#### J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

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

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

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

#### K. Limitations of physical restraint and the use of force

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

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

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

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

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

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

- (a) Conduct constituting a disciplinary offence;
- (b) Type and duration of disciplinary sanctions that may be inflicted;
- (c) The authority competent to impose such sanctions;
- (d) The authority competent to consider appeals.

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

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

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

#### M. Inspection and complaints

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

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental



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

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

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

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

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

#### N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

#### V. PERSONNEL

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.



professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance co-operation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

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

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

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

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

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

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

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

### **Article 1**

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

#### **Commentary :**

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

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

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

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

### **Article 2**

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

#### **Commentary :**

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

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

### **Article 3**

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

#### **Commentary :**

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

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

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

#### **Article 4**

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

#### **Commentary :**

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

#### **Article 5**

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

#### **Commentary :**

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

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

( b ) The Declaration defines torture as follows:

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

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

#### **Article 6**

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

**Commentary :**

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

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

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

**Article 7**

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

**Commentary :**

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

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

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

**Article 8**

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

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

**Commentary :**

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

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

other penalties because they have reported that a violation of this Code has occurred or is about to occur.

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

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

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

## **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**

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

Whereas the work of law enforcement officials<sup>1</sup> is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

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

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

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

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

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

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

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

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

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

### **General provisions**

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow

for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

( a ) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

( b ) Minimize damage and injury, and respect and preserve human life;

( c ) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

( d ) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

### **Special provisions**

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

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

( a ) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

( b ) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

( c ) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

( d ) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

( e ) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

( f ) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

### **Policing unlawful assemblies**

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

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

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

### **Policing persons in custody or detention**

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

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

### **Qualifications, training and counselling**

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

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the



understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

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

### **Reporting and review procedures**

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 ( f ). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

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



# General Assembly

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## Human Rights Council

Thirty-first session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

Albania,\* Andorra,\* Argentina,\* Armenia,\* Australia,\* Austria,\* Belgium,\* Benin,\* Bosnia and Herzegovina,\* Brazil,\* Bulgaria,\* Canada,\* Chile,\* Costa Rica,\* Croatia,\* Cyprus,\* Czech Republic,\* Denmark,\* Djibouti,\* Estonia,\* Finland,\* France,\* Georgia,\* Germany,\* Ghana,\* Greece,\* Honduras,\* Hungary,\* Iceland,\* Ireland,\* Italy,\* Latvia,\* Liechtenstein,\* Lithuania,\* Luxembourg,\* Malta,\* Mexico,\* Montenegro,\* Morocco,\* New Zealand,\* Norway,\* Panama,\* Paraguay,\* Peru,\* Poland,\* Portugal,\* Republic of Korea,\* Republic of Moldova,\* Romania,\* San Marino,\* Slovakia,\* Slovenia,\* Spain,\* Sweden,\* Switzerland,\* the former Yugoslav Republic of Macedonia,\* Tunisia,\* Turkey,\* Ukraine,\* United Kingdom of Great Britain and Northern Ireland,\* United States of America,\* Uruguay:\* draft resolution

### **31/... Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention**

*The Human Rights Council,*

*Recalling* all resolutions on torture and other cruel, inhuman or degrading treatment or punishment adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council,

*Recognizing* that law enforcement officials play a vital role in the protection of the right to life, liberty and security, as enshrined in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

*Recognizing also* the role of law enforcement officials in serving the community and protecting all persons against acts of torture and other cruel, inhuman or degrading treatment or punishment, consistent with the important role of their profession, and that, in the performance of their duty, law enforcement officials are obligated to respect and protect the human rights of all persons,

\* Non-member State of the Human Rights Council.



*Recalling* the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)<sup>1</sup> and the adoption of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),<sup>2</sup>

*Recalling also* that accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication,

*Recalling further* article 11 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, according to which 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,

*Mindful* of existing principles, guidelines and standards relevant to interrogation, including the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, , and also mindful of the Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, adopted by the African Commission on Human and Peoples' Rights, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the Inter-American Commission on Human Rights, and the revised standards for law enforcement agencies, issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,

1. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat all acts of torture and other cruel, inhuman or degrading treatment or punishment, stresses that all acts of torture must be made offences under domestic criminal law punishable by appropriate penalties that take into account their grave nature, and calls upon States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment;

2. *Urges* all States that have not yet done so to become parties to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and to give early consideration to signing and ratifying the Optional Protocol thereto as a matter of priority;

3. *Welcomes* the Convention against Torture Initiative, launched in March 2014 on the thirtieth anniversary of the adoption of the Convention, to achieve the universal ratification and improved implementation of the Convention by 2024, as well as related regional initiatives on the prevention and eradication of torture;

4. *Urges* States to adopt, implement and comply fully with legal and procedural safeguards against torture and other cruel, inhuman or degrading treatment or punishment, as well as to ensure that the judiciary, and where relevant the prosecution, can effectively ensure compliance with such safeguards;

5. *Stresses* that effective legal and procedural safeguards for the prevention of torture and other cruel, inhuman or degrading treatment or punishment include ensuring that any individual arrested or detained on a criminal charge is brought promptly before a judge or other independent judicial officer, and permitting prompt and regular medical care and legal counsel at any stage of detention as well as visits by family members;

<sup>1</sup> General Assembly resolution 65/229, annex.

<sup>2</sup> General Assembly resolution 70/175, annex.

6. *Also stresses* the obligation of States to ensure that anyone who is arrested is informed at the time of arrest of the reasons for the arrest, and is promptly informed of any charges against him or her in accessible forms of communication, including in a language that he or she understands, and be provided with information about and an explanation of his or her rights;

7. *Calls upon* States in the context of criminal proceedings to ensure access to lawyers from the outset of custody and during all interrogations and judicial proceedings, as well as timely access of lawyers to appropriate information to enable them to provide effective legal assistance to their clients;

8. *Encourages* States to ensure that a proper and consented medical examination by a medical practitioner is available to persons in police custody and pretrial detention as promptly as possible after their admission to the place of detention, and to ensure that the results of every examination and relevant statements by the detainee and the medical practitioner's conclusions are duly recorded and made available to the detainee in accordance with relevant rules of domestic law;

9. *Also encourages* States to ensure the compilation and maintenance of up-to-date official registers and/or records of persons in police custody or pretrial detention, which, as a minimum, contain information about (a) the reasons for the arrest; (b) the time of the arrest and the taking of the arrested person to a place of custody, as well as that of his or her first appearance before a judicial or other authority; (c) the identity of the law enforcement officials concerned; (d) precise information concerning the place of custody; and to communicate such records to the detained person or his or her counsel, as prescribed by law;

10. *Stresses* the importance of developing corroborating methods of crime investigation to eliminate or reduce sole reliance on confessions for the purpose of securing convictions, and the importance of seeking corroborative evidence through all available modern, scientific methods of crime investigation, including through appropriate investment in equipment, skilled human resources and international cooperation on capacity-building;

11. *Also stresses* the importance of keeping under systematic review interrogation rules, instructions, methods and practices, and of developing domestic guidelines on how to conduct interrogations with a view to preventing any cases of torture and other cruel, inhuman or degrading treatment or punishment;

12. *Urges* States during reviews of domestic interrogation rules, instructions, methods and practices to ensure that they observe their international obligations, that safeguards against torture and other cruel, inhuman or degrading treatment or punishment are in place, and that during such reviews they are mindful of the particular importance of safeguards, to ensure that:

(a) The physical environment and conditions during interrogation are humane;

