

# A Human Rights Approach to Prison Management

Handbook for prison staff

**Andrew Coyle**

**International Centre for Prison Studies**

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**KING'S**  
*College*  
**LONDON**

**International Centre  
for Prison Studies**



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The moral right of the author  
has been asserted.

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# Preface



There has never been such a global consensus in favour of human rights. Yet in too many parts of the world rhetoric does not match reality. If we are to bridge this gap, we have to recognise that the implementation of human rights standards is not simply a question of abstract theory. It must have practical application in the day to day work of government.

As the British Minister responsible for prisons until last summer, I strongly believe that the way societies treat those who have been deprived of their liberty is a litmus test of commitment to human rights. A wide range of international treaties and standards exist to guide prison services across the world. Britain supports the universal implementation of these agreements.

This comprehensive handbook aims to translate universally agreed standards on prison reform into practical guidance for prison staff. It has been written by Andrew Coyle who had years of good experience running prisons, before sharing his expertise as head of the International Centre for Prison Studies. I am sure it will be well received by government ministers, international organisations and prison staff alike.

If the standards of care this handbook sets out are implemented, trust and respect in the prison service will rise. And we will have taken another important step towards the universal application of human rights.

A handwritten signature in blue ink that reads "Jack Straw". The signature is fluid and cursive, with a small dot at the end of the last word.

**The Right Hon Jack Straw MP**



# Acknowledgements

Many people have contributed to this handbook.

The members of the advisory group are mentioned by name in the Introduction.

**All the Associates of ICPS** who work tirelessly around the world for the improvement of prison management have contributed indirectly or directly from their expertise and knowledge.

Particular assistance was provided by **Andrew Barclay** and **Arthur de Frisching**.

**Mary Murphy** worked on early drafts of the handbook.

**James Haines** put the manuscript into readable form and spent many hours researching examples of good practice.

**Vivien Stern** made a major contribution to the final text and format of the handbook.

**Vivien Francis, Anton Shelupanov, Femke van der Meulen** and **Helen Fair** of ICPS provided invaluable administrative support.

Grateful thanks are due to all these contributors.

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### Who the handbook is for

This handbook is intended to assist everyone who has anything to do with prisons. Readers are likely to include government ministers whose portfolio covers parliamentary accountability for prisons, officials who work within Ministries of Justice and other ministries which have oversight of prison issues, as well as intergovernmental agencies such as the United Nations, the Council of Europe, the Organisation of American States, the African Union, the International Committee of the Red Cross and the World Health Organisation. It will also be of interest to a variety of non-governmental organisations and groups from civil society which work in prisons. It should also be made available where possible to prisoners. But its primary audience is intended to be those who work directly with prisons and prisoners. These include national and regional prison administrators. Above all, it is intended for those who actually work in prisons and who deal with prisoners on a day to day basis.

### A set of clear principles

The topics covered in the handbook demonstrate the complexity of prison management and the wide range of skills that are required from those whose task it is to direct prisons. The issues covered in the handbook show that there is a common set of factors which, when taken together, constitute a model for good prison management. However, it is not sufficient to consider these topics in a vacuum. It is also important that they should be grounded in a set of clear principles. Since it is intended that this handbook should have application in every prison system in the world, it is essential that the set of principles which is to be used as a reference point should be applicable in every country. They should not be based on a particular culture or on the standards which are accepted in one country or region. The handbook meets this requirement by taking the relevant international human rights standards as its starting point for each chapter.

### International standards

These standards have been agreed by the international community, usually through the United Nations. The main human rights instruments, such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, are treaties which are legally binding on all states which have ratified or acceded to them. Most of them contain references to the treatment of people who are deprived of their liberty.

In addition, there are a number of international instruments that deal specifically with prisoners and conditions of detention. The more detailed standards that are set out in these principles, minimum rules or guidelines provide a valuable complement to the broad principles contained in the legal treaties. These include: the *Standard Minimum Rules for the Treatment of Prisoners* (1957); the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988); the *Basic Principles for the Treatment of Prisoners* (1990) and the *Standard Minimum Rules for the Administration of Juvenile Justice* (1985). There are also a number of instruments that refer specifically to staff working with people who have been deprived of their liberty. They include: the *Code of Conduct for Law Enforcement Officials* (1979), 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* (1982) and the *Basic Principles on the Use of Force and Firearms* (1990).

## Regional standards

These international standards are supplemented by a number of regional human rights instruments. In Europe these are: the *Convention for the Protection of Human Rights and Fundamental Freedoms* (1953); the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (1989) and the *European Prison Rules* (1987). The *American Convention on Human Rights* entered into force in 1978, while the *African Charter on Human and Peoples' Rights* came into force in 1986.

Regional judicial bodies are a useful reference point for measuring the extent to which individual states implement international standards. In the Americas, the Inter-American Court of Human Rights fulfils this role, while in Europe a similar role is carried out by the European Court of Human Rights.

## International monitors

Within the member states of the Council of Europe the observance of human rights standards in places of detention is also monitored by the *Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*. In 1997 the *African Commission on Human and Peoples' Rights* appointed a *Special Rapporteur on Prison Conditions*. The United Nations is moving towards adoption of an Optional Protocol to the *Convention against Torture*. This will establish a system of regular visits to places of detention by an international body of experts, to be complemented by sustained regular visits conducted by national independent inspection groups.

## Legitimacy

The legitimacy of this handbook on good prison management comes from its solid grounding in these international human rights standards, which are recognised around the world.

## Practical experience

However, it is not sufficient for those responsible for prisons to be aware of and to refer to these international standards. If they are to implement the standards in their daily work, they must be able to interpret them and to apply them in real working situations. This is what the handbook sets out to do. Its legitimacy in this respect comes from the practical experience of those who have been involved in the writing of the handbook. The main author of the book spent 24 years working as a prison director. Considerable support was given by an international advisory group, all of whom have extensive experience of working in prisons in different regions of the world. They included:

- M. Riazuddin Ahmed, Deputy Inspector General of Prisons, Hyderabad, India
- Richard Kuuire, Director General, the Ghana Prisons Service
- Julita Lemgruber, former Director General of Prisons for the State of Rio de Janeiro, Brazil
- Patrick McManus, former Director of Kansas Department of Corrections, United States of America
- Dmitry Pankratov, Deputy Head of Academy of Law and Management, Ministry of Justice, Russian Federation

In addition, the staff and associates of the International Centre for Prison Studies made use of the wide experience that they have gained through working alongside prison colleagues from all regions of the world in a wide variety of human rights and prison management projects.

*Human rights  
are an integral  
part of  
good prison  
management*

The International Centre for Prison Studies carries out all its practical prison management projects within the context of human rights. It does so for two reasons. The first is that this is the right thing to do. The handbook demonstrates in many chapters the importance of managing prisons within an ethical context which respects the humanity of everyone involved in a prison: prisoners, prison staff and visitors. This ethical context needs to be universal in its application and the international human rights instruments provide this universality.

There is also a more pragmatic justification for this approach to prison management: it works. This approach does not represent a liberal or soft approach to prison management. The members of the handbook advisory group and others involved in writing this handbook have worked in some of the most problematic prisons in the world. They are convinced that this style of management is the most effective and safest way of managing prisons. Time and again staff of the Centre have found that first line prison staff in different countries, from a variety of cultures, respond positively to this approach. It relates the international standards to their daily work in a manner which is immediately recognisable.

What this approach underlines is that the concept of human rights is not merely another subject to be added to the training curriculum. Rather, it suffuses, and is an integral part of, good prison management.

*An additional  
tool*

In recent years there have been a number of useful publications that have dealt with some of the issues covered in this handbook. They include:

- Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials, published in a pilot edition by the Office of the UN High Commissioner for Human Rights, Geneva, in 2000
- Making Standards Work, published by Penal Reform International, London, in 2001 (second edition)
- The Torture Reporting Handbook, published by the University of Essex, United Kingdom, in 2000

It is hoped that this handbook will take its place alongside these and other similar works and will provide a useful tool for good prison management.

While the book sets out to be comprehensive in the topics that it deals with, it is impossible when dealing with such a complex subject to be exhaustive. There has had to be a selection in identifying the key features for prison management. It is recognised that many issues that will have to be faced in the prison setting are not dealt with in this handbook. Reactions from readers and recommendations about what might be added to any future edition would be welcomed by ICPS.

## *Note about terminology*

### **Prisons**

In some jurisdictions different terms are used to denote whether places of detention hold people who are awaiting trial, who have been convicted or who are subject to different conditions of security. In the United States of America, for example, places which hold persons who are awaiting trial at minor courts or who have been sentenced to short sentences are usually described as jails; those holding convicted prisoners are often called correctional institutions. In the whole of the Russian Federation there are only 15 prisons, since this term denotes places of detention with the highest security. Establishments for other convicted persons are usually described as penal colonies.

### **Prisoners**

Similarly, different words are used for various groups of people who are detained. Those awaiting trial may be known as pre-trial, under-trial or remand and are often referred to as detainees.

In this handbook the word 'prison' has been used for all places of detention and the word 'prisoner' has been used to describe all who are held in such places. The context in which these words are used will be clear from the text.

# Prison Staff and the Administration of Prisons

## The framework

### *An important public service*

In any democratic society, work in prison is a public service. Prisons are places, like schools and hospitals, which should be run by the civil power with the objective of contributing to the public good. Prison authorities should have some accountability to an elected parliament and the public should be regularly informed about the state and aspirations of the prisons. Government ministers and senior administrators should make it clear that they hold prison staff in high regard for the work they do and the public should frequently be reminded that prison work is an important public service.

### *The ethical basis of prison management*

Prison management needs to operate within an ethical framework. Without a strong ethical context, the situation where one group of people is given considerable power over another can easily become an abuse of power. The ethical context is not just a matter of the behaviour of individual staff towards prisoners. A sense of the ethical basis of imprisonment needs to pervade the management process from the top down. An emphasis by the prison authorities on correct processes, a demand for operational efficiency, or pressure to meet management targets without a prior consideration of ethical imperatives can lead to great inhumanity. A concentration by the prison authorities on technical processes and procedures will lead staff to forget that a prison is not the same as a factory which produces motor cars or washing machines. The management of prisons is primarily about the management of human beings, both staff and prisoners. This means that there are issues which go beyond effectiveness and efficiency. When making decisions about the treatment of human beings there is a fundamental consideration; the first question which must always be asked is, 'Is what we are doing right?'

### *Staff/prisoner relationships are the key*

When people think of prisons they tend to consider their physical aspect: walls, fences, a building with locked doors and windows with bars. In reality the most important aspect of a prison is the human dimension, since prisons are primarily concerned with people. The two most important groups of people in a prison are the prisoners and the staff who look after them. The key to a well managed prison is the nature of the relationship between these two groups.

### *Good leadership is vital*

Those with responsibility for prisons and prison systems need to look beyond technical and managerial considerations. They also have to be leaders who are capable of enthusing the staff for whom they are responsible with a sense of value in the way they carry out their difficult daily tasks. They need to be men and women who have a clear vision and a determination to maintain the highest standards in the difficult work of prison management.

### *The need for good staff*

Prisons usually cannot select their prisoners; they have to accept whoever is sent to them by the court or the legal authority. They can, however, choose their staff. It is essential that the staff should be carefully selected, properly trained, supervised and supported. Prison work is demanding. It involves working with men and women who have been deprived of their liberty, many of whom are likely to be mentally disturbed, suffer from addictions, have

poor social and educational skills and come from marginalised groups in society. Some will be a threat to the public; some will be dangerous and aggressive; others will try very hard to escape. None of them wants to be in prison. Each of them is an individual person.

### *The role of staff*

**T**he role of prison staff is:

- to treat prisoners in a manner which is decent, humane and just;
- to ensure that all prisoners are safe;
- to make sure that dangerous prisoners do not escape;
- to make sure that there is good order and control in prisons;
- to provide prisoners with the opportunity to use their time in prison positively so that they will be able to resettle into society when they are released.

### *Personal integrity*

**I**t requires great skill and personal integrity to carry out this work in a professional manner. This means first of all that men and women who are to work in prisons need to be carefully chosen to make sure that they have the appropriate personal qualities and educational background. They then need to be given proper training in the principles that should underlie their work and in the human and technical skills that are required. Throughout their careers they should be given the opportunity to develop and expand these skills and to keep up to date with the latest thinking on prison issues.

### *The danger of insularity*

**P**rison staff generally work in an enclosed and isolated environment which, over time, can make them narrow and inflexible. The way they are trained and managed needs to be designed to guard against this insularity. Staff need to remain sensitive to changes in the wider society from which their prisoners come and to which they will return. This will be particularly important where prisons are remotely sited and staff live in accommodation attached to the prison.

### *The status of prison staff*

**G**enerally speaking prison staff are held in lower regard than other people who work in the criminal justice field, such as the police. This is often reflected in the pay of prison staff, which in many countries is very low. As a consequence it is often very difficult to recruit properly qualified staff to work in prisons. In order to attract and to retain high quality personnel it is essential that salaries should be set at a proper level and that the other conditions of employment should be the same as in comparable work elsewhere in the public service.

### *Public education about prisons*

**I**n many countries there is little public knowledge about prisons, prison staff, or their work. Whilst society generally recognises the intrinsic worth of health workers and teachers, prison staff do not attract similar public esteem. Government ministers and senior prison administrators should consider arranging a programme of public education and should stimulate media interest to educate society about the important role which prison staff have in safeguarding civil society.



## Values and communication

### *The inherent dignity of all human beings*

In democratic societies the law underpins and protects the fundamental values of society. The most important of these is respect for the inherent dignity of all human beings, whatever their personal or social status. One of the greatest tests of this respect for humanity lies in the way in which a society treats those who have broken, or are accused of having broken, the criminal law. These are people who themselves may well have shown a lack of respect for the dignity and rights of others. Prison staff have a special role on behalf of the rest of society in respecting their dignity, despite any crime which they may have committed. This principle of respect for all human beings, whatever wrong they might have done, was articulated by a famous former prisoner and ex-President of South Africa, Nelson Mandela:

“ It is said that no one truly knows a nation until one has been inside the jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.<sup>1</sup>”

This is the basis for placing prison management, above all else, within an ethical framework. This imperative must never be lost sight of by senior administrators, by prison management or by first line prison staff. Without an ethical context, managerial efficiency in prisons can take a path that leads ultimately to the barbarism of the concentration camp and the gulag.

### *A clear message*

This principle must be kept in mind at all times by those who are responsible for the administration of prisons. Applying it in very difficult circumstances requires commitment. First line prison staff will only be able to maintain this commitment if they get a clear and consistent message from those in charge of the system that this is an imperative. They need to understand that they are not merely guards, whose sole task is to deprive people of their liberty. They are certainly not vigilantes, whose task is to inflict greater punishment than that already imposed by the judicial authorities. Instead, they have to combine a custodial role with an educational and reformatory role. This requires great personal talent and professional skill.

### *Personal qualities of staff*

Working in prison requires a unique combination of personal qualities and technical skills. Prison staff need personal qualities which enable them to deal with all prisoners, including the difficult and the dangerous, in an even-handed, humane and just manner. This means that there should be strict recruitment and selection processes so that only persons with the right qualities are taken into the organisation. Only when these are in place will it be possible to describe work in prisons as a profession.

### *The perils of poor staffing*

In many countries it is very difficult to recruit anyone to work in a prison. As a result, the only people who will work there are those who cannot find any other means of employment. Sometimes they will come to work in the prison service as an alternative to carrying out obligatory military service and will leave as soon as they can. Since they are also badly trained and poorly paid, it is predictable that they have little professional pride in their work, that they are vulnerable to temptations to become involved in corrupt practices and that they have no sense of carrying out a worthwhile public service.

<sup>1</sup> Mandela N (1994), *Long Walk to Freedom*, Little Brown, London



## *A coherent strategy*

To instil into staff such as these a sense of vision or a belief that what they do is of value is a huge task for those who are in charge of a prison system. It cannot be done in a haphazard manner, nor will it come about by accident. It can only be achieved if there is a coherent strategy based on the premise that a good staff who are publicly valued are the key to a good prison system.

### **What the international instruments say**

International Covenant on Civil and Political Rights, Article 10:

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

Code of Conduct for Law Enforcement Officials, Article 2:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 46 (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.**

Standard Minimum Rules for the Treatment of Prisoners, Rule 48:

**All members of the personnel 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.**

### **Putting it into practice**

## *A clear statement of purpose*

In order to ensure that these values are properly understood and implemented by staff it is important that a prison administration sets out its statement of purpose clearly. Such a statement will be based on international instruments and standards and will be clearly communicated to all who are involved in the work of prisons. The Policy Document of the Uganda Prison Service is an example of such a statement. It sets out a clear Mission Statement for the service and identifies the core values that underpin its work. Amongst those values is an acknowledgement of the fundamental importance of an effective system for recruiting and training staff.

# THE REPUBLIC OF UGANDA UGANDA PRISONS SERVICE

## POLICY DOCUMENT

2000 AND BEYOND

## MISSION STATEMENT

The Prisons Service of Uganda, as part of an integrated justice system, contributes to the protection of all members of society by providing reasonable, safe, secure and humane custody of offenders in accordance with universally accepted standards, while encouraging and assisting them in their rehabilitation, reformation and social reintegration as law-abiding citizens.

### VALUES

#### 1 Justice as the Core Value

Prisons Service is that component of the criminal justice system which has the greatest impact on the freedoms, liberties and rights of individuals. Therefore, those who are involved in corrections must respect fundamental human rights in every aspect of their work and must be guided by a belief in:

- Fairness and equality under and before the law;
- The dignity and worth of individuals;
- Managing with honesty, openness and integrity.

2 Fundamental to an effective corrections and justice system is a firm commitment to the belief that offenders are responsible for their own behaviour and have the potential to live as law-abiding citizens.

3 The majority of offenders can be dealt with effectively in the community by means of non-custodial correctional programmes; imprisonment should be used with restraint.

4 In the interest of public protection, decisions about offenders must be based on informed risk assessment and risk management.

5 Effective corrections is dependent on close co-operation with criminal justice partners and the community in order to contribute to a more just, humane and safe society.

6 Carefully recruited, properly trained and well-informed staff members are essential to an effective correctional system.

7 The public has a right to know what is done in Prisons and should be given the opportunity to participate in the criminal justice system.

8 The effectiveness of corrections depends on the degree to which correctional systems are capable of responding to change and shaping the future.

9 Remand prisoners are presumed to be innocent and shall be treated as such. They shall be kept separate from convicted prisoners.

10 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.

11 Imprisonment shall always be regarded only as a means of last resort following unlawful behaviour.

It is also important that the public and the media should be aware of the values within which prisons operate. If the role of the prison in a civil society is properly understood, it is more likely that the public will appreciate efforts made by the prison authorities to implement good practice. In order that this should happen, it is important that senior prison staff should develop good relations with their local public and media. It is wrong that the public should only hear about prisons when things go wrong; they should also be informed about the daily realities of prison life. Prison administrations should encourage prison directors to meet regularly with groups in civil society, including non-governmental organisations, and where appropriate to invite them into the prison.

“ In Ghana the Prison Service organised a week of activities to raise public awareness of the work of prisons.

## Prisons in the government structure

### Not military

#### A civilian service

Imprisonment is part of the criminal justice process and in democratic societies people are sent to prison by independent judges appointed by the civil power. The prison system should also be under the control of the civil rather than the military power. The administration of prisons should not be directly in the hands of the army or other military power. There are, however, a number of countries where the head of the prison administration is a serving member of the armed forces who has been seconded or sent for a limited time to the prison administration to carry out that role. Where this is the case, the government should make clear that this person is acting in a civilian capacity as head of the prison administration.

### Not police

In terms of separation of functions, it is important that there should be a clear organisational separation between the police and the prison administrations. The police are generally responsible for investigating crime and arresting criminals. Once a person has been detained or arrested, he or she should as soon as possible appear before a judicial authority and should thereafter be remanded into prison service custody. In many countries the administration of the police comes under the Ministry of the Interior while the administration of prisons comes under the Ministry of Justice. This is one way of ensuring the separation of powers and of underlining the close link that should exist between the judicial authority and the prison system.

“ There shall be a clear distinction between the role of the police and the prosecution, the judiciary and the correctional system’

The European Code of Police Ethics, Recommendation (2001)10, Committee of Ministers of the Council of Europe.

### What the international instruments say

Standard Minimum Rules for the Treatment of Prisoners, Rule 46(3):

(To secure the foregoing ends,) personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness.

## Putting it into practice

### *Democratic control*

In democratic countries prison administrations are generally public authorities which come under the control of a government ministry. In some countries, such as Brazil, India or Germany, this ministry is within a state or regional government. In most countries the prison system is organised nationally and is responsible to a department of the central government. In others, such as the United States and Canada, there is a combination of both models. It has become increasingly common that the responsible government department should be the Ministry of Justice, where one exists.

### *Separating police from prisons*

Placing prison administration within the Ministry of Justice emphasises the close link between the judicial process and the detention of citizens. It also separates the work of the police from that of the prison system. This is important since the investigation process should be separate from pre-trial detention so that suspects are not put under duress.

Another reason for encouraging this transfer is the fact that the police in some countries are in effect military units, carrying army ranks, organised on a military basis and liable to be called on by the government when necessary to act as a military force. This does not sit easily with the requirement that prison personnel should have civil service status.

“ In Africa over the past 15 years the administration of prisons has been transferred from the Interior Ministry to the Justice Ministry in Benin, Côte d'Ivoire, Cameroon, Chad, Niger, Togo, Burkina Faso and Senegal.

The Council of Europe expects new accession states in Eastern Europe to transfer responsibility for their prison administrations from the Ministries of the Interior to the Ministries of Justice.

### *The consequences of transferring responsibility*

It has to be recognised that such a transfer of responsibility within the government can have severe consequences for staff in countries where the military have special arrangements for salary and for other conditions of employment, such as free access to health care for themselves and their families, free travel, subsidised housing and holiday arrangements. These issues are dealt with later in this chapter.

### *Links with social agencies*

There is another reason why prisons should be administered by a civilian authority. Virtually all prisoners will one day return to life in civil society. If they are to live within the law it will be important that they have somewhere to live, that they have the opportunity of employment and that they have a proper social support structure. It is very important therefore, that the prison administration should have close links with other public service agencies, such as the social welfare and health authorities. This is more likely to happen if the prison administration itself is a civil organisation and not a military one.

### *A disciplined and hierarchical organisation*

At the same time, it should be understood that although prison staff should have civilian status the prison system itself will usually remain a disciplined and hierarchical organisation. Prisons are not democracies. In order to function properly there has to be a clearly recognised chain of command. This is true of most large organisations. It is especially true in the prison setting where there has always to be an awareness, even in the best managed prisons, of the possibility of unrest and disorder. It is quite feasible to have a system that is civilian in status yet well disciplined. As will be discussed in chapter 5 of this handbook, it is in the interests of everyone concerned, staff and prisoners, that prisons should be well-ordered institutions. This is much more likely to happen if they are organised in a disciplined manner.

## Staff recruitment

### Ensuring high standards

*The importance of the right staff*

High personal and professional standards should be expected of all prison staff, especially those who are going to work directly with prisoners in any capacity. These include first line, uniformed staff or guards as well as professional staff such as teachers and instructors. The staff who come into contact with prisoners every day need to be chosen with special care. So recruitment is very important. The prison administration should have a clear policy to encourage suitable individuals to apply to work in prisons. If the prison service has already established its values and the ethical context within which it is to operate, it is important that these should be clearly articulated in any recruiting material or process. This should make clear to anyone who wishes to apply for such work what will be expected of him or her in terms of behaviour and attitude. It will also make clear that anyone with unacceptable personal standards, say in respect of the treatment of racial minorities or towards women or foreigners, need not apply for work in the prison system.

*Selecting suitable candidates*

Even when such a policy is in place to ensure applicants understand the nature of the work in prisons, not all those who apply will be suitable. There has to be a clear set of procedures to ensure that only those applicants who are suitable are in fact selected to join the prison system. In the first place these procedures should be able to test the integrity and humanity of the applicants and how they are likely to respond in the difficult situations which they may well face in the course of their daily work. This part of the procedure is the most important since it covers qualities that are an essential requirement for prison work. Only when the applicants have shown that they meet these requirements should the procedures go on to test such matters as the educational standards of the applicants, their physical capabilities, their previous work records and their potential to learn new skills.

*No discrimination*

There should be no discrimination in the selection of staff. This means that women should have the same opportunities as men to work in prisons and should be paid the same salaries, given the same training and have the same opportunities for promotion. The vast majority of prisoners are men and traditionally in many countries work in prisons has been regarded as a male preserve. There is no reason why this should be so. In some prisons a substantial number of prisoners come from minority racial or ethnic groups. Where this is the case, prison administrations should make an effort to recruit sufficient proportions of staff from similar backgrounds.

### What the international instruments say

Standard Minimum Rules for the Treatment of Prisoners, Rule 46:

- (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 the institutions depends.
- (3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers 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.

Standard Minimum Rules for the Treatment of Prisoners, Rule 49:

- (1) So far as possible, the personnel 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.