(b) The length of interrogation sessions are in accordance with obligations under international human rights law, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Interrogated persons are not subjected to coercive methods of interrogation that impair their capacity of decision or their judgement, or forces them to confess, incriminate themselves or testify against any other person;

(d) All persons during police custody and pretrial detention subjected to interrogation are afforded the right to the presence and assistance of a lawyer and, if

necessary, the presence and services of a properly qualified interpreter during interrogation sessions;

(e) Records of interrogation sessions during police custody and pretrial detention, including their duration and the intervals between sessions, as well as the identity of the law enforcement official who conduct the interrogations and other persons present, are kept accurately and that such records are stored safely;

(f) Rules are in place to obligate law enforcement officials to report instances of torture or other cruel, inhuman or degrading treatment or punishment to their superior authorities, with appropriate sanctions for non-reporting, and, where necessary, that independent organs are vested with reviewing or remedial power;

(g) Consideration is given at all times to the personal circumstances of the interrogated person;

13. *Stresses* that States must ensure that no statement that is established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, urges States to extend that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, and recognizes that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

14. *Calls upon* States to include education and information regarding the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment in the training of law enforcement personnel, which may include training on, inter alia, the use of force and all available modern scientific methods for crime investigation and the critical importance of reporting instances of torture or other cruel, inhuman or degrading treatment or punishment to superior authorities;

15. *Emphasizes* that it is important, for the ability of law enforcement officials to play their role in safeguarding the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, that States ensure the proper functioning of the criminal justice system, particularly by taking effective measures for combating corruption, establishing proper legal aid programmes and providing adequate selection, training and remuneration of law enforcement officials;

16. *Stresses* that inspections of places of police custody and pretrial detention by an independent authority contribute to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, and that, to be fully effective, such visits should be regular and able to be made unannounced, and the authority should be empowered to examine all issues related to the treatment of persons in police custody and pretrial detention and to interview detained persons in full confidentiality, subject to reasonable conditions to ensure security and good order in such places;

17. *Emphasizes* that States are obligated to ensure that any person who alleges to have been subjected to torture or other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction has the right to complain to the competent authorities, and that steps are taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his or her complaint or any evidence given;

18. *Stresses* that an independent, competent domestic authority must promptly, effectively and impartially investigate all allegations of torture or other cruel, inhuman or degrading treatment or punishment, as well as wherever there is reasonable ground to believe that such an act has been committed, and that those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate such acts must be held responsible, brought

to justice and punished in a manner commensurate with the severity of the offence, including officials in charge of any place of detention or other place where persons are deprived of their liberty where the prohibited act is found to have been committed;

19. *Invites* the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and other relevant special procedures, within their respective mandates, to take the present resolution into account in their future work;

20. *Welcomes* the work of the Special Rapporteur and takes note of his latest report;<sup>3</sup>

21. *Requests* the Office of the United Nations High Commissioner of Human Rights to convene, in 2017, an intersessional, full-day seminar with the participation of States, relevant United Nations agencies, funds and programmes, and other relevant stakeholders, with interpretation in the six official languages of the United Nations, with the objective of exchanging national experiences and practices on the implementation of effective safeguards to prevent torture and other cruel, inhuman or degrading treatment or punishment during police custody and pretrial detention, and invites the Office to cooperate with relevant United Nations organizations and other relevant stakeholders in the preparation of the seminar;

22. *Also requests* the Office of the High Commissioner to prepare a summary report of the above-mentioned seminar, and to submit the report to the Human Rights Council at its thirty-seventh session.

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<sup>3</sup> A/HRC/31/57.



# General Assembly

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## Resolution adopted by the General Assembly on 16 December 2005

[on the report of the Third Committee (A/60/509/Add.1)]

### **60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**

*The General Assembly,*

*Guided* by the Charter of the United Nations, the Universal Declaration of Human Rights,<sup>1</sup> the International Covenants on Human Rights,<sup>2</sup> other relevant human rights instruments and the Vienna Declaration and Programme of Action,<sup>3</sup>

*Affirming* the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels,

*Recognizing* that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms international law in the field,

*Recalling* the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law by the Commission on Human Rights in its resolution 2005/35 of 19 April 2005<sup>4</sup> and by the Economic and Social Council in its resolution 2005/30 of 25 July 2005, in which the Council recommended to the General Assembly that it adopt the Basic Principles and Guidelines,

1. *Adopts* the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law annexed to the present resolution;

<sup>1</sup> Resolution 217 A (III).

<sup>2</sup> Resolution 2200 A (XXI), annex.

<sup>3</sup> A/CONF.157/24 (Part I), chap. III.

<sup>4</sup> See *Official Records of the Economic and Social Council, 2005, Supplement No. 3 and corrigendum (E/2005/23 and Corr.1)*, chap. II, sect. A.

2. *Recommends* that States take the Basic Principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general;

3. *Requests* the Secretary-General to take steps to ensure the widest possible dissemination of the Basic Principles and Guidelines in all the official languages of the United Nations, including by transmitting them to Governments and intergovernmental and non-governmental organizations and by including the Basic Principles and Guidelines in the United Nations publication entitled *Human Rights: A Compilation of International Instruments*.

64th plenary meeting  
16 December 2005

## **Annex**

### **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**

#### **Preamble**

*The General Assembly,*

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights,<sup>1</sup> article 2 of the International Covenant on Civil and Political Rights,<sup>2</sup> article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>5</sup> article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>6</sup> and article 39 of the Convention on the Rights of the Child,<sup>7</sup> and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV),<sup>8</sup> article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977,<sup>9</sup> and articles 68 and 75 of the Rome Statute of the International Criminal Court,<sup>10</sup>

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<sup>5</sup> Resolution 2106 A (XX), annex.

<sup>6</sup> United Nations, *Treaty Series*, vol. 1465, No. 24841.

<sup>7</sup> *Ibid.*, vol. 1577, No. 27531.

<sup>8</sup> See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

<sup>9</sup> United Nations, *Treaty Series*, vol. 1125, No. 17512.

<sup>10</sup> *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June–17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.



*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular article 7 of the African Charter on Human and Peoples' Rights,<sup>11</sup> article 25 of the American Convention on Human Rights,<sup>12</sup> and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>13</sup>

*Recalling* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and General Assembly resolution 40/34 of 29 November 1985 by which the Assembly adopted the text recommended by the Congress,

*Reaffirming* the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

*Noting* that the Rome Statute of the International Criminal Court requires the establishment of "principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation", requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims" and to permit the participation of victims at all "stages of the proceedings determined to be appropriate by the Court",

*Affirming* that the Basic Principles and Guidelines contained herein are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity,

*Emphasizing* that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

*Recalling* that international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity,

<sup>11</sup> United Nations, *Treaty Series*, vol. 1520, No. 26363.

<sup>12</sup> *Ibid.*, vol. 1144, No. 17955.

<sup>13</sup> *Ibid.*, vol. 213, No. 2889.

*Noting* that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively,

*Recognizing* that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law,

*Convinced* that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large, in accordance with the following Basic Principles and Guidelines,

*Adopts* the following Basic Principles and Guidelines:

**I. Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law**

1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from:

- (a) Treaties to which a State is a party;
- (b) Customary international law;
- (c) The domestic law of each State.

2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

(a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;

(b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;

(c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;

(d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

**II. Scope of the obligation**

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

(a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;

(b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;

(c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and

(d) Provide effective remedies to victims, including reparation, as described below.

### **III. Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law**

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

### **IV. Statutes of limitations**

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.

7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

### **V. Victims of gross violations of international human rights law and serious violations of international humanitarian law**

8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

#### **VI. Treatment of victims**

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

#### **VII. Victims' right to remedies**

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

#### **VIII. Access to justice**

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

- (a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;
- (b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;
- (c) Provide proper assistance to victims seeking access to justice;
- (d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

#### **IX. Reparation for harm suffered**

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. *Rehabilitation* should include medical and psychological care as well as legal and social services.

22. *Satisfaction* should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;

(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

**X. Access to relevant information concerning violations and reparation mechanisms**

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

**XI. Non-discrimination**

25. The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.

**XII. Non-derogation**

26. Nothing in these Basic Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Basic Principles and Guidelines are without prejudice to special rules of international law.

**XIII. Rights of others**

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.



# General Assembly

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## Human Rights Council

Twenty-second session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

Angola, Argentina, Armenia\*, Austria, Belgium\*, Bosnia and Herzegovina\*, Brazil, Bulgaria\*, Chile, Costa Rica, Croatia\*, Cyprus\*, Czech Republic, Denmark\*, Estonia, Finland\*, France\*, Georgia\*, Germany, Greece\*, Guatemala, Honduras\*, Hungary\*, Iceland\*, Ireland, Italy, Liechtenstein\*, Lithuania\*, Luxembourg\*, Maldives, Mexico\*, Montenegro, Netherlands\*, Norway\*, Panama\*, Paraguay\*, Peru, Poland, Portugal\*, Slovakia\*, Slovenia\*, Spain, Sweden\*, Switzerland, the former Yugoslav Republic of Macedonia\*, Turkey\*, United Kingdom of Great Britain and Northern Ireland\*, United States of America, Uruguay\*, Venezuela (Bolivarian Republic of): draft resolution

### **22/... Torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims**

*The Human Rights Council,*

*Recalling* all resolutions on torture and other cruel, inhuman or degrading treatment or punishment adopted by the General Assembly, the Commission on Human Rights and the Council,

*Reaffirming* that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment, and recalling in this regard the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and relevant provisions in the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

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

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\* Non-Member State of the Human Rights Council.



of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments, and that legal and procedural safeguards against such acts must not be subject to measures that would circumvent this right,

*Noting* that torture and inhuman treatment are grave breaches of the Geneva Conventions of 1949, and that under the Statute of the International Criminal Tribunal for the Former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda and the Rome Statute for the International Criminal Court, acts of torture can constitute crimes against humanity and, when committed in a situation of armed conflict, constitute war crimes,

*Recalling* article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment providing a right to redress for victims of torture, and General Assembly resolution 60/147 of 16 December 2005, in which the Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,

*Taking note* of the general comment of the Committee against Torture regarding the implementation of article 14 of the Convention,

*Reaffirming and recalling* resolutions of the Human Rights Council and the General Assembly, including Assembly resolution 36/151 of 16 December 1981, in which the Assembly established the United Nations Voluntary Fund for Victims of Torture, in which States are urged to ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation,

*Noting* that, for the purposes of the present resolution, the term “victim” means a victim of torture or other cruel, inhuman or degrading treatment or punishment, and that a person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted and regardless of any familial or other relationship between the perpetrator and the victim,

*Recognizing* that redress depends upon and is obtained through prompt, effective and impartial investigations of torture or other cruel, inhuman or degrading treatment or punishment and acknowledgement of the violations, and that the provision of redress has an inherent preventive and deterrent effect in relation to future violations,

*Recognizing also* that the main purpose of rehabilitation is to enable victims to regain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life,

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

2. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat all acts of torture and other cruel, inhuman or degrading treatment or punishment, stresses that all acts of torture must be made offences under domestic criminal law punishable by appropriate penalties that take into account their grave nature, and calls upon States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment;

3. *Urges* all States that have not yet become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to do so, and to give early consideration to signing and ratifying the Optional Protocol thereto as a matter of priority;

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

5. *Recalls*, in this respect, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a valuable tool in efforts to prevent and combat torture, and the updated set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity;

6. *Stresses* that national legal systems must ensure that victims obtain redress without suffering any reprisals for bringing complaints or giving evidence;

7. *Recognizes* the interdependence and equal importance of providing an effective remedy and reparation, including restitution, fair and adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition, to redress torture and other cruel, inhuman or degrading treatment or punishment;

8. *Calls upon* States to provide redress for victims of torture and other cruel, inhuman or degrading treatment or punishment encompassing effective remedy and adequate, effective and prompt reparation, which should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, taking into full account the specific needs of the victim;

9. *Encourages* States to adopt a victim-oriented approach and put victims and their individual needs at the centre of redress procedures, including by implementing procedures for the effective participation of victims in the redress process, consulting victims and organizations representing them in determining appropriate individual reparation, and taking measures to avoid retraumatization of the victim caused by or during the redress process;

10. *Urges* States to pay special attention to the provision of redress for gender-based violence that constitutes torture or other cruel, inhuman or degrading treatment or punishment, and to adopt a gender-sensitive approach to redress;

11. *Recognizes* that sexual and gender-based violence that constitutes torture or other cruel, inhuman or degrading treatment or punishment affects victims, their families, communities and societies, and stresses that effective remedies in those situations should include access to health care, psychosocial support, legal assistance and socioeconomic reintegration services for victims of such violence;

12. *Urges* States to ensure that appropriate rehabilitation is promptly available to all victims without discrimination of any kind, provided either directly by the public health system or through the funding of private rehabilitation facilities, including those administered by civil society organizations, and to consider making rehabilitation available to immediate family or dependents of the victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization;

13. *Recognizes* the importance of full, holistic and specialized rehabilitation services, which include any necessary coordinated combination of medical and psychological care, as well as legal, social, community- and family-based, vocational, educational services and interim economic support and that are performed by specialists with a view to establish the restoration of functions or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture or other cruel, inhuman or degrading treatment or punishment;

14. *Urges* States to establish, maintain, facilitate or support rehabilitation centres or facilities where victims can receive such treatment and where effective measures for ensuring the safety of their staff and patients are taken;

15. *Encourages* States to make rehabilitation services available at the earliest possible stage and without limitation in time until as full rehabilitation as possible is achieved;

16. *Calls upon* States to ensure that victims are duly informed about the availability of rehabilitation services and that procedures for obtaining rehabilitation are transparent;

17. *Encourages* States to ensure early assessment and evaluation of individuals' rehabilitation needs, and recalls in this regard the Istanbul Principles as a valuable tool; and to further ensure continuous evaluation of the quality of the rehabilitation services;

18. *Urges* States to respect the professional and moral independence, duties and responsibilities of rehabilitation personnel, as well as the confidentiality of the rehabilitation process, and to ensure that they or the victims are not subjected to reprisals or intimidation;

19. *Encourages* States to ensure that persons providing rehabilitation services, as well as other relevant professionals, receive initial and continuing, adequate and regular training relevant to implement the prohibition against torture and to provide rehabilitation;

20. *Encourages* bilateral and international cooperation on effective remedy and reparation, including rehabilitation for victims, encourages States and other donors to contribute generously to the United Nations Voluntary Fund for Victims of Torture, established to provide humanitarian, legal and financial aid to victims of torture and their relatives, and requests the Office of the United Nations High Commissioner for Human Rights to provide advisory services in cooperation with other relevant United Nations agencies to States on the provision of redress to torture victims;

21. *Invites* the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Committee against Torture, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other relevant special procedures and treaty bodies to continue to address effective remedy and reparation, including rehabilitation of victims;

22. *Takes note* of the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.<sup>1</sup>

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<sup>1</sup> A/HRC/22/53.