Code of Conduct for Law Enforcement Officials, Article 18:

Governments and law enforcement agencies shall ensure that all law enforcement agencies 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.

Convention on the Elimination of All Forms of Discrimination Against Women, Article 2:

States Parties condemn the discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end, undertake:

- (a) To embody the principle of equality of men and women in their national constitutions and other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

### Putting it into practice

#### *An active recruitment policy*

Many prison administrations have great difficulty in recruiting staff of a high quality. There can be a variety of reasons for this. It may be due to low levels of salary. It may be because the standing of prison work in the local community is very low. It may be because of competition from other law enforcement agencies such as the police. Whatever the reason, prison administrations may have to pursue an active recruitment policy instead of simply waiting for potential recruits to come to them. This can be done in a variety of ways.

#### *A programme of public education*

The need for an active recruitment policy gives additional support to the argument, set out earlier in this chapter, for a programme of public education about what goes on inside prisons. This will help to counter false assumptions and may stir interest among the public in general and potential recruits in particular. If members of civil society are ignorant about the reality of prison life it will be unlikely that any of them will consider the possibility of joining the prison system. This public education can be carried out in a variety of ways. It may involve encouraging responsible members of the community to visit prisons to see for

themselves what they are like. It may include regular contact with the media so that they can be encouraged to publish a wide range of information rather than merely report critically when things have gone wrong.

The prison administration should then target specific bodies that might supply recruits to the prison system. These might be educational institutions, such as colleges and universities, or they might be community groups. They should be given specific information about the role of staff, about what kind of people might like to work in the prison system and the fact that this is a worthwhile career in the public service.

### *Specialist staff*

**P**articular attention needs to be paid to the recruitment of specialist staff. These are likely to be individuals who are already trained in a specific profession. They will include teachers, instructors and health care staff. In some prisons there will also be a need for psychiatrists and psychologists. It should not be assumed that people who have had a professional training, say as teachers, will automatically be suitable to work in a prison environment. They also need to be selected carefully and there needs to be clarity about the role they are expected to carry out in the organisation.

### *Women prison staff*

**E**xperience in a number of countries has shown that women can carry out the normal duties of a prison officer just as well as men. Indeed, in situations of possible confrontation the presence of women staff can often defuse potentially volatile incidents. There are a few situations, such as supervision of sanitary areas and carrying out personal body searches, in which the member of staff involved should be of the same gender as the prisoner. Apart from these situations, women prison staff can be assigned to all duties.

## **Staff training**

### *The underpinning values*

**O**nce staff have been properly recruited and selected they need to be given appropriate training. Most new staff will have little or no experience or knowledge of the prison world. The first requirement is to reinforce for all of them an appreciation of the ethical context within which prisons must be administered, as described earlier in this chapter. It must be made clear that all the technical skills that will subsequently be taught are underpinned by a belief in the dignity and humanity of everyone involved in prisons. These include all prisoners, whoever they may be and whatever crimes they may have been convicted of, and all staff and visitors. Staff need to be taught the basic skills which are required to deal with other human beings, some of whom may be very awkward and difficult, in a decent and humane manner. This is not simply a matter of theory. It is a crucial first step towards the technical training that will follow. Sometimes even in the most developed prison system there remains a lack of understanding about what staff are being trained for. There is an absence of appreciation about the main features that are at the basis of good prison work.

### *Technical training*

**S**taff should then be given the necessary technical training. They need to be aware of security requirements. This involves learning all about the use of security technology: keys, locks, surveillance equipment. They need to learn how to keep proper records and what sorts of reports need to be written. Above all, they need to understand the importance of their direct dealings with prisoners. The security of the lock and the key must be supplemented by the kind of security that comes from knowing who their prisoners are and how they are likely to behave. These are the issues of dynamic security referred to in chapter 5 of this handbook.



## *The prevention of disorder*

As far as keeping good order is concerned, new prison staff need to learn that prevention of disorder is always better than having to deal with it after it has occurred. Disorder extends from incidents involving a single prisoner to mass insurrection and riot. It is very rare that disorder erupts spontaneously. There are usually many warning signs that trouble is brewing. A properly trained member of staff will recognise these warning signs and will act to divert trouble. This is a skill which can be taught.

## *Continuing training*

The appropriate training of staff is a requirement that continues from the moment of first recruitment to that of final retirement. There should be a regular series of opportunities for continuing development for staff of all ages and all ranks. This will help to make staff aware of the latest techniques. It will also provide training in specific skills for staff who work in specialist areas and opportunities for more senior staff to develop their management skills.

### **What the international instruments say**

Standard Minimum Rules for the Treatment of Prisoners, Rule 47:

- (1) The personnel shall possess an adequate standard of education and intelligence.
- (2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.
- (3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organised at suitable intervals.

Standard Minimum Rules for the Treatment of Prisoners, Rule 50:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 51:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 52:

- (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.
- (2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.



Standard Minimum Rules for the Treatment of Prisoners, Rule 53:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 54:

- (1) Officers of the institutions 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. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.
- (2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.
- (3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

Code of Conduct for Law Enforcement Officials, Article 3:

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Code of Conduct for Law Enforcement Officials, 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.

Code of Conduct for Law Enforcement Officials, Article 5:

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Code of Conduct for Law Enforcement Officials, 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.

Code of Conduct for Law Enforcement Officials, Article 7:

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and vigorously oppose any violations of them.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,  
Principle 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.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,  
Principle 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.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,  
Principle 15:

Law enforcement officials, in their relations with people 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 security is threatened.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,  
Principle 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.

Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 1:

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Declaration on the Elimination of Discrimination against Women, Article 10:

- 1 All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:
  - (a) The right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;
  - (b) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;
  - (c) The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;
  - (d) The right to receive family allowances on equal terms with men.
- 2 In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including child care facilities.

Rules for the Protection of Juveniles Deprived of their Liberty, Rule 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.

Rules for the Protection of Juveniles Deprived of their Liberty, Rule 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.

Standard Minimum Rules for the Administration of Juvenile Justice, Rule 22:

- 1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilised to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.
- 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.

## Putting it into practice

### *Initial training*

The standard and length of the training given to new recruits to prison work varies enormously from country to country. The most basic arrangement is that in which new staff are expected to learn purely by working alongside experienced staff. They are given only the most rudimentary advice before being handed a set of security keys and left to get on with their tasks. This is a very dangerous practice. At best, it means that new staff will not understand what their work really involves and will learn habits from older staff which do not represent best practice. At worst, it means that the new staff will be vulnerable to pressure from powerful prisoners who will take advantage of their vulnerability and will have power over them in a way that will weaken security and good order.

In some countries new recruits are sent for a few weeks to a training school or college where they learn the rudiments of their work before taking up their duties in prison. In other countries first line staff undertake up to two years' training before beginning work as qualified prison officers. Prison systems in a number of countries require new staff to undertake a mixture of classroom and practical training. In Ghana, for example, new staff spend three months in the training school, followed by three months in a prison and then a further three months in the training school.

However it is achieved, all new prison staff should be given a clear set of principles about what their work involves and sufficient technical knowledge to carry out their basic work before they enter a prison. They should then work alongside experienced staff who have been identified by management as most likely to give the new members of staff the best example and instil in them a confidence in their work.

### *Senior staff training*

Senior prison staff need to have a more sophisticated form of training. This is true whether they are recruited directly at that level or whether they graduate through the ranks of more junior staff. It cannot be assumed that experience alone equips people for the higher levels of prison management. Even staff who have worked in prisons for many years at a junior level need to be helped to develop additional skills before taking on a management role. In some countries, such as Russia, staff are directly recruited for senior posts and are required to undertake a diploma or degree course lasting several years before they go to work at a management level in a prison. The director of a prison and his or her deputies are key persons in setting the culture and ethos of a prison. They need to be selected with special care for their personal qualities and to be given extensive training.

### *Training specialist staff, especially medical staff*

**S**taff who have a specialist function, such as teachers and instructors, will need additional training in order to carry out their roles properly. This applies especially to medical staff. Medical doctors have to realise that when they come to work in a prison they bring with them all the ethical obligations of their profession. Even though these people are in prison, the doctor's first responsibility is to treat their illness, whether it be physical or mental. This needs to be made clear to any doctor who comes to work in a prison.

“ The Corrections Health Service of New South Wales in Australia, an organisation separate from the prison system but working closely with it to provide health services to all prisoners in New South Wales prisons, produced a Code of Conduct and Ethics for its staff in 1999.

### *Training for work with special groups of prisoners*

**S**taff who are to work with specific groups of prisoners should be given the special training necessary to work with them. This applies especially to staff who are to work with juvenile and younger prisoners. There is sometimes a tendency to regard this sort of work as somehow less important or demanding than work with adult prisoners. The reality is often quite different. Juvenile prisoners are frequently more volatile and demanding than adult prisoners. There is also a greater possibility that they will respond positively to appropriate training and encouragement. One of the principal tasks of staff who work with younger prisoners is to help them to grow into mature adults who will live in a lawful manner. Similar training considerations apply to staff who work with women prisoners, with mentally disturbed prisoners and with high security prisoners.

### *Development and continuing training*

**T**he initial training which staff receive should be merely the beginning of their development. Prisons are dynamic institutions, continuously changing, being influenced by expanding knowledge and external influences. Staff need to be given regular opportunities to bring their knowledge up to date and to sharpen their skills. This will require development within the prison administration and also with other criminal justice and social welfare agencies. This development will continue throughout the whole of a staff member's career.

### *Training in the use of force*

**I**n most prisons for the vast majority of the time prisoners will respond quietly to legitimate orders. They do not wish to be in prison but they accept the reality and go about their business as instructed. From time to time individuals or small groups may act in a violent manner and have to be controlled using force. This matter is dealt with in chapter 5 of this handbook. It is important that at the outset of their training all staff should be made aware of the circumstances in which force may be used against prisoners.

### *Procedures for the use of force*

**T**he first principle is that force may only be used when it is absolutely necessary and then only to the extent that is necessary. This means that there should be a clear set of procedures which lay down the circumstances in which force may be used and the nature of that force. A decision to use any kind of force should only be made by the most senior member of staff on duty in the prison at the time. A record should be made of any use of force and the reason for it.

### *Minimum use of force*

**A**ll staff should be trained in legitimate means of physically restraining violent prisoners, acting either individually or as a group, by use of minimum force. Selected members of staff should be trained to a high level. The form of control and restraint training used by the prison services in the United Kingdom is an example of minimum use of force.

### *Training in the use of firearms*

In some prison services a number of staff carry firearms. Special care must be taken to make sure that these staff are properly trained and that they have a clear understanding of the circumstances in which firearms may be used. It is not recommended practice that staff who work directly with prisoners should be armed. This is to make sure that firearms are never used in haste and that they can never fall into the hands of prisoners.

### *Use only to prevent loss of life*

Lethal firearms should only be used when directly necessary to prevent loss of life. This means that there must be an immediate and clearly perceived threat to someone's life. For example, lethal fire should not be used simply because a prisoner is escaping. Using lethal fire is only permissible when such an escape presents an immediate threat to someone's life.

## Conditions of employment for staff

### *The need for good conditions*

If the principles of good prison management as described in this handbook are to be realised it is essential to have a well-motivated staff who are highly trained and committed to the public service which they perform. This chapter has described in some detail what this involves. However, it is not sufficient to recruit able persons, to imbue them with a sense of professionalism and to train them to a high standard. If they do not have appropriate levels of pay and conditions of employment they will be unlikely to remain working in the prison system. Instead, they may benefit from the training that they are given and may then take these skills to another job that has better conditions of employment. In recent years this has become a real problem for many prison services in countries of the former Soviet Union, which still provide a high level of education for incoming staff, especially at senior levels, but are then unable to pay them sufficient to keep them in the service for more than a few years.

### *Pay levels*

In the world of today the standing of a profession is measured in large part by the level of salary which it attracts. The best individuals are not likely to be attracted to work with very low levels of pay. Prison work is one of the most complex of public services. That should be recognised in the salaries paid to prison staff at all levels. There are a number of possible comparative groups, which may differ from country to country. In some cases, they will be other criminal justice agencies such as the police. In others, they may be public servants such as teachers or nurses. Whatever comparative group is used, governments have to recognise that prison staff are entitled to a proper remuneration for their difficult and sometimes dangerous work. An added consideration in some countries is that if staff are not paid at an appropriate level they may be open to corruption of a direct or indirect nature.

### *Other conditions of employment*

In many countries prisons are in very isolated locations, far from centres of population. This has an effect not only on staff but also on their families. It affects access to schools, to medical facilities, to shops and to other social activities. In such circumstances, other conditions of employment, especially those which affect family members, are as important as levels of pay.