# WMA Statement on the Right of Rehabilitation of Victims of Torture

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***Adopted by the 64<sup>th</sup> General Assembly, Fortaleza, Brazil, October 2013***

## **PREAMBLE**

The World Medical Association notes with grave concern the continued use of torture in many countries throughout the world.

The WMA reaffirms its total condemnation of all form of torture, and other cruel, inhuman or degrading treatment or punishment, as defined by the UN Convention Against Torture (CAT, 1984). Torture is one of the gravest violations of international human rights law and has devastating consequences for victims, their families and society as a whole. Torture causes severe physical and mental injuries and is a crime absolutely prohibited under international law.

The WMA reaffirms its policies adopted previously, namely:

- The Declaration of Tokyo laying down Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment (1975)
- The Declaration of Hamburg concerning Support for Medical Doctors Refusing to Participate in, or to Condone, the Use of Torture or Other Forms of Cruel, Inhuman or Degrading Treatment (1997)
- The Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment (2003).

The medical evaluation is an essential factor in pursuing the documentation of torture and the reparation of victims of torture. Physicians have a critical role to play in gathering information about torture, documenting evidence of torture for legal purposes, as well as supporting and rehabilitating victims.

The WMA recognizes the adoption, in December 2012, by the UN Committee Against Torture of the General Comment on the Implementation of article 14 of Convention against Torture relating to the right to reparation of victims of torture.

The General Comment outlines the right of rehabilitation as an obligation on States and specifies the scope of these services. The WMA welcomes in particular:

- The obligation of State parties to adopt a “long-term and integrated approach and ensure that specialized services for the victim of torture or ill treatment are available, appropriate and promptly accessible” (paragraph 13), without making access to these services dependent on the victim pursuing judicial remedies.
- The recognition of the right of victims to choose a rehabilitation service provider, be it a State institution, or a non-State service provider, which is funded by the State.
- The recognition that State parties should provide torture victims with access to rehabilitation programs as soon as possible following an assessment by qualified independent healthcare professionals.
- The references in paragraph 18 to measures aimed at protecting health and legal professionals who assist torture victims, developing specific training on the Istanbul Protocol for health professionals, and promoting the observance of international standards and codes of conduct by public servants, including medical, psychological and social service personnel.

## **RECOMMENDATIONS**

The WMA emphasizes the vital function of reparation for victims of torture and their families in rebuilding their lives and achieve redress and the important role of physicians in rehabilitation.

The WMA encourages its member associations to work with relevant agencies – governmental and non-governmental - acting for the reparation of victims of torture, in particular in the areas of documentation and rehabilitation, as well as prevention.

The WMA encourages its members to support agencies that are under threat of - or subjected to - reprisals from state parties due to their involvement in the documentation of torture, rehabilitation and reparation of torture victims.

The WMA calls on its members to use their medical experience to support torture victims in accordance with article 14 of the UN Convention against Torture.

The WMA calls on its member associations to support and facilitate data collection at the national level in order to monitor the implementation of the State’s obligation to provide rehabilitation services.

## **Resolution adopted by the General Assembly**

*[on the report of the Third Committee (A/67/458)]*

### **67/187. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems**

*The General Assembly,*

*Recalling* the Universal Declaration of Human Rights,<sup>1</sup> which enshrines the key principles of equality before the law and the presumption of innocence, as well as the right to a fair and public hearing by an independent and impartial tribunal, along with all the guarantees necessary for the defence of anyone charged with a penal offence, other minimum guarantees and the entitlement to be tried without undue delay,

*Recalling also* the International Covenant on Civil and Political Rights,<sup>2</sup> in particular article 14 thereof, which states that everyone charged with a criminal offence shall be entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own choosing or assigned to him or her where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law,

*Bearing in mind* the Standard Minimum Rules for the Treatment of Prisoners,<sup>3</sup> approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957 and extended by the Council by its resolution 2076 (LXII) of 13 May 1977, according to which an untried prisoner, for the purposes of his or her defence, shall be allowed to receive visits from his or her legal adviser,

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<sup>1</sup> Resolution 217 A (III).

<sup>2</sup> See resolution 2200 A (XXI), annex.

<sup>3</sup> *Human Rights: A Compilation of International Instruments*, Volume I (First Part), *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34.

*Bearing in mind also* the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>4</sup> principle 11 of which states that a detained person shall have the right to defend himself or herself or to be assisted by counsel as prescribed by law,

*Bearing in mind further* the Basic Principles on the Role of Lawyers,<sup>5</sup> in particular principle 6 thereof, which states that any persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services,

*Recalling* the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,<sup>6</sup> especially paragraph 18 thereof, in which Member States are called upon to take steps, in accordance with their domestic laws, to promote access to justice, to consider the provision of legal aid to those who need it and to enable the effective assertion of their rights in the criminal justice system,

*Recalling also* the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,<sup>7</sup> especially paragraph 52 thereof, in which it is recommended that Member States endeavour to reduce pretrial detention, where appropriate, and promote increased access to justice and legal defence mechanisms,

*Recalling further* the Economic and Social Council resolution 2007/24 of 26 July 2007 on international cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa,

*Recognizing* that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important

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<sup>4</sup> Resolution 43/173, annex.

<sup>5</sup> *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Havana, 27 August–7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex.

<sup>6</sup> Resolution 60/177, annex.

<sup>7</sup> Resolution 65/230, annex.

safeguard that ensures fundamental fairness and public trust in the criminal justice process,

*Recognizing also* that the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, can be applied by Member States, taking into account the great variety of legal systems and socioeconomic conditions in the world,

1. *Notes with appreciation* the work of the open-ended intergovernmental expert group on strengthening access to legal aid in criminal justice systems, at its meeting held in Vienna from 16 to 18 November 2011, to develop a set of principles and guidelines on access to legal aid in criminal justice systems;

2. *Adopts* the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, as a useful framework to guide Member States on the principles on which a legal aid system in criminal justice should be based, taking into account the content of the present resolution and the fact that all elements of the annex will be applied in accordance with national legislation;

3. *Invites* Member States, consistent with their national legislation, to adopt and strengthen measures to ensure that effective legal aid is provided, in accordance with the spirit of the Principles and Guidelines, bearing in mind the diversity of criminal justice systems among different countries and regions around the world and the fact that legal aid is developed in accordance with the overall balance of the criminal justice system, as well as the circumstances of countries and regions;

4. *Encourages* Member States to consider, where appropriate, the provision of legal aid and to provide such aid to the maximum extent possible;

5. *Also encourages* Member States to draw upon the Principles and Guidelines, as appropriate, and in accordance with national law, in undertaking national efforts and measures to strengthen access to legal aid in criminal justice systems;

6. *Requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to continue to provide advisory services and technical assistance to Member States, upon request, in the area of criminal justice reform, including restorative justice,



alternatives to imprisonment and the development of integrated plans for the provision of legal aid;

7. *Also requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to make the Principles and Guidelines widely available, including through the development of relevant tools such as handbooks and training manuals;

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

9. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twenty-third session on the implementation of the present resolution.

*60th plenary meeting  
20 December 2012*

## **Annex**

# **United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems**

### **A. Introduction**

1. Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights,<sup>1</sup> a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.
2. Furthermore, article 14, paragraph 3 (*d*), of the International Covenant on Civil and Political Rights<sup>2</sup> states that everyone should be entitled, among other rights, “to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.
3. A functioning legal aid system, as part of a functioning criminal justice system, may reduce the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, wrongful convictions, prison overcrowding and congestion in the courts, and reducing reoffending and revictimization. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process. Legal aid can be utilized to contribute to the prevention of crime by increasing awareness of the law.
4. Legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial

measures; promoting greater community involvement in the criminal justice system; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources.