In some instances staff are provided with free or subsidised housing, either because of the remoteness of the prison, the expense of finding accommodation locally or because it is provided for all public servants. For similar reasons staff and their families have free access to the medical facilities of the prison. Reference has already been made to the requirement imposed by the Council of Europe to newly accessing states that responsibility for prison

administration should be transferred from Ministries of the Interior to Ministries of Justice. There are good reasons in terms of the accountability of the system why this is a positive development. What has to be taken into account as a consequence however is that, as officers of the Ministry of the Interior, staff and their families had access to free health care, free education, free housing and to free or subsidised transport and holidays. In many instances these facilities compensated for low levels of salary. On transfer to the Ministry of Justice many of these facilities were lost and staff found it very difficult to support their families in a decent manner. The solution to these difficulties is to pay staff a reasonable salary so that they do not have to depend on payment in kind. This is sometimes very difficult in countries where there are scant public resources.

### *Preferable to live in the community*

**I**t is beneficial for staff and their families to be able to live in the general community rather than in a community made up only of other prison workers. This will make it easier for them to develop other interests away from their work and to mix with people from other walks of life. It will also enable their partners and children to enjoy a normal life outside the prison ghetto. A fuller lifestyle is also liable to make staff more committed while they are at work.

### *Equality of treatment*

**C**hapter 16 of this handbook deals with the need to make sure that there is no discrimination towards prisoners who belong to any kind of minority. As indicated earlier in this chapter the same principles apply to staff. Women staff should have parity of salary and other conditions of service with their male colleagues. They should also have the same opportunities for promotion and for work in areas requiring special skills. The same principles apply to staff from minority groups, whether minorities of race, religion, culture or sexual preference.

### *Transfer*

**I**n some prison systems staff have to accept transfers to other prisons. When this happens, consideration needs to be given not only to the needs of the staff themselves but also those of their families. For example, if children of staff are at a particularly sensitive time in their schooling a transfer may have a major detrimental effect on their education. Factors such as this should be taken into account. Except in rare emergency situations, staff should always be consulted before a transfer takes place and whenever possible they should be invited to agree to such moves. Transfers should never be used as a form of disciplinary action against a member of staff.

### *Staff representation*

**M**ost prison systems are disciplined organisations. That does not mean that staff should be treated unreasonably or without respect for their position. In most countries staff are entitled to belong to trade unions which negotiate with management on their behalf about levels of pay and conditions of employment. This arrangement is to be recommended. If there is no formal trade union, staff should at least have a recognised negotiating machinery. Trade union and other staff representatives should not be penalised for the work that they do in representing their fellow members of staff.





# Prisoners are Human Beings

## The framework

### Human dignity

*Prisoners are entitled to human rights protections*

People who are detained or imprisoned do not cease to be human beings, no matter how serious the crime of which they have been accused or convicted. The court of law or other judicial agency that dealt with their case decreed that they should be deprived of their liberty, not that they should forfeit their humanity.

*The prisoner as person*

Prison staff should never lose sight of the fact that prisoners are human beings. They must continually resist the temptation to regard the prisoner merely as a number rather than as a whole person. Nor do prison staff have any right to inflict additional punishments on prisoners by treating them as lesser human beings who have forfeited the right to be respected because of what they have done or are accused of having done. Ill-treatment of prisoners is always legally wrong. In addition, such behaviour lessens the very humanity of the member of staff who acts in such a way. The need for prison administrations and prison staff to work always within an ethical context was dealt with in chapter 2 of this handbook. This chapter will deal with the practical consequences of this.

*Total prohibition on torture and cruel, inhuman or degrading treatment*

Persons who are detained or imprisoned retain all their rights as human beings with the exception of those that have been lost as a specific consequence of deprivation of liberty. The prison authority and prison staff need to have a clear understanding of the implications of this principle. Some issues are very clear. There is, for example, a total prohibition on torture and deliberately inflicted cruel, inhuman or degrading treatment. There has to be an understanding that this prohibition does not merely apply to direct physical or mental abuse. It also applies to the totality of conditions in which prisoners are held.

“ The European Court of Human Rights has found that the conditions in which a prisoner was held for four years and ten months in a detention centre in Russia contravened Article 3 of the European Convention on Human Rights. Article 3 prohibits inhuman or degrading treatment. The case was brought by Valery Kalashnikov who was imprisoned in Magadan between 1995 and 2000.

The Court found that in the detention centre in Magadan Mr Kalashnikov was held in a cell where each prisoner had between 0.9 and 1.9 square metres of space. The acute overcrowding meant that the prisoners had to take it in turns to sleep. The light was on in the cell all the time and there was constant noise from the large number of prisoners. These conditions led to sleep deprivation. The Court also noted the lack of adequate ventilation and the fact that prisoners were allowed to smoke in the cell, the infestation of the cell with pests, the dirty state of the cell and the toilet area, the lack of privacy and the contracting by Valery Kalashnikov of skin diseases and fungal infections. The Court was very concerned that at times Mr Kalashnikov was held in the same cell as people suffering from syphilis and tuberculosis.

The Court also noted in its judgement in 2002 that conditions had improved considerably at the Magadan Detention Centre recently and also accepted that there was no actual intention on the part of the Russian authorities to humiliate or debase Mr Kalashnikov.



“ The European Court of Human Rights has found that the conditions in which a prisoner was held for at least two months in a prison in Greece contravened Article 3 of the European Convention on Human Rights, which prohibits inhuman or degrading treatment. The case was brought by Donald Peers who was held in Koridallos Prison in Greece as a remand prisoner after his arrest in 1994.

The Court took particularly into account that Mr Peers had to spend a considerable part of each 24-hour period practically confined to his bed in a cell, with no ventilation and no window, which would at times become unbearably hot. He also had to use the toilet in the presence of another prisoner and be present while the toilet was being used by his cellmate. The Court was of the opinion that these conditions diminished Mr Peers' human dignity and gave rise in him to feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance.

The Court considered that there was no evidence of a positive intention on the part of the authorities of humiliating or debasing Mr Peers but found that the fact that they had taken no steps to improve the objectively unacceptable conditions of detention denoted a lack of respect for Mr Peers.

### *Which rights are forfeited?*

There has to be careful consideration of what rights are to be forfeited as a consequence of the deprivation of liberty.

- The right of freedom of movement (Universal Declaration of Human Rights, Article 13) is obviously restricted by the nature of imprisonment, as is that of free association (UDHR, Article 20). Even these rights are not completely removed since prisoners are rarely held in total isolation and, when they are, there has to be very good and specific reason.
- The right to family contact (UDHR, Article 12) is not taken away but its exercise may well be restricted. A father, for example, does not have unrestricted access to his children, nor they to him, in a prison setting. The ability to create and to maintain a family (UDHR, Article 16) is another right which is dealt with in different ways in different jurisdictions. In some countries prisoners are not allowed to have any intimate relations with partners or spouses; in some they may have sexual relations under very limited conditions; in others they are allowed to have virtually normal relations for specific periods of time. These matters are dealt with in chapter 8 of this handbook.
- The rights of mothers and children to family life require special consideration. Some of the important issues arising in these contexts are dealt with in chapters 12 and 13 of this handbook.
- The right of everyone to take part in the government of his or her country directly or through freely chosen representatives (UDHR, Article 21) may also be restricted by imprisonment. Article 25 of the International Covenant on Civil and Political Rights indicates that this right is to be exercised by voting in elections. In some jurisdictions prisoners who have not yet been convicted are eligible to vote; in others all prisoners may vote. In other countries, no-one who is in detention is allowed to vote in elections and the prohibition on voting may even extend to those who have served their sentence and left prison.

## *A common humanity between prisoners and staff*

**M**en, women and children who are in prison are still human beings. Their humanity extends far beyond the fact that they are prisoners. Equally, prison staff are human beings. The extent to which these two groups recognise and observe their common humanity is the most important measurement of a decent and humane prison. Where such recognition is lacking there will be a real danger that human rights will be abused.

### **What the international instruments say**

International Covenant on Civil and Political Rights, Article 10:

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

Basic Principles for the Treatment of Prisoners, Principle 1:

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

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

The African Charter on Human and Peoples' Rights, Article 5:

**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.**

American Convention on Human Rights, Article 5 (2):

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

### **Putting it into practice**

## *Protecting human rights improves operational efficiency*

**T**he proper behaviour of staff towards prisoners is the key lesson of this handbook. If staff do not behave in a way which respects the prisoner as a person and which recognises the inherent dignity of the person, then any regard to individual human rights becomes impossible. Staff behaviour and the humane and dignified treatment of prisoners should underpin every operational activity in a prison. This is not merely a question of human rights principles. In operational terms it is also the most effective and efficient way in which to manage a prison. In addition to being an abuse of human rights, a failure to observe this obligation can sometimes have legal consequences for the prison administration.

“ On 27 November 1994 Christopher Edwards, who had been tentatively diagnosed as a schizophrenic in 1994, was arrested for approaching young women in the street. He was remanded to Chelmsford Prison, England. On the following day he was located in a cell with another young man who had a previous history of violent outbursts and assault. Shortly before 1.00am on 29 November prison staff discovered Christopher Edwards dead in his cell. He had been stamped and kicked to death by the other prisoner, who was subsequently convicted of manslaughter by reason of diminished responsibility.

The parents of Christopher Edwards took the case to the European Court of Human Rights. In a judgement in 2002 the Court found that there had been a violation of Article 2 (right to life) as regards the circumstances of Christopher Edwards' death. There had been a further violation of Article 2 as regards a failure to conduct an effective investigation into the circumstances of his death and a violation of Article 13 (right to an effective remedy) in respect of his parents' lack of access to an appropriate means of obtaining a determination of their allegations that the authorities failed to protect their son's right to life.

## *The Standard Minimum Rules*

What this approach means in practical terms is described in greater detail in the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRs), which were approved by the General Assembly of the United Nations in 1957 and which are referred to continuously in this handbook. The SMRs deal with the essential features of daily life in prison. While making clear that some aspects of the treatment of prisoners are non-negotiable and reflect legal obligations, the text of the SMRs also recognises that a variety of legal, social, economic and geographical conditions prevail in the world. The document states that the standard minimum rules are designed to 'stimulate a constant endeavour to overcome practical difficulties' and encourage experiment, providing that this is in harmony with the principles expressed in the Rules (SMRs Preliminary Observations 2 and 3).

## **Torture and ill-treatment are never permitted**

*No circumstances ever justify torture*

The international human rights instruments do not leave room for any doubt or uncertainty in respect of torture and ill-treatment. They state clearly that there are absolutely no circumstances in which torture or other cruel, inhuman or degrading treatment or punishment can ever be justified. Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, other than that pain or suffering which is inherent in the fact of detention or imprisonment.

*Extracting confessions by torture is prohibited*

The prohibition on torture is particularly important in relation to places where those undergoing interrogation or investigation are detained, as there may be a temptation to use duress in order to obtain information essential to the resolution of a criminal case. The most obvious example of this is where a prisoner confesses to a crime as a direct consequence of the ill-treatment which he or she suffers while under investigation. This is an important argument for a separation of the agencies which investigate crime from those which detain accused persons.

*Ill-treatment must never be seen as normal*

The closed and isolated nature of prisons can offer the opportunity for abusive actions to be committed with impunity, sometimes in an organised manner and at other times because of the actions of individual members of staff. There is a danger that in countries or institutions where the punitive function of prisons is given priority, actions which amount to torture or ill-treatment, such as routine unlawful use of force and beatings, can come to be regarded by staff as 'normal' behaviour.

## What the international instruments say

Universal Declaration of Human Rights, Article 5:

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

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.1:

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

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2:

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

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 10:

Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Code of Conduct for Law Enforcement Officials, Article 3:

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 34:

Whenever the death or disappearance of a detained or imprisoned person occurs during his sentence or imprisonment, an enquiry 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.

## Putting it into practice

*Staff must be told that torture is prohibited*

All those authorities responsible for the administration of prisons have an obligation to ensure that all staff and others involved in prisons are fully aware of the complete prohibition on torture and cruel, inhuman or degrading treatment.

*Danger moments for ill-treatment*

Authorities should ensure that none of the operational regulations in prison can ever be interpreted by staff as permission to inflict such treatment on a prisoner. This applies particularly to regulations for dealing with difficult or obstructive prisoners and those who are held in segregation units. There are certain key moments which set the tone for how staff are expected to deal with prisoners. One occurs when the prisoner is first admitted into prison. The treatment he or she receives at that point is an important indicator to the prisoner and to others of what is to follow. On first admission to prison some people will be subdued and afraid. Others may be truculent or under the influence of drugs or alcohol. It is important that staff should treat every prisoner on admission with dignity and respect. Another important set of regulations will relate to the treatment of prisoners who are violent, who breach prison rules or who are in any way difficult to manage. This treatment can be firm and decisive while at the same time avoiding any suggestion of cruelty or inhumanity.