5. Regrettably, many countries still lack the necessary resources and capacity to provide legal aid for suspects, those charged with a criminal offence, prisoners, victims and witnesses.

6. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which are drawn from international standards and recognized good practices, aim to provide guidance to States on the fundamental principles on which a legal aid system in criminal justice should be based and to outline the specific elements required for an effective and sustainable national legal aid system, in order to strengthen access to legal aid pursuant to Economic and Social Council resolution 2007/24 of 26 July 2007, entitled “International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa”.

7. In line with the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and the Lilongwe Plan of Action for the implementation of the Declaration, the Principles and Guidelines follow a broad concept of legal aid.

8. For the purposes of the Principles and Guidelines, the term “legal aid” includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.

9. For the purposes of the Principles and Guidelines, the individual who provides legal aid is herein referred to as the “legal aid provider”, and the organizations that provide legal aid are referred to as the “legal aid service providers”. The first providers of legal aid are lawyers, but the Principles and Guidelines also suggest that States involve a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia. Provision

of legal aid to foreign nationals should conform to the requirements of the Vienna Convention on Consular Relations<sup>8</sup> and other applicable bilateral treaties.

10. It should be noted that States employ different models for the provision of legal aid. These may involve public defenders, private lawyers, contract lawyers, pro bono schemes, bar associations, paralegals and others. The Principles and Guidelines do not endorse any specific model but encourage States to guarantee the basic right to legal aid of persons detained, arrested or imprisoned,<sup>9</sup> suspected<sup>10</sup> or accused of, or charged with a criminal offence, while expanding legal aid to include others who come into contact with the criminal justice system and diversifying legal aid delivery schemes.

11. The Principles and Guidelines are based on the recognition that States should, where appropriate, undertake a series of measures that, even if not strictly related to legal aid, can maximize the positive impact that the establishment and/or reinforcement of a properly working legal aid system may have on a properly functioning criminal justice system and on access to justice.

12. Recognizing that certain groups are entitled to additional protection or are more vulnerable when involved with the criminal justice system, the Principles and Guidelines also provide specific provisions for women, children and groups with special needs.

13. The Principles and Guidelines are primarily concerned with the right to legal aid, as distinct from the right to legal assistance as recognized in international law. Nothing in these Principles and Guidelines should be interpreted as providing a lesser degree of protection than that provided under existing national laws and regulations and international and regional human rights conventions or covenants applicable to the administration of justice, including, but not limited to, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child,<sup>11</sup> the Convention on the Elimination of All Forms of Discrimination against Women<sup>12</sup>

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<sup>8</sup> United Nations, *Treaty Series*, vol. 596, No. 8638.

<sup>9</sup> The terms “arrest”, “detained person” and “imprisoned person” are understood as defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (resolution 43/173, annex).

<sup>10</sup> The right to legal aid of suspects arises before questioning, when they become aware that they are the subject of investigation, and when they are under threat of abuse and intimidation, e.g., in custodial settings.

<sup>11</sup> United Nations, *Treaty Series*, vol. 1577, No. 27531.

<sup>12</sup> *Ibid.*, vol. 1249, No. 20378.

and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>13</sup> However, this should not be interpreted as meaning that States are bound by international and regional instruments that they have not ratified or acceded to.

## **B. Principles**

### *Principle 1. Right to legal aid*

14. Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process,<sup>14</sup> States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.

### *Principle 2. Responsibilities of the State*

15. States should consider the provision of legal aid their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system.

16. The State should not interfere with the organization of the defence of the beneficiary of legal aid or with the independence of his or her legal aid provider.

17. States should enhance the knowledge of the people about their rights and obligations under the law through appropriate means, in order to prevent criminal conduct and victimization.

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<sup>13</sup> Ibid., vol. 2220, No. 39481.

<sup>14</sup> The term “justice process” is understood as defined in the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex). For the purpose of the Principles and Guidelines, the term shall also encompass extradition, transfer of prisoners and mutual legal assistance proceedings.

18. States should endeavour to enhance the knowledge of their communities about their justice system and its functions, the ways to file complaints before the courts and alternative dispute resolution mechanisms.

19. States should consider adopting appropriate measures for informing their communities about acts criminalized under the law. The provision of such information for those travelling to other jurisdictions, where crimes are categorized and prosecuted differently, is essential for crime prevention.

*Principle 3. Legal aid for persons suspected of or charged with a criminal offence*

20. States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.

21. Legal aid should also be provided, regardless of the person's means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty.

22. Children should have access to legal aid under the same conditions as or more lenient conditions than adults.

23. It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.

*Principle 4. Legal aid for victims of crime*

24. Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime.

*Principle 5. Legal aid for witnesses*

25. Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to witnesses of crime.

*Principle 6. Non-discrimination*

26. States should ensure the provision of legal aid to all persons regardless of age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.

*Principle 7. Prompt and effective provision of legal aid*

27. States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.

28. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence.

*Principle 8. Right to be informed*

29. States should ensure that, prior to any questioning and at the time of deprivation of liberty, persons are informed of their right to legal aid and other procedural safeguards as well as of the potential consequences of voluntarily waiving those rights.

30. States should ensure that information on rights during the criminal justice process and on legal aid services is made freely available and is accessible to the public.

*Principle 9. Remedies and safeguards*

31. States should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed or denied or if persons have not been adequately informed of their right to legal aid.

*Principle 10. Equity in access to legal aid*

32. Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not

limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures.

33. States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups.

*Principle 11. Legal aid in the best interests of the child*

34. In all legal aid decisions affecting children,<sup>15</sup> the best interests of the child should be the primary consideration.

35. Legal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.

*Principle 12. Independence and protection of legal aid providers*

36. States should ensure that legal aid providers are able to carry out their work effectively, freely and independently. In particular, States should ensure that legal aid providers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad, and to freely access prosecution and other relevant files; and do not suffer, and are not threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

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<sup>15</sup> “Child” shall mean any person under 18 years of age, in line with the Convention on the Rights of the Child.



*Principle 13. Competence and accountability of legal aid providers*

37. States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs.

38. Disciplinary complaints against legal aid providers should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review.

*Principle 14. Partnerships*

39. States should recognize and encourage the contribution of lawyers' associations, universities, civil society and other groups and institutions in providing legal aid.

40. Where appropriate, public-private and other forms of partnership should be established to extend the reach of legal aid.

**C. Guidelines**

*Guideline 1. Provision of legal aid*

41. Whenever States apply a means test to determine eligibility for legal aid, they should ensure that:

(a) Persons whose means exceed the limits of the means test but who cannot afford, or do not have access to, a lawyer in situations where legal aid would have otherwise been granted and where it is in the interests of justice to provide such aid, are not excluded from receiving assistance;

(b) The criteria for applying the means test are widely publicized;

(c) Persons urgently requiring legal aid at police stations, detention centres or courts should be provided preliminary legal aid while their eligibility is being determined. Children are always exempted from the means test;

(d) Persons who are denied legal aid on the basis of the means test have the right to appeal that decision;

(e) A court may, having regard to the particular circumstances of a person and after considering the reasons for denial of legal aid, direct that that person be provided with legal aid, with or without his or her contribution, when the interests of justice so require;

(f) If the means test is calculated on the basis of the household income of a family, but individual family members are in conflict with each other or do not have equal access to the family income, only the income of the person applying for legal aid is used for the purpose of the means test.

### *Guideline 2. Right to be informed on legal aid*

42. In order to guarantee the right of persons to be informed of their right to legal aid, States should ensure that:

(a) Information on the right to legal aid and what such aid consists of, including the availability of legal aid services and how to access such services and other relevant information, is made available to the community and to the general public in local government offices and educational and religious institutions and through the media, including the Internet, or other appropriate means;

(b) Information is made available to isolated groups and marginalized groups. Use should be made of radio and television programmes, regional and local newspapers, the Internet and other means, in particular, following changes to the law or specific issues affecting a community, targeted community meetings;

(c) Police officers, prosecutors, judicial officers and officials in any facility where persons are imprisoned or detained inform unrepresented persons of their right to legal aid and of other procedural safeguards;

(d) Information on the rights of a person suspected of or charged with a criminal offence in a criminal justice process and on the availability of legal aid services is provided in police stations, detention centres, courts and prisons, for example, through the provision of a letter of rights or in any other official form submitted to the accused. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children; and such information should be in a language that those persons understand. Information provided to children must be provided in a manner appropriate to their age and maturity;

(e) Effective remedies are available to persons who have not been adequately informed of their right to legal aid. Such remedies may include

a prohibition on conducting procedural actions, release from detention, exclusion of evidence, judicial review and compensation;

(f) Means of verification that a person has actually been informed are put in place.

*Guideline 3. Other rights of persons detained, arrested, suspected or accused of, or charged with a criminal offence*

43. States should introduce measures:

(a) To promptly inform every person detained, arrested, suspected or accused of, or charged with a criminal offence of his or her right to remain silent; his or her right to consult with counsel or, if eligible, with a legal aid provider at any stage of the proceedings, especially before being interviewed by the authorities; and his or her right to be assisted by an independent counsel or legal aid provider while being interviewed and during other procedural actions;

(b) To prohibit, in the absence of any compelling circumstances, any interviewing of a person by the police in the absence of a lawyer, unless the person gives his or her informed and voluntary consent to waive the lawyer's presence, and to establish mechanisms for verifying the voluntary nature of the person's consent. An interview should not start until the legal aid provider arrives;

(c) To inform all foreign detainees and prisoners in a language they understand of their right to request contact with their consular authorities without delay;

(d) To ensure that persons meet with a lawyer or a legal aid provider promptly after their arrest in full confidentiality; and that the confidentiality of further communications is guaranteed;

(e) To enable every person who has been detained for any reason to promptly notify a member of his or her family, or any other appropriate person of his or her choosing, of his or her detention and location and of any imminent change of location; the competent authority may, however, delay a notification if absolutely necessary, if provided for by law and if the transmission of the information would hinder a criminal investigation;

(f) To provide the services of an independent interpreter, whenever necessary, and the translation of documents where appropriate;

(g) To assign a guardian, whenever necessary;

(h) To make available in police stations and places of detention the means to contact legal aid providers;

(i) To ensure that persons detained, arrested, suspected or accused of, or charged with a criminal offence are advised of their rights and the implications of waiving them in a clear and plain manner; and should endeavour to ensure that the person understands both;

(j) To ensure that persons are informed of any mechanism available for filing complaints of torture or ill-treatment;

(k) To ensure that the exercise of these rights by a person is not prejudicial to his or her case.

#### *Guideline 4. Legal aid at the pretrial stage*

44. To ensure that detained persons have prompt access to legal aid in conformity with the law, States should take measures:

(a) To ensure that police and judicial authorities do not arbitrarily restrict the right or access to legal aid for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular in police stations;

(b) To facilitate access for legal aid providers assigned to provide assistance to detained persons in police stations and other places of detention for the purpose of providing that assistance;

(c) To ensure legal representation at all pretrial proceedings and hearings;

(d) To monitor and enforce custody time limits in police holding cells or other detention centres, for example, by instructing judicial authorities to screen the remand caseload in detention centres on a regular basis to make sure that people are remanded lawfully, that their cases are dealt with in a timely manner and that the conditions in which they are held meet the relevant legal standards, including international ones;

(e) To provide every person, on admission to a place of detention, with information on his or her rights in law, the rules of the place of detention and the initial stages of the pretrial process. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The

information material should be supported by visual aids prominently located in each detention centre;

(f) To request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a comprehensive legal system for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular at police stations;

(g) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality.

#### *Guideline 5. Legal aid during court proceedings*

45. To guarantee that every person charged with a criminal offence for which a term of imprisonment or capital punishment may be imposed by a court of law has access to legal aid in all proceedings at court, including on appeal and other related proceedings, States should introduce measures:

(a) To ensure that the accused understands the case against him or her and the possible consequences of the trial;

(b) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality;

(c) To provide representation in any court proceedings by a lawyer of choice, where appropriate, or by a competent lawyer assigned by the court or other legal aid authority at no cost when the person does not have sufficient means to pay and/or where the interests of justice so require;

(d) To ensure that the counsel of the accused is present at all critical stages of the proceedings. Critical stages are all stages of a criminal proceeding at which the advice of a lawyer is necessary to ensure the right of the accused to a fair trial or at which the absence of counsel might impair the preparation or presentation of a defence;

(e) To request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a comprehensive legal system for persons detained, arrested, suspected or accused of, or charged with a criminal offence; such support could include, for example, appearing before the courts on fixed days;

(f) To enable, in accordance with national law, paralegals and law students to provide appropriate types of assistance to the accused in court, provided that they are under the supervision of qualified lawyers;

(g) To ensure that unrepresented suspects and the accused understand their rights. This may include, but is not limited to, requiring judges and prosecutors to explain their rights to them in clear and plain language.

#### *Guideline 6. Legal aid at the post-trial stage*

46. States should ensure that imprisoned persons and children deprived of their liberty have access to legal aid. Where legal aid is not available, States shall ensure that such persons are held in prison in conformity with the law.

47. For this purpose, States should introduce measures:

(a) To provide all persons, on admission to the place of imprisonment and during their detention, with information on the rules of the place of imprisonment and their rights under the law, including the right to confidential legal aid, advice and assistance; the possibilities for further review of their case; their rights during disciplinary proceedings; and procedures for complaint, appeal, early release, pardon or clemency. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and should be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in those parts of the facilities to which prisoners have regular access;

(b) To encourage bar and legal associations and other legal aid providers to draw up rosters of lawyers, and paralegals, where appropriate, to visit prisons to provide legal advice and assistance at no cost to prisoners;

(c) To ensure that prisoners have access to legal aid for the purpose of submitting appeals and filing requests related to their treatment and the conditions of their imprisonment, including when facing serious disciplinary charges, and for requests for pardon, in particular for those prisoners facing the death penalty, as well as for applications for parole and representation at parole hearings;

(d) To inform foreign prisoners of the possibility, where available, of seeking transfer to serve their sentence in their country of nationality, subject to the consent of the States involved.

*Guideline 7. Legal aid for victims*

48. Without prejudice to or inconsistency with the rights of the accused and consistent with the relevant national legislation, States should take adequate measures, where appropriate, to ensure that:

(a) Appropriate advice, assistance, care, facilities and support are provided to victims of crime, throughout the criminal justice process, in a manner that prevents repeat victimization and secondary victimization;<sup>16</sup>

(b) Child victims receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;<sup>17</sup>

(c) Victims receive legal advice on any aspect of their involvement in the criminal justice process, including the possibility of taking civil action or making a claim for compensation in separate legal proceedings, whichever is consistent with the relevant national legislation;

(d) Victims are promptly informed by the police and other front-line responders (i.e., health, social and child welfare providers) of their right to information and their entitlement to legal aid, assistance and protection and of how to access such rights;

(e) The views and concerns of victims are presented and considered at appropriate stages of the criminal justice process where their personal interests are affected or where the interests of justice so require;

(f) Victim services agencies and non-governmental organizations can provide legal aid to victims;

(g) Mechanisms and procedures are established to ensure close cooperation and appropriate referral systems between legal aid providers and other professionals (i.e., health, social and child welfare providers) to obtain a comprehensive understanding of the victim, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

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<sup>16</sup> “Repeat victimization” and “secondary victimization” are understood as defined in paragraphs 1.2 and 1.3 of the appendix to Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe to member States on assistance to crime victims.