*Sexual abuse*

Prisoners are vulnerable to sexual abuse. This may be forced or as a result of coercion or barter in exchange for privileges. In some cases the perpetrator may be a member of staff or, more usually, another prisoner. In many cases sexual abuse by prisoners may be condoned by staff as a form of punishment or control. In a number of countries prison rape has become a widespread and serious concern. In addition to the physical and psychological damage which it causes it increases the spread of HIV/AIDS and other diseases. Prison administrations have a responsibility to ensure that prisoners, especially women, are safe from the threat of sexual abuse.

“ The United States Supreme Court has ruled that 'being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society'. As a result a bill is currently before Senate (the Prison Rape Prevention Act of 2002) which, as well as seeking to prevent and punish prison rape, will also seek to identify those prisons where the incidence of rape is high.

*Regulating the use of force*

It must be made clear to staff that the behaviour of a prisoner can never be used as a justification for the use of torture or ill-treatment. When force has to be used, it must be in accordance with agreed procedures and then only to the extent that it is essential to restrain a prisoner. There should be specific regulations covering the use of all methods of physical force, including means of restraint such as handcuffs, body belts and chains, as well as batons and truncheons. Staff should not have unrestricted access to handcuffs, body belts and straitjackets. Instead, they should be held in a central location in the prison and any use should be authorised in advance by a senior member of staff. A full record should be maintained of any instance when this equipment is issued and the circumstances in which it is used.

*Use of batons or truncheons*

In many countries individual members of staff are issued with some form of baton or truncheon for their personal use. There should be clear instructions as to the circumstances in which this may be used. This should always be to do with personal defence and not as any form of punishment. Batons or truncheons should not be carried openly in the hand by staff as they go about their daily duties. These and other related matters are dealt with more fully in chapter 5 of this handbook, which deals with security and good order.

### *Minimum use of force methods*

**T**here are a variety of techniques for controlling violent prisoners by the use of methods using minimum force. These reduce the likelihood of both staff and prisoners being seriously injured. Staff should be trained in these techniques; this training should be updated on a regular basis. Whenever there is a violent incident or a prisoner has to be subdued, a senior member of staff should attend the scene as soon as possible and should not leave until the incident has come to an end.

### *Complaints against torture and ill-treatment*

**T**here should be a formal and open set of procedures which prisoners can use to complain, without any fear of recrimination, to an independent authority against any incidence of torture or cruel, inhuman or degrading treatment. Chapter 9 of this handbook deals with the right of prisoners to make complaints.

### *Access for independent observers*

**T**here should be a system of regular access by a judge or other independent persons to prisons in order to ensure that torture or cruel, inhuman or degrading treatment does not take place. The need for independent inspection is dealt with in chapter 10 of this handbook.

## **Admission procedures**

### *Admission is a time of vulnerability*

**D**etainees and prisoners are particularly vulnerable when they first arrive in detention or imprisonment. International law recognises that the right to life and to freedom from torture and ill-treatment require a specific framework of protection at this time. A number of international instruments describe the rights of the imprisoned person and the obligations of prison staff at the point of first admission to a place of detention in order to safeguard against torture, ill-treatment, disappearance, extrajudicial killing and suicide.

### *Admission procedures which respect human dignity*

**G**ood practice has evolved in countries around the world, showing how staff can conduct admission procedures not only lawfully, but with sensitivity to the welfare and essential dignity of the detained person. Out of this good practice it is possible to make a series of recommendations that are of universal applicability and that can be adapted to local custom, cultural traditions and socio-economic level.

### *All prisoners have these rights*

**T**hese rights apply to all prisoners, whether they are on remand, pre-trial, awaiting sentence or convicted. Important additional considerations apply to particular groups of prisoners, such as those who have not been convicted, juveniles and young prisoners and women. There are specific references to their needs in chapters 11 to 16 of this handbook.

## What the international instruments say

Vienna Convention on Consular Relations, Article 36:

- 1 With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
  - (a) Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
  - (b) If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded to the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;
  - (c) Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.
- 2 The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, Article 6:

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

Declaration on the Protection of All Persons from Enforced Disappearance, Article 10:

An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralised registers.

Standard Minimum Rules for the Treatment of Prisoners, Rule 7:

- (1) In every place where prisoners are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:
  - (a) Information concerning his identity;
  - (b) The reasons for his commitment and the authority therefor;
  - (c) The day and hour of his admission and release;
- (2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

Standard Minimum Rules for the Treatment of Prisoners, Rule 35:

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



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

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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 detention or imprisonment or of his 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 organisation, if he is a refugee or otherwise under the protection of an intergovernmental organisation.
- (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 should be given to notifying parents or guardians.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18:

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

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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 this medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Standard Minimum Rules for the Treatment of Prisoners, Rule 24:

The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

Standard Minimum Rules for the Treatment of Prisoners, Rule 38:

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



## Putting it into practice

*There must be a valid judicial order*

**A**ll prisoners have the right to be held only in an officially recognised place of detention. The first task of the prison authorities is to check that there is a valid order for the detention of each individual who is brought to the prison. This order should be issued and signed by a judicial authority or other competent agency.

*Prisoners must be registered*

**T**he prison authorities must keep an up-to-date official register of all detainees, both at the place of detention and, if possible, also at a central location. The register should show the date and time of admission and the authority under which the person is imprisoned. The information in such registers must be accessible to the courts and other competent authorities and any other person with a legitimate interest in the information.

*The register must be bound with numbered entries*

**T**he details relating to each prisoner should be sufficient to identify each prisoner. This is to ensure that people are only held in prison if there is a legitimate sanction for their detention, that they are not held for longer than the law allows and in order to guard against human rights violations such as 'disappearance', torture or ill-treatment, and extrajudicial killing. The register should be bound and the entries numbered so that it is not possible to delete or add entries out of sequence.

*Registration of pre-trial prisoners*

**I**n the case of a person detained without sentence, the written legal sanction for detention should specify the date when the person will next appear before a legal authority.

*Advising family and lawyers*

**A**ll persons received into a prison should be given the opportunity as soon as possible to inform their legal representative and their families of their whereabouts. This facility should be provided whenever a prisoner is transferred to another prison or place of detention. The rights of pre-trial prisoners are dealt with in chapter 11 of this handbook. Special care should be taken to ensure that young prisoners can make contact with their families; see chapter 12 of this handbook. Additional consideration should be given to prisoners who have responsibility for old, young or ill members of their families; this may often be the case for women prisoners.

*Foreign national prisoners*

**F**oreign national prisoners, especially those held in pre-trial detention, should be given all reasonable facilities to communicate with and to receive visits from representatives of their government. If they are refugees or under the protection of an intergovernmental organisation they have the right to communicate with or receive visits from representatives of the competent international organisation. It should be remembered that such contact should only be with the consent of the detainee. There may be instances where prisoners who are foreign nationals require protection from expulsion or repatriation to a state where there are grounds to believe that they would be in danger of torture or ill-treatment.

*A medical examination is essential*

**A**s soon as possible after a person is admitted to prison he or she should be offered a medical examination by a properly qualified medical officer. Any necessary medical treatment should be offered. All of this should be free of charge.

“ “ The European Committee for the Prevention of Torture considers that the medical examination should take place on the day of admission

[Report of the CPT on a visit to Finland in 1992]

“ “ ‘Any signs of violence observed... should be fully recorded, together with any relevant statements by the prisoner and the doctor’s conclusions’ and that if requested by the prisoner ‘the doctor should provide him with a certificate describing his injuries.’

[Report of the CPT on a visit to Bulgaria in 1995]

“ “ The CPT sees medical screening of new arrivals as indispensable ‘in particular in the interests of preventing the spread of transmissible diseases, of suicide prevention and of the timely recording of injuries.’

[Report of the CPT on a visit to Turkey in 1997]

### *The role of a qualified nurse*

In some prisons it may be difficult to arrange for a doctor to examine all prisoners immediately after admission. It may be that there is no resident doctor or it may be that the volume of admissions is so large that the doctor cannot possibly give everyone a full clinical examination immediately, especially if the prisoners arrive in the evening. In such circumstances arrangements should be made for a qualified nurse to give all prisoners a preliminary interview. The doctor will see only those who are obviously unwell or those prisoners who are referred to him or her by the nurse. Under this arrangement the doctor will give all new prisoners a full medical examination the day after admission.

The right of prisoners to have access to healthcare, the standards governing the quality of that care and other related matters are dealt with in chapter 4 of this handbook.

### *Women need special protection*

Given the high proportion of women prisoners who will have suffered sexual abuse, staff working in the admission area of women’s prisons should receive additional training so that they are aware of the sensitive issues involved.

### *Body-searching*

It is common practice that on first admission to prison all prisoners are given a full body search. The issue of searching is dealt with more comprehensively in chapter 5 of this handbook.

The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (Article 17) General Comment 16, para 8

“ “ So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.<sup>1</sup>

“ “ In 1993 the Supreme Court of Canada ruled that male staff could not carry out even clothed searches of women prisoners although the Court did not rule that women staff should not carry out such searches of male prisoners because the Court concluded that the effect of cross-gender searching is different and more threatening for women than for men.

1 UN International Human Rights Instruments, HRC/Gen I/Rev.5, 26 April 2001

### *Information for prisoners*

Life in prison should start and carry on within a framework of justice and fairness, in a way that minimises the prisoners' feelings of powerlessness and makes explicit to them that they remain citizens with rights and obligations. This is likely to be particularly important to those coming into prison for the first time. As soon as possible after the first point of admission arrangements should be made to ensure that all prisoners are made aware of the regulations of the prison, what is expected of them and what they can expect of the prison staff. If possible they should be given a personal copy of the prison regulations.

### *Provision for those who cannot read*

Provision needs to be made to ensure that those who do not speak the local language, who are illiterate or disabled can still receive and understand this important information. This can be done in a variety of ways: by having someone read and explain the rules, by making sure that there is someone who talks the language of the prisoner, in some countries by use of videos. It is especially important that prisoners should be made aware of their right to make a request or a complaint, as described in chapter 9 of this handbook.

### *Handling large numbers of arriving prisoners*

The way that staff in a prison admission area carry out their work may vary according to the number of prisoners who are admitted or released on a single day. In prisons for long-term prisoners there may only be a handful of prisoners admitted or released in a month. In this case staff will not be under great pressure and will be able to devote a reasonable amount of time to dealing with each prisoner. In large urban prisons, which deal primarily with prisoners who are pre-trial or waiting sentence or who are serving short sentences, there may be tens or even hundreds of prisoners passing through the admission area each day, often within a few hours. In the latter situation staff need to be well supported and supervised by management.

### *Training for staff working in the admission area*

The admission area can be very intimidating for new arrivals to prison. The receiving staff need to be specially trained to recognise how to exercise the difficult balance between firm control, which makes clear to the person that the prison is a well organised place, and an understanding of the stress which the prisoner is likely to be feeling as he or she moves into this strange new world. Not all staff are suited for this type of work. Those who work in the admission area should be specially selected and should be given specific training to enable them to carry out their work with sensitivity and with confidence.

## Living conditions

### *Deprivation of liberty is the punishment*

There are certain basic physical requirements that must be met if the state is to comply with its obligation to respect the prisoner's human dignity and fulfil its duty of care. These include adequate provision of accommodation, hygienic conditions, clothing and bedding, food, drink and exercise. When a judicial authority sends someone to prison, the international standards are clear that the punishment imposed should be solely deprivation of liberty. Imprisonment must not include risk of physical or emotional abuse by staff or by other prisoners. It must not include risk of serious illness or even death because of the physical conditions or the lack of proper care.

### *The duty of care*

In countries where the standard of living for the general population is very low it is sometimes argued that prisoners do not deserve to be held in decent and humane conditions. If men and women who are not in prison have to struggle to survive, if they do not have enough food for themselves or their children, why should anyone worry about the

conditions in which those who have broken the law are held? That is a difficult question to answer, but it can be answered. Put simply, if the state takes on itself the right to deprive someone of liberty, for whatever reason, it must also take on itself the obligation to make sure that that person is treated in a decent and humane manner. The fact that non-imprisoned citizens find it difficult to live decently can never be used as a justification by the state for failing to treat those who are in its care decently. This principle goes to the heart of the democratic society, in which the organs of the state have to be seen as examples in respect of the way they treat all citizens.

### *Use of scarce resources*

**A**t a more pragmatic level, the shortage of public funds may well be an added reason for the state to make sure that prison is used only for the most dangerous criminals and is not used as a way of removing marginalised individuals from society.

### *The health risks*

**I**mprisonment may mean that a large number of individuals are kept together in a very restricted environment with little or no freedom of movement. This raises particular concerns. In the first place there may be a serious risk to health. For example people suffering from a highly infectious disease such as tuberculosis may be in such close proximity and in such ill-ventilated conditions, that their fellow prisoners are at great risk of contracting the disease. People deprived of the opportunity to wash themselves or their clothing may catch skin diseases or parasites and, for lack of bedding or beds, pass on their affliction to others. A prisoner in a cold climate who does not have warm clothing may catch pneumonia. A prisoner deprived of exercise and access to sunlight and fresh air may suffer serious loss of muscle tone and vitamin deficiency. A prisoner deprived of sufficient quantities of food and/or liquid is likely to suffer serious damage to health.

### **What the international instruments say**

Standard Minimum Rules for the Treatment of Prisoners, Rules 9–21:

- 9 (1) Where sleeping accommodation is in single cells or rooms, each prisoner should occupy a night cell or room by himself.
- 9 (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 institution.
- 10 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 contents of air, minimum floor space, lighting, heating and ventilation.
- 11 In all places where prisoners are required to live or work,
  - (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.
  - (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.
- 12 The sanitary arrangements shall be adequate to enable every prisoner to comply with the needs of nature when necessary in a clean and decent manner.
- 13 Adequate showering and bathing installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.
- 14 All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

- 15 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.
- 16 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 enabled to shave regularly.
- 17 (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him 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 institution for an authorised purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.
- 18 If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.
- 19 Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, sufficient bedding, clean when issued and changed often enough to ensure its cleanliness.
- 20 (1) Every prisoner shall be provided by the 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 needs it.
- 21 (1) Every prisoner not working shall have at least one hour's exercise in the open air, 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.

### Putting it into practice

#### *Living space*

The accommodation in which prisoners live must meet certain basic standards. The international standards make clear that prisoners should have enough space to live in, with access to enough air and light to keep healthy.

#### *Overcrowding*

One of the major problems in many jurisdictions is the level of overcrowding. This is often worst for remand and pre-trial prisoners. Overcrowding can take different forms. In some cases it may mean that cells which were built for one person are used for multiple occupation. In the worst situations this can mean up to twelve or fifteen individuals in cells which are hardly eight square metres. In other circumstances it can involve up to a hundred individuals crammed into a larger room. Generally speaking, the international instruments do not specify a minimum floor or cubic area for each prisoner. In recent years the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has been moving towards doing so.

#### *Time spent in cell or living space*

An important consideration when trying to decide how much space each prisoner should have for living accommodation is the amount of time which is to be spent in that space within a twenty four hour period. A smaller space is less damaging if it is to be used only for sleeping and if the prisoner is to be out in other space during the day, involved in other activities. Overcrowding is obviously worst when the prisoners have to spend almost all the

time in these cells or rooms, coming out as a group only for a short period of exercise or singly when they have to be interviewed or have a visitor. This is what happens in some jurisdictions, especially in prisons which hold predominantly pre-trial prisoners or those who are serving short sentences.

### *Using all available space*

**E**ven in prisons with an extremely high level of overcrowding there are likely to be spaces which are under-used. Although the rooms which hold prisoners may be badly overcrowded, there will probably be adjacent rooms which are used only rarely. In some prisons there are extensive and broad corridors which could be used to allow groups of prisoners to come out of the cells throughout the day to be involved in different forms of activities. Prison chapels and places of prayer can also be made available for additional use. In such circumstances it will often be possible to arrange a wide variety of educational, craft or work activities.

### *Using all available resources*

**O**ne justification for keeping prisoners locked in their living space is that there are not sufficient staff to supervise them otherwise. That argument needs to be examined closely on operational grounds. There will usually be sufficient staff to allow groups of prisoners out in rotation. It may also be possible for some prisoners to help other prisoners in education, by teaching literacy for example, or in craft activity.

### *Single or communal cells*

**A**ttitudes to privacy and solitude vary across cultures. In Western Europe and North America, for example, prisoners usually prefer to sleep in single accommodation. This norm is reflected in the European Prison Rules. In other cultures being in a single room may be regarded as a form of segregation or punishment and there may be a preference for prisoners to live in proportionately sized communal rooms. If the latter is the case, it may be necessary to develop appropriate criteria for allocating prisoners to each room so that weaker prisoners are not placed at the mercy of stronger ones.

### *Clothing for prisoners*

**I**nternational standards place an obligation on the state to provide clothing which will keep the prisoner warm or cool, as necessary to his or her health, and forbid clothing prisoners in a degrading or humiliating way. They also place an obligation on the state to maintain clothing in a clean and hygienic condition or to provide the means for prisoners to do so.

### *Prison uniforms*

**I**n many countries prisoners are obliged to wear a uniform provided by the prison. This is normally justified by arguments based on security and equality. Except possibly in the case of some prisoners of demonstrably high security or escape risk, there is no obvious reason why uniform clothing should be the norm. Some jurisdictions do not have sufficient resources to provide official clothing for prisoners and expect them to provide their own. In other systems prisoners who do not present a risk of escape are permitted to wear their own clothing. In many countries women prisoners are allowed to wear civilian clothes. The opportunity to wear something familiar from a world outside and which reinforces a sense of individual identity will be valued by prisoners.

Prison uniform should not be part of a punitive framework nor should it set out to humiliate the wearer. For this reason prison administrations have discarded the unnecessary practice of requiring prisoners to wear uniforms with arrows or stripes.



Each prisoner should have access to laundry facilities so that all clothes, especially those worn close to the skin, can be washed regularly. This may be done communally or by the prisoner individually. The special needs of women prisoners in this respect need to be recognised, as described in chapter 13 of this handbook.

### *Bedding*

**T**he nature of the bed and bedding may vary according to local tradition. In many countries it is the norm to sleep on a raised bed. In other countries, particularly those in warmer regions, it may be the custom to lay out bedding or mats directly on the ground. Arrangements for prisoners should follow the local norm. The essential point is that all prisoners should have their own bed or bed mat, clean bedding and their own sleeping space. In a number of countries levels of overcrowding are so bad that prisoners have to sleep in shifts, sharing sleeping spaces or beds on a rota basis.

This arrangement is not acceptable. If overcrowding reaches such levels, the prison administration should make sure that the governmental bodies responsible for sending people to prison are made aware of the situation in prisons and of the consequences of sending people there.

### *Toilet and washing facilities*

**S**ince the movement of people who are in prison is often severely restricted, it is important that they should have regular access to sanitary facilities. Prisoners should have unrestricted access to toilet facilities and to clean water. There should also be adequate facilities to allow regular bathing or showering. These matters are especially important when prisoners are kept for long periods in overcrowded living accommodation. The arrangements which are in place should not humiliate prisoners, for example, by obliging them to shower in public.

As well as meeting the right of all people to keep themselves clean and to maintain their self-respect, access to proper sanitation is essential in prisons as a means of reducing the possible spread of illness among prisoners and staff. Sanitary arrangements must be accessible, clean and private enough to ensure the dignity and self-respect of the prisoner.

The special needs of women prisoners in respect of sanitary provision need to be provided for with respect for their dignity.

### *Food and drink*

**O**ne of the most basic obligations of care is that prison administrations should provide all prisoners with sufficient food and drink to ensure that they do not suffer from hunger or an illness associated with under-nourishment.

Reference has already been made to the dilemma which can face prison administrations in countries where the general population suffers from hunger through lack of sufficient nutritional food. In such cases, some people argue, one should accept that prisoners cannot be provided with sufficient nutritional food because law-abiding citizens are suffering in this respect. One can understand this argument. However, in depriving people of their liberty the state takes on an obligation to care for them in a proper manner. This is an absolute obligation which cannot be overruled.

In situations where there is a shortage of food the prison administration should explore all possibilities of using available land within or belonging to prisons for cultivation and of arranging for prisoners to undertake this work.

“ In Malawi the prison administration, working closely with the non-governmental organisation Penal Reform International, has developed a project to upgrade the prison farms and increase their productivity. This is helping the country’s prisons to move towards self-sufficiency in food production, to feed prisoners and staff and their families as well as train prisoners in agricultural methods.

Meals should be provided at regularly spaced intervals throughout each 24-hour period. In many countries it is not acceptable to have the last meal of the day served in mid-afternoon with no more food provided until the following morning.

Arrangements should also be made for prisoners to eat their meals in circumstances that are appropriate. They should be given individual utensils and the opportunity to keep these clean. They should not normally have to eat in the same room where they sleep. If this is necessary, a special area should be provided for eating.

It is essential that prisoners should have regular access to clean water. Such water supplies should be separate from any provided for sanitary needs.

### *Exercise in the open air*

**M**any prisoners, in particular pre-trial prisoners, spend the majority of their days indoors in conditions of relatively close confinement, with limited access to light and fresh air. In these circumstances it is essential for both physical and mental health that they should be given an adequate amount of time each day in the open and should have the opportunity to walk about or to take other exercise.

The minimum recommended time in the fresh air is one hour each day. During this period prisoners should be able to walk about in relatively large areas and should also, if at all possible, be able to see natural growth and vegetation. The practice in some countries of placing large numbers of prisoners into small walled yards, which are in effect cells without roofs, for an hour each day does not satisfy the obligation to give the opportunity to exercise in the open air.

The right to exercise in the open air applies to all prisoners, including those who are under any kind of segregation or punishment.

## Religion

The right to freedom of religious belief and to observe the requirements of that religion is a universal human right and applies to all prisoners as well as to free persons. Prison regulations should include the right of qualified religious representatives to visit prisons regularly to meet prisoners. Facilities should be provided to all prisoners who wish to observe their religious duties. This may include the right to pray in private at specified times of the day or night, to carry out various washing practices or to wear particular items of clothing.



## What the international instruments say

Universal Declaration of Human Rights, Article 18:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

International Covenant on Civil and Political Rights, Article 18 (1):

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

Standard Minimum Rules for the Treatment of Prisoners:

- 41 (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.
  - (2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his 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 attitude should be fully respected.
- 42 So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

## Putting it into practice

### *Religious observance*

Deprivation of liberty must not include deprivation of the right to observe the requirements of one's religion. The prison authorities should ensure that:

- Prisoners have the opportunity to pray, to read religious texts and to meet other requirements of their religion, such as clothing or washing, as often as their religion requires.
- Prisoners of the same religion should have the opportunity to gather as a group for religious services on religious holy days.
- Prisoners should have the opportunity to be visited by qualified representatives of their religion for private prayers and group services.

### *All recognised religions to be included*

These provisions should apply to all recognised religious groups and should not be restricted to the main religions in any country. Special attention should be paid to the religious needs of prisoners from minority groups.

It is also important to ensure that prisoners who do not adhere to any religious group or who do not wish to practice a religion should not be obliged to do so. Prisoners should not receive additional privileges or be allowed to live in better conditions because of their religious affiliation or practice.

## The framework

### *The right to good health*

Those who are imprisoned retain their fundamental right to enjoy good health, both physical and mental, and they retain their entitlement to a standard of medical care which is at least the equivalent of that provided in the wider community. The International Covenant on Economic, Social and Cultural Rights (Article 12) establishes:

“ the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

### *Prisoners have additional safeguards*

Alongside these fundamental rights of all human persons, prisoners have additional safeguards as a result of their status. When a state deprives people of their liberty it takes on a responsibility to look after their health in terms both of the conditions under which it detains them and of the individual treatment which may be necessary as a result of those conditions.

### *Minimising the risks*

Good health is important to everyone. It affects how people behave and their ability to function as members of the community. It has a particular significance in the closed community of a prison. By its nature the condition of imprisonment can have a damaging effect on both the physical and mental wellbeing of prisoners. Prison administrations have a responsibility, therefore, not simply to provide medical care but also to establish conditions which promote the wellbeing of both prisoners and prison staff. Prisoners should not leave prison in a worse condition than when they entered. This applies to all aspects of prison life, but especially to healthcare.

### *Prisoners bring health problems*

Prisoners often arrive in prison with pre-existing health problems which may have been caused by neglect, abuse or by the prisoner's previous lifestyle. Prisoners often come from the poorest sections of society and their health problems will reflect this. They will bring with them untreated conditions, addictions and also mental health problems. These prisoners will need particular support, as will those many others whose mental health may be significantly and adversely affected by the fact of imprisonment.

“ Overcrowded prisons with infected inmates and with poor hygiene and sanitation are a dominant threat in the field of communicable diseases in the region. Prison health must be a priority.