<sup>17</sup> Economic and Social Council resolution 2005/20, annex.

*Guideline 8. Legal aid for witnesses*

49. States should take adequate measures, where appropriate, to ensure that:

(a) Witnesses are promptly informed by the relevant authority of their right to information, their entitlement to assistance and protection and how to access such rights;

(b) Appropriate advice, assistance, care facilities and support are provided to witnesses of crime throughout the criminal justice process;

(c) Child witnesses receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;

(d) All statements or testimony given by the witness at all stages of the criminal justice process are accurately interpreted and translated.

50. States should, where appropriate, provide legal aid to witnesses.

51. The circumstances in which it may be appropriate to provide legal aid to witnesses include, but are not limited to, situations in which:

(a) The witness is at risk of incriminating himself or herself;

(b) There is a risk to the safety and well-being of the witness resulting from his or her status as such;

(c) The witness is particularly vulnerable, including as a result of having special needs.

*Guideline 9. Implementation of the right of women to access legal aid*

52. States should take applicable and appropriate measures to ensure the right of women to access legal aid, including:

(a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice;

(b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;

(c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services, which may include the translation of legal documents where requested or required.



*Guideline 10. Special measures for children*

53. States should ensure special measures for children to promote children's effective access to justice and to prevent stigmatization and other adverse effects as a result of their being involved in the criminal justice system, including:

(a) Ensuring the right of the child to have counsel assigned to represent the child in his or her own name in proceedings where there is or could be a conflict of interest between the child and his or her parents or other parties involved;

(b) Enabling children who are detained, arrested, suspected or accused of, or charged with a criminal offence to contact their parents or guardians at once and prohibiting any interviewing of a child in the absence of his or her lawyer or other legal aid provider, and parent or guardian when available, in the best interests of the child;

(c) Ensuring the right of the child to have the matter determined in the presence of the child's parents or legal guardian, unless it is not considered to be in the best interests of the child;

(d) Ensuring that children may consult freely and in full confidentiality with parents and/or guardians and legal representatives;

(e) Providing information on legal rights in a manner appropriate for the child's age and maturity, in a language that the child can understand and in a manner that is gender- and culture-sensitive. Provision of information to parents, guardians or caregivers should be in addition, and not an alternative, to communicating information to the child;

(f) Promoting, where appropriate, diversion from the formal criminal justice system and ensuring that children have the right to legal aid at every stage of the process where diversion is applied;

(g) Encouraging, where appropriate, the use of alternative measures and sanctions to deprivation of liberty and ensuring that children have the right to legal aid so that deprivation of liberty is a measure of last resort and for the shortest appropriate period of time;

(h) Establishing measures to ensure that judicial and administrative proceedings are conducted in an atmosphere and manner that allow children to be heard either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law. Taking into account the child's age and maturity may also require modified judicial and administrative procedures and practices.

54. The privacy and personal data of a child who is or who has been involved in judicial or non-judicial proceedings and other interventions should be protected at all stages, and such protection should be guaranteed by law. This generally implies that no information or personal data may be made available or published, particularly in the media, that could reveal or indirectly enable the disclosure of the child's identity, including images of the child, detailed descriptions of the child or the child's family, names or addresses of the child's family members and audio and video records.

*Guideline 11. Nationwide legal aid system*

55. In order to encourage the functioning of a nationwide legal aid system, States should, where it is appropriate, undertake measures:

(a) To ensure and promote the provision of effective legal aid at all stages of the criminal justice process for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence, and for victims of crime;

(b) To provide legal aid to persons who have been unlawfully arrested or detained or who have received a final judgement of the court as a result of a miscarriage of justice, in order to enforce their right to retrial, reparation, including compensation, rehabilitation and guarantees of non-repetition;

(c) To promote coordination between justice agencies and other professionals such as health, social services and victim support workers in order to maximize the effectiveness of the legal aid system, without prejudice to the rights of the accused;

(d) To establish partnerships with bar or legal associations to ensure the provision of legal aid at all stages of the criminal justice process;

(e) To enable paralegals to provide those forms of legal aid allowed by national law or practice to persons detained, arrested, suspected of, or charged with a criminal offence, in particular in police stations or other detention centres;

(f) To promote the provision of appropriate legal aid for the purpose of crime prevention.

56. States should also take measures:

(a) To encourage legal and bar associations to support the provision of legal aid by offering a range of services, including those that are free (pro bono), in line with their professional calling and ethical duty;

(b) To identify incentives for lawyers to work in economically and socially disadvantaged areas (e.g., tax exemption, fellowships and travel and subsistence allowances);

(c) To encourage lawyers to organize regular circuits of lawyers around the country to provide legal aid to those in need.

57. In the design of their nationwide legal aid schemes, States should take into account the needs of specific groups, including but not limited to the elderly, minorities, persons with disabilities, the mentally ill, persons living with HIV and other severe contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, refugees and internally displaced persons, in line with guidelines 9 and 10.

58. States should take appropriate measures to establish child-friendly<sup>18</sup> and child-sensitive legal aid systems, taking into account children's evolving capacities and the need to strike an appropriate balance between the best interests of the child and children's right to be heard in judicial proceedings, including:

(a) Establishing, where possible, dedicated mechanisms to support specialized legal aid for children and support the integration of child-friendly legal aid into general and non-specialized mechanisms;

(b) Adopting legal aid legislation, policies and regulations that explicitly take into account the child's rights and special developmental needs, including the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence; the right to be heard in all judicial proceedings affecting him or her; standard procedures for determining best interest; privacy and protection of personal data; and the right to be considered for diversion;

(c) Establishing child-friendly legal aid service standards and professional codes of conduct. Legal aid providers working with and for children should, where necessary, be subject to regular vetting to ensure their suitability for working with children;

(d) Promoting standard legal aid training programmes. Legal aid providers representing children should be trained in and be knowledgeable about children's rights and related issues, receive ongoing and in-depth training and

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<sup>18</sup> "Child-friendly legal aid" is the provision of legal assistance to children in criminal, civil and administrative proceedings that is accessible, age-appropriate, multidisciplinary and effective, and that is responsive to the range of legal and social needs faced by children and youth. Child-friendly legal aid is delivered by lawyers and non-lawyers who are trained in children's law and child and adolescent development and who are able to communicate effectively with children and their caretakers.

be capable of communicating with children at their level of understanding. All legal aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups and on proceedings that are adapted to them, and training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority or indigenous groups, and on available measures for promoting the defence of children who are in conflict with the law;

(e) Establishing mechanisms and procedures to ensure close cooperation and appropriate referral systems between legal aid providers and different professionals to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

59. To ensure the effective implementation of nationwide legal aid schemes, States should consider establishing a legal aid body or authority to provide, administer, coordinate and monitor legal aid services. Such a body should:

(a) Be free from undue political or judicial interference, be independent of the Government in decision-making related to legal aid and not be subject to the direction, control or financial intimidation of any person or authority in the performance of its functions, regardless of its administrative structure;

(b) Have the necessary powers to provide legal aid, including but not limited to the appointment of personnel; the designation of legal aid services to individuals; the setting of criteria and accreditation of legal aid providers, including training requirements; the oversight of legal aid providers and the establishment of independent bodies to handle complaints against them; the assessment of legal aid needs nationwide; and the power to develop its own budget;

(c) Develop, in consultation with key justice sector stakeholders and civil society organizations, a long-term strategy guiding the evolution and sustainability of legal aid;

(d) Report periodically to the responsible authority.