Statement from the heads of government at the 4th Baltic Sea States Summit on the Threat of Communicable Diseases Issued at St. Petersburg, 10 June 2002

### *Communicable diseases prevalent*

In many countries, a large percentage of those in prison are infected with transmissible diseases, such as tuberculosis, hepatitis and HIV/AIDS. Prison administrations have a responsibility to those who come into prison – prisoners especially, but also staff and visitors – to ensure that they are not exposed to risks of infection. A failure to manage these conditions will mean that they become community health problems as a result of contact between the prison and wider society, through staff and visitors, and as a result of the eventual release of prisoners.

## Old-age prisoners

In some jurisdictions the increasing use of long or indeterminate sentences is leading to a growth in age-related medical problems in the prison population. This will place further demands on prison administrations to ensure that they plan appropriate healthcare provision. The general issues concerning elderly prisoners are dealt with in chapter 14 of this handbook.

## An obligation even in times of economic difficulty

A number of countries experience great difficulty in providing healthcare of a high standard to the population at large. Even in these circumstances prisoners are entitled to the best possible healthcare arrangements and without charge. The European Committee for the Prevention of Torture (CPT) has stated that even in times of grave economic difficulty nothing can relieve the state of its responsibility to provide the necessities of life to those whom it has deprived of liberty. The CPT has also made clear that the necessities of life include sufficient and appropriate medical supplies.<sup>1</sup>

## The right to healthcare

### What the international instruments say

Prisoners, whatever the nature of their offence, retain all those fundamental rights to which they are entitled as human persons, including the right to enjoy the highest attainable standards of physical and mental health. Specific international instruments set out more clearly what this implies in terms of the healthcare provision to be made by prison administrations.

Basic Principles for the Treatment of Prisoners, Principle 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.**

Basic Principles for the Treatment of Prisoners, Principle 9:

**Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.**

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 22:

- (1) **At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.**
- (2) **Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.**
- (3) **The services of a qualified dental officer shall be available to every prisoner.**

<sup>1</sup> CPT Rapport au Gouvernement de la République de Moldova relatif à la visite effectuée en Moldova par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants, du 10 au 22 juin 2001 [CPT/Inf (2002) 11 para 69 and para 95]

Standard Minimum Rules for the Treatment of Prisoners, Rule 25:

(1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is especially drawn.

Standard Minimum Rules for the Treatment of Prisoners, Rule 62:

The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Rule 1:

1 Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standards as is afforded to those who are not imprisoned or detained.

### Putting it into practice

*Comparable care must be provided*

Wherever possible prisoners should have full access to the medical facilities which are available to the public at large. In most jurisdictions this access is limited to specialist care while general medical care is provided within the individual prison or in specific prison medical facilities. Any medical treatment or nursing care provided by the prison administration should be at least comparable to what is available in the outside community.

*General medical care*

As a minimum, the prison administration should provide in each prison:

- initial medical screening on admission to the prison;
- regular out-patient consultations;
- emergency treatment;
- suitably equipped premises for consultation with and the treatment of prisoners;
- an adequate supply of appropriate medicines dispensed by qualified pharmacists;
- facilities for physiotherapy and post-treatment rehabilitation;
- any special diets which may be identified as medically necessary.

Prison administrations will need to ensure that access to general medical care is available at any time and without delay in cases of urgency (Standard Minimum Rule 52).

“ Four prisoners who were HIV-positive brought a case to the South African High Court in 1997 because they argued that they and other HIV-positive prisoners were not receiving proper medical care for their condition including special medication like AZT. They argued that they should be given such treatment free of charge. The Correctional Services Department argued that the money was not available to provide such a high level of care. The Judge ruled in favour of the prisoners and said that they should receive the appropriate medical treatment at State expense.<sup>2</sup>

<sup>2</sup> Van Biljon v Minister of Correctional Services 1997 SACR 50 (C)

## *Links with the public health service*

In all aspects of medical care prison authorities should seek to establish and maintain close links with health service providers outside the prison. This will not only allow for a continuity of treatment but will also enable prisoners and staff to benefit from wider developments in treatments, in professional standards and in training.

“ Following a report from the High Committee on Public Health (Haut Comité de la Santé Publique) in 1993 highlighting health problems in prisons, responsibility for prison health care was transferred under a law of January 1994 from the Ministry of Justice, which manages French prisons, to the public hospital sector. The aim of the transfer was to meet the requirement to provide for prisoners the same standard of health care as was available to the population outside prisons. As a first step and to ensure eligibility for this care all prisoners were automatically given membership of the social security, general health and maternity insurance scheme.

## *There should be no charge for health care*

It is an important principle of prison health care that all necessary medical care and treatment should be provided free of charge (UN Body of Principles, Principle 24). This may require special attention in those jurisdictions where the free provision of medical care in civil society is limited. This may be a particular problem where there are increasing numbers of long-term prisoners who require expensive treatment for complex or terminal conditions. Prison administrations will need to ensure that they make suitable arrangements which are based on the needs of prisoners and that the required treatment is not restricted on the grounds that it is deemed to be too expensive merely because the patient is a prisoner.

## *Initial screening*

The question of medical screening on first admission to prison was dealt with in chapter 3 of the handbook. There are several important reasons why prisoners should be offered medical examination when they first arrive in prison:

- it enables medical staff to identify any pre-existing medical conditions and ensure that appropriate treatment is provided;
- it allows appropriate support to be provided to those who may be suffering the effects of the withdrawal of drugs;
- it will help to identify any injuries which may have been sustained during initial detention;
- it will allow trained staff to assess the mental state of the prisoner and provide appropriate support to those who may be vulnerable to self-harm.

It is not always possible to ensure that a doctor is able to carry out a medical examination of all prisoners as soon as they are admitted to prison. Prison administrations should ensure that each prisoner is at least seen by a suitably qualified nurse who can report any concerns to the medical officer.

As part of the admissions procedure prisoners should receive clear information on the arrangements for health care in the prison and the method of seeking a medical consultation.

## *Specialist facilities*

In addition to these facilities for general medical, dental and psychiatric care, the prison administration should also ensure that it has suitable arrangements in place to provide specialist consultation and in-patient care. This will require a close link between the prison and the medical services in civil society since it is unlikely that prison health care services will themselves be able to make adequate arrangements for the full range of specialisms.

In planning for specialist care particular attention will need to be given to the needs of vulnerable groups, especially women and older prisoners.

Access to specialist facilities may often require the transfer of the prisoner to another location. Prison administrations will need to ensure that arrangements for escorting prisoners are suitable and do not lead to delays in treatment or additional anxiety for the prisoner. The conditions in which prisoners are transported should be appropriate to their medical condition.

## When prisoners need hospital care

From time to time some prisoners will have medical problems which require to be dealt with in a hospital. There are several different ways of providing such a service. Many prison administrations have established prison hospitals which are able to deal with less acute cases requiring in-patient treatment. In other cases the problems of security have been addressed by establishing special prison units within civil hospitals. Often, however, prisoners may receive in-patient treatment in the normal facilities of a civil hospital. In such cases special consideration will need to be given to the appropriate security arrangements, especially for women in childbirth and for the terminally ill. The CPT in its Third General Report stressed that:

“...prisoners sent to hospital to receive treatment should not be physically attached to their beds or other items of furniture for custodial reasons.<sup>3</sup>”

## A healthy environment

### What the international instruments say

In addition to meeting the needs of those prisoners who are ill, prison administrations are also responsible for ensuring that the conditions of imprisonment do not undermine physical and mental well-being.

Standard Minimum Rules for the Treatment of Prisoners, Rule 10:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 12:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 13:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 26:

(1) The medical officer shall regularly inspect and advise the director upon:  
(a) The quantity, quality, preparation and service of food;

<sup>3</sup> Council of Europe, 3rd General Report on the CPT's Activities covering the period 1 January to 31 December 1992 [CPT/Inf (93) 12, para 36]

- (b) The hygiene and cleanliness of the institution and the prisoners;
- (c) The sanitation, heating, lighting and ventilation of the institution;
- (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.

## Putting it into practice

### *The impact of the prison environment*

There is an absolute obligation on the state to preserve and, if necessary, restore the health of those individuals for whom it takes responsibility by depriving them of their liberty. The conditions under which prisoners are detained will have a major impact on their health and well-being. In order to meet their responsibilities therefore, prison administrations should ensure appropriate standards in all those areas which may affect the health and hygiene of prisoners. The physical conditions of the accommodation, the food and the arrangements for hygiene and sanitation should all be designed in such a way as to help those who are unwell to recover and to prevent the spread of infection to the healthy.

Many jurisdictions face overwhelming problems, such as overcrowding, and an acute shortage of resources presents major obstacles to achieving healthy prison conditions. The amount of space available to each prisoner and access to natural light and fresh air will all have a significant impact on the spread of infectious diseases and on the mental state of prisoners. In its report on its visit to Moldova in 2001 the CPT declared that natural light and fresh air were fundamental rights of prisoners and they welcomed the removal of shutters from the windows of some of the prisons which they visited.<sup>4</sup>

### *Transmissible diseases*

Transmissible diseases have become a major problem for many prison administrations. In some countries in Eastern Europe and Central Asia the incidence of tuberculosis has reached epidemic proportions and HIV/AIDS is now spreading rapidly. In parts of Africa a high proportion of prisoners are infected with HIV/AIDS. A number of administrations have begun to address these problems through initial screening and treatment programmes, often in conjunction with international agencies and NGOs.

“ The International Committee of the Red Cross together with the Ministries of the Interior and Health began a TB control programme in prisons in Georgia in 1998. As part of the programme:

- screening of prisoners was introduced;
- the TB prison colony was refurbished to ensure a safe working environment and better living conditions for prisoners;
- doctors and nurses were trained;
- DOTS treatment was introduced.

The programme has achieved a significant cure rate amongst those completing the treatment.<sup>5</sup>

4 CPT Rapport au Gouvernement de la République de Moldova relatif à la visite effectuée en Moldova par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants, du 10 au 22 juin 2001 [CPT/Inf (2002) 11 para 85]

5 Reported in *Prison Healthcare News*, Issue 1, Spring 2002 ICPS, King's College London



## *Staff education in disease transmission*

In those jurisdictions with a high incidence of transmissible disease, prison administrations should establish a programme of education for staff in the transmission of disease and forms of protection so as to enable them to carry out their work normally. In some countries staff are routinely offered free inoculation against hepatitis.

## *Mental disorder*

The conditions of imprisonment will have a serious impact on the mental well-being of prisoners. Prison administrations should seek to reduce the extent of that impact and should also establish procedures to monitor its effects on individual prisoners. Steps should be taken to identify those prisoners who might be at risk of self-harm or suicide. Staff should be properly trained in recognising the indicators of potential self-harm.

Where prisoners are diagnosed as mentally ill they should not be held in prison but should be transferred to a suitably equipped psychiatric facility.

## *Monitoring general prison conditions*

International instruments place a special obligation on prison medical officers to use their professional expertise to inspect and report on all those conditions which may affect the health and hygiene of prisoners. Health care staff have an important role in establishing the concept that health care embraces not simply treatment but all aspects of creating a healthy environment and that this requires the co-operation of everyone in the prison. This will be particularly challenging where resources are limited.

## Individual treatment

### What the international instruments say

Individual prisoners are entitled to regular, confidential access to appropriate levels of medical consultation which is at least the equivalent to that available in civil society. Any medical judgements and treatments should be based on the needs of the individual prisoner and not on the needs of the administration.

Standard Minimum Rules for the Treatment of Prisoners, Rule 25:

**(1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is especially drawn.**

Standard Minimum Rules for the Treatment of Prisoners, Rule 62:

**The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.**

### Putting it into practice

## *Access to medical consultation*

Prison administrations must make appropriate arrangements to ensure that prisoners who are sick or who are concerned about their health have access each day to a suitably qualified medical officer. The conditions under which these consultations take place should be such as to respect the dignity of the prisoner and allow confidentiality to be maintained. Where security issues need to be considered it may be necessary to allow consultations with the medical officer to take place within sight but not within hearing of prison guards.



## Privacy

The conditions under which prisoners are interviewed about their health should be the equivalent of those which apply in civil medical practice. Wherever possible they should take place in appropriately equipped consulting rooms. It is unacceptable for consultation to take place with groups of prisoners or in the presence of other prisoners or non-medical staff.

## Confidentiality

The right to confidentiality also requires that prisoners should not have to submit their requests for access to the doctor to other prison staff. Under no circumstances should they be required to disclose their reasons for seeking a consultation. The arrangements for seeking a medical consultation should be made clear to prisoners on admission to the prison.

## Medical records

The medical records of individual prisoners should remain under the control of the medical officer and should not be disclosed without the prior written authorisation of the prisoner. In some countries prison health care services come under the jurisdiction of civilian health care provision. In addition to the benefits discussed in the section on 'The right to healthcare' above, such arrangements also help to establish clearly that medical records are not part of general prison records.

## Treatment

The treatment provided as a result of consultation and diagnosis should be that which is in the best interests of the individual prisoner. Decisions should not be based on the relative cost or convenience to the prison administration.

## Pre- and post-sentence treatment

In addition to the management of those healthcare problems which present themselves in prison, medical officers also have a responsibility to ensure that they have arrangements in place to identify and respond to any pre-existing medical conditions. This again will require suitable common arrangements with the external medical authorities.

## Terminally ill prisoners

In some countries arrangements exist whereby those prisoners who are terminally ill may be released early from their sentences. Any diagnosis made or advice offered by prison medical staff should be based on professional judgement and in the best interests of the prisoner. It will be for the prison authorities to consider and assess any risks posed by the early release of such prisoners.

“ WHO Guidelines on HIV infection and AIDS in prisons Geneva March 1993

51 If compatible with considerations of security and judicial procedures, prisoners with advanced AIDS should be granted compassionate early release, as far as possible, in order to facilitate contact with their families and friends and to allow them to face death with dignity and in freedom.

## Health care personnel

### What the international instruments say

Each prison should have available to it sufficient suitably qualified health care staff to meet the needs of the prison population.

Standard Minimum Rules for the Treatment of Prisoners, Rule 22:

- (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.
- (3) The services of a qualified dental officer shall be available to every prisoner.

Standard Minimum Rules for the Treatment of Prisoners, Rule 49:

- (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

## Putting it into practice

### *Ethical code for health professionals working in prison settings*

In 1979 the International Council of Prison Medical Services approved an ethical code known as the Oath of Athens, according to which they pledged:

“ In keeping with the spirit of the Oath of Hippocrates, that we shall endeavour to provide the best possible health care for those who are incarcerated in prisons for whatever reasons, without prejudice and within our respective professional ethics.

We recognize the right of the incarcerated individuals to receive the best possible health care.

We undertake:

- 1 To abstain from authorising or approving any physical punishment.
- 2 To abstain from participating in any form of torture.
- 3 Not to engage in any form of human experimentation amongst incarcerated individuals without their informed consent.
- 4 To respect the confidentiality of any information obtained in the course of our professional relationships with incarcerated persons.
- 5 That our medical judgements be based on the needs of our patients and take priority over any non-medical matters.

### *Equivalence of care*

Prison administrations must ensure that prisoners have access to qualified medical staff who are sufficient in both number and expertise to meet their needs. This is often best arranged by establishing links with the health care provision for the general civilian population. All medical and health care staff in prisons should be suitably qualified to at least the same level as would be required for similar posts outside prison. Similarly, their salaries and conditions of employment should be of an equivalent nature.

### *Prisoners as patients*

The United Nations Principles of Medical Ethics place on all health personnel, and particularly physicians, a duty to provide prisoners with protection of their physical and mental health and treatment of disease. Their first priority, therefore, is the health of their patients and not the management of the prison. The Oath of Athens, quoted above, further makes it clear that medical judgements should be based on the needs of patients and take priority over any non-medical matters.

Medical staff working in prisons are not part of the disciplinary or administrative staff of the prison. In some jurisdictions where medical staff are employed directly by the prison

administration they have a separate management structure which is independent of the individual prison.

There are a number of issues in which medical staff need to distinguish between the demands of the prison administration and the ethics of professional health care. A number of important examples and the appropriate medical response to them are listed below.

### *Support for health care staff*

**P**rison administrations will need to ensure that medical staff working in prisons receive proper support and training both in the specific requirements of prison medicine and in more general developments. Qualified medical staff who are prepared to work in prisons are often in short supply. Prison administrations should ensure that their expertise is not diverted into inappropriate tasks by providing them with appropriate auxiliary and clerical support.

### *Support for prison nurses*

**T**he International Council of Nurses in 1998 produced a statement which says, among other things, that national nursing associations should provide access to confidential advice, counsel and support for prison nurses. [The Nurse's Role in the Care of Prisoners and Detainees, International Council of Nurses, 1998]

### *Documentation of torture*

**I**n 1999 a coalition of professional and human rights bodies and individuals developed a set of principles for the effective documentation of torture or ill treatment known as the Istanbul Protocol [Principles on the Effective Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 1999]

### *Body searches*

**I**n 1993 the World Medical Association adopted a statement on body searches of prisoners which states, among other things, that the physician's obligation to provide medical care to the prisoner should not be compromised by an obligation to participate in the prison's security system. Where they have to be carried out, such searches should, therefore, be conducted by a physician other than the physician who provides medical care to the prisoner. [Statement on Body Searches of Prisoners, World Medical Association, 1993]

### *Hunger strikes*

**I**n 1991 and 1992 the World Medical Association adopted guidelines for doctors involved in the care of hunger strikers which, among other things, stress the importance of consent and confidentiality in the relationship between the doctor and patient, and that decisions on intervention or non-intervention should be left with the individual doctor without interference from third parties whose primary interest is not the patient's welfare. [Declaration of Malta on Hunger Strikers, World Medical Association, 1991, 1992]

### *Death penalty participation*

**I**n 1981 and again in 2000 the World Medical Association resolved that it was unethical for physicians to participate in capital punishment, in any way, or during any step of the execution process. [Resolution on Physician Participation in Capital Punishment, World Medical Association, 1981, 2000]

### *Training for all staff*

**T**he nature of the prison community is such that, in addition to ensuring the availability of a full range of medical services, prison administrations should also recognise that all prison staff need to have an understanding of basic health matters. Very often when an incident occurs in a prison in which someone needs immediate first aid it will be non health care staff who will be first on the scene and who will be required to administer immediate care. They should be properly trained to deliver this care.

# Operating Secure, Safe and Orderly Prisons

## The framework

### *Security and justice*

In his speech at the official launch of the re-training and human rights project of the South African Department of Correctional Services, the former President of South Africa, Nelson Mandela, stressed the importance of both security and justice in the administration of prisons:

“Secure prisons are essential to making our justice system an effective weapon against crime. When prisoners – convicted or awaiting trial – are entrusted to your care, they must know and the public must know that they will remain there until they are legally discharged...”

The full contribution which our prisons can make towards a permanent reduction in the country’s crime-rate lies also in the way in which they treat prisoners. We cannot emphasise enough the importance of both professionalism and respect for human rights.

(Kroonstad, 25 June 1998)

### *The right balance*

One of the most important findings of the report produced by Lord Justice Woolf after a number of very serious riots in English prisons in 1990 was that the maintenance of a correct balance between security, control and justice is the key to an effectively managed prison.<sup>1</sup>

“ (T)here are three requirements which must be met if the prison system is to be stable: they are security, control and justice.

For present purposes, “security” refers to the obligation of the Prison Service to prevent prisoners escaping. “Control” deals with the obligation of the Prison Service to prevent prisoners being disruptive. “Justice” refers to the obligation of the Prison Service to treat prisoners with humanity and fairness and to prepare them for their return to the community...

### *A safe environment*

The importance of achieving and maintaining that balance between security, control and justice must be understood by all prison managers. It is quite wrong to suggest that treating prisoners with humanity and fairness will lead to a reduction in security or control. On the contrary, the objective of preventing escapes and ensuring control can best be achieved within a well ordered environment:

- which is safe for prisoners and staff;
- in which all members of the prison community perceive they are being treated with fairness and justice;
- in which prisoners have the opportunity to participate in constructive activities and to prepare themselves for release.

The professional prison manager has to strive constantly to ensure that this balance is maintained.

<sup>1</sup> Report of an Inquiry into Prison Disturbances April 1990, 1991, Her Majesty’s Stationery Office, London

*The need for a clear set of rules and regulations*

All well ordered communities, including prisons, need to operate within a set of rules and regulations that are perceived by the members of the community to be fair and just. In prisons these regulations will be designed to ensure the safety of each individual, both staff and prisoner, and each group has a responsibility to observe those rules and regulations. Prisoners should be rewarded for good behaviour as well as punished for bad behaviour. Staff need to know that they also are expected to observe the rules at all times. A prison community will have a clearly defined system of hearings, discipline and sanctions for those who deviate from the agreed rules, which is applied in a just and impartial manner.

*A proper assessment of the appropriate level of security*

Prison administrations have a duty to keep in custody those whom the judicial authorities have decided should lose their liberty. Prisoners do not like being in prison but the majority of them accept the reality of their situation; provided they are subject to appropriate security measures and fair treatment they will not try to escape or seriously disrupt the normal routine of the prison. On the other hand, a small number may well do everything in their power to try to escape. If they were to escape, some prisoners would be a danger to the community; others would not be a threat to the public. All of this means that the prison authorities should be able to assess the danger posed by each individual prisoner in order to make sure that each one is subject to the appropriate conditions of security, neither too high nor too low.

*Excessive security and control can be dangerous*

In prisons the world over there are situations where there is excessive security and control by the prison authorities at the expense of justice:

- oppressive security measures which exclude rehabilitative programmes;
- brutal methods of control;
- lack of justice in disciplinary hearings;
- and unlawful punishments.

In prison systems in some countries, those managing prisons have lost control of their institutions and have allowed powerful groups of prisoners to exert an illegal system of control over both other prisoners and staff.

In both situations the well ordered community breaks down, leading to the possibility of violent and abusive behaviour by prisoners and staff, the likelihood of disorder, the possibility of escapes and an absence of constructive activities for prisoners.

*Use of force as a last resort*

Only in extreme circumstances, when there is a complete breakdown in order and all other interventions have failed, either individually or collectively, can use of force be justified as a legitimate method of restoring order. This must be the last resort. Because prisons are closed communities in which abuse of authority can easily occur in such circumstances, there has to be a specific and transparent set of procedures for use of force. This issue is also referred to in chapters 2 and 3.

## The balance between security and social reintegration programmes

International instruments define the purpose of imprisonment as being to protect society against crime not simply by removing offenders from society but by trying to ensure, so far as is possible, their rehabilitation. In order for this to happen prison administrations need to achieve an appropriate balance between security and those programmes which are designed to enable prisoners to reintegrate into society. This balance is more likely to be achieved if there is a clear set of procedures which define the appropriate level of security for the prison and for individual prisoners.

### What the international instruments say

Basic Principles for the Treatment of Prisoners, Principle 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.

Standard Minimum Rules for the Treatment of Prisoners, Rule 58:

The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

Standard Minimum Rules for the Treatment of Prisoners, Rule 63(2):

It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

Standard Minimum Rules for the Treatment of Prisoners, Rule 33:

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

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

European Prison Rules, Rule 39:

This rule adds the following conditions to SMR 33:

- (a) *if necessary*, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority *unless that authority decides otherwise*;
  - (b) On medical grounds by direction *and under the supervision* of the medical officer;
- The use of chains and irons shall be prohibited.

## Putting it into practice

### Security classification

The security measures to which prisoners are subject should be the minimum necessary to achieve their secure custody. There are at least three valid reasons for this approach:

- Staff are likely to be more aware of those prisoners who do require a high level of security if their numbers are restricted;
- The lower the level of security the more humane the treatment is likely to be;
- The third reason is a pragmatic one; security is expensive and the higher the level, the greater the cost. It makes financial sense not to have prisoners in a higher security category than is necessary.

On first admission, each prisoner should be assessed to determine:

- the risk that the prisoner might present to the community if he or she were to escape;
- the likelihood that the person will try to escape either on his or her own or with external assistance.

The prisoner should then be held in security conditions appropriate to that level of risk. The security classification should be kept under constant review throughout the length of the sentence.

### Different levels of security

- *Maximum security* conditions should mean that escape is virtually impossible and should only be used for the most dangerous prisoners. In these conditions there will be a high standard of physical security, both around the perimeter and inside the prison. The internal movement of prisoners will be closely supervised by staff, if necessary on a one-to-one basis. Only a small minority of prisoners in any system are likely to need this level of security.
- *Minimum security* (sometimes called open conditions) should be used for those prisoners who present little or no risk to the community and who can be trusted not to try to escape. In these conditions the level of physical security will be low. Very often there will be no perimeter security. Internal security may be restricted to locking doors to the accommodation units at night. Prisoners who have been convicted of some non-violent offences may be suitable for these conditions as well as long-term prisoners who are approaching their date of release.
- *Medium security* conditions are appropriate for the great majority of prisoners, who are not determined to escape but who cannot be trusted in minimum security conditions. Generally these conditions will involve a secure perimeter, such as a fence. All internal doors in the prison will usually be locked but prisoners may be trusted to move from one area of the prison to another without close supervision by staff.

In recent years a number of jurisdictions have invested significant resources in the development of maximum security facilities. It is always inappropriate to allocate prisoners to these facilities simply on the basis that the accommodation