#### *Guideline 12. Funding the nationwide legal aid system*

60. Recognizing that the benefits of legal aid services include financial benefits and cost savings throughout the criminal justice process, States

should, where appropriate, make adequate and specific budget provisions for legal aid services that are commensurate with their needs, including by providing dedicated and sustainable funding mechanisms for the national legal aid system.

61. To this end, States could take measures:

(a) To establish a legal aid fund to finance legal aid schemes, including public defender schemes, to support legal aid provision by legal or bar associations; to support university law clinics; and to sponsor non-governmental organizations and other organizations, including paralegal organizations, in providing legal aid services throughout the country, especially in rural and economically and socially disadvantaged areas;

(b) To identify fiscal mechanisms for channelling funds to legal aid, such as:

(i) Allocating a percentage of the State's criminal justice budget to legal aid services that are commensurate with the needs of effective legal aid provision;

(ii) Using funds recovered from criminal activities through seizures or fines to cover legal aid for victims;

(c) To identify and put in place incentives for lawyers to work in rural areas and economically and socially disadvantaged areas (e.g., tax exemptions or reductions, student loan payment reductions);

(d) To ensure fair and proportional distribution of funds between prosecution and legal aid agencies.

62. The budget for legal aid should cover the full range of services to be provided to persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence, and to victims. Adequate special funding should be dedicated to defence expenses such as expenses for copying relevant files and documents and collection of evidence, expenses related to expert witnesses, forensic experts and social workers, and travel expenses. Payments should be timely.

### *Guideline 13. Human resources*

63. States should, where appropriate, make adequate and specific provisions for staffing the nationwide legal aid system that are commensurate with their needs.

64. States should ensure that professionals working for the national legal aid system possess qualifications and training appropriate for the services they provide.

65. Where there is a shortage of qualified lawyers, the provision of legal aid services may also include non-lawyers or paralegals. At the same time, States should promote the growth of the legal profession and remove financial barriers to legal education.

66. States should also encourage wide access to the legal profession, including affirmative action measures to ensure access for women, minorities and economically disadvantaged groups.

#### *Guideline 14. Paralegals*

67. States should, in accordance with their national law and where appropriate, recognize the role played by paralegals or similar service providers in providing legal aid services where access to lawyers is limited.

68. For this purpose, States should, in consultation with civil society and justice agencies and professional associations, introduce measures:

(a) To develop, where appropriate, a nationwide scheme of paralegal services with standardized training curricula and accreditation schemes, including appropriate screening and vetting;

(b) To ensure that quality standards for paralegal services are set and that paralegals receive adequate training and operate under the supervision of qualified lawyers;

(c) To ensure the availability of monitoring and evaluation mechanisms to guarantee the quality of the services provided by paralegals;

(d) To promote, in consultation with civil society and justice agencies, the development of a code of conduct that is binding for all paralegals working in the criminal justice system;

(e) To specify the types of legal services that can be provided by paralegals and the types of services that must be provided exclusively by lawyers, unless such determination is within the competence of the courts or bar associations;

(f) To ensure access for accredited paralegals who are assigned to provide legal aid to police stations and prisons, facilities of detention or pretrial detention centres, and so forth;

(g) To allow, in accordance with national law and regulations, court-accredited and duly trained paralegals to participate in court proceedings and advise the accused when there are no lawyers available to do so.

*Guideline 15. Regulation and oversight of legal aid providers*

69. In adherence to principle 12, and subject to existing national legislation ensuring transparency and accountability, States, in cooperation with professional associations, should:

(a) Ensure that criteria are set for the accreditation of legal aid providers;

(b) Ensure that legal aid providers are subject to applicable professional codes of conduct, with appropriate sanctions for infractions;

(c) Establish rules to ensure that legal aid providers are not allowed to request any payment from the beneficiaries of legal aid, except when authorized to do so;

(d) Ensure that disciplinary complaints against legal aid providers are reviewed by impartial bodies;

(e) Establish appropriate oversight mechanisms for legal aid providers, in particular with a view to preventing corruption.

*Guideline 16. Partnerships with non-State legal aid service providers and universities*

70. States should, where appropriate, engage in partnerships with non-State legal aid service providers, including non-governmental organizations and other service providers.

71. To this end, States should take measures, in consultation with civil society and justice agencies and professional associations:

(a) To recognize in their legal systems the role to be played by non-State actors in providing legal aid services to meet the needs of the population;

(b) To set quality standards for legal aid services and support the development of standardized training programmes for non-State legal aid service providers;

(c) To establish monitoring and evaluation mechanisms to ensure the quality of legal aid services, in particular those provided at no cost;

(d) To work with all legal aid service providers to increase outreach, quality and impact and facilitate access to legal aid in all parts of the country and in all communities, especially in rural and economically and socially disadvantaged areas and among minority groups;

(e) To diversify legal aid service providers by adopting a comprehensive approach, for example, by encouraging the establishment of centres to provide legal aid services that are staffed by lawyers and paralegals and by entering into agreements with law societies and bar associations, university law clinics and non-governmental and other organizations to provide legal aid services.

72. States should, where appropriate, also take measures:

(a) To encourage and support the establishment of legal aid clinics in law departments within universities to promote clinical and public interest law programmes among faculty members and the student body, including in the accredited curriculum of universities;

(b) To encourage and provide incentives to law students to participate, under proper supervision and in accordance with national law or practice, in a legal aid clinic or other legal aid community scheme, as part of their academic curriculum or professional development;

(c) To develop, where they do not already exist, student practice rules that allow students to practise in the courts under the supervision of qualified lawyers or faculty staff, provided that such rules are developed in consultation with and accepted by the competent courts or bodies that regulate the practice of law before the courts;

(d) To develop, in jurisdictions requiring law students to undertake legal internships, rules for them to be allowed to practise in the courts under the supervision of qualified lawyers.

### *Guideline 17. Research and data*

73. States should ensure that mechanisms to track, monitor and evaluate legal aid are established and should continually strive to improve the provision of legal aid.

74. For this purpose, States could introduce measures:



(a) To conduct regular research and collection of data disaggregated by the gender, age, socioeconomic status and geographical distribution of legal aid recipients and to publish the findings of such research;

(b) To share good practices in the provision of legal aid;

(c) To monitor the efficient and effective delivery of legal aid in accordance with international human rights standards;

(d) To provide cross-cultural, culturally appropriate, gender-sensitive and age-appropriate training to legal aid providers;

(e) To improve communication, coordination and cooperation between all justice agencies, especially at the local level, to identify local problems and to agree on solutions to improve the provision of legal aid.

#### *Guideline 18. Technical assistance*

75. Technical assistance based on needs and priorities identified by requesting States should be provided by relevant intergovernmental organizations, such as the United Nations, bilateral donors and competent non-governmental organizations, as well as by States in the framework of bilateral and multi-lateral cooperation, with a view to building and enhancing the national capacities and institutions for the development and implementation of legal aid systems and criminal justice reforms, where appropriate.

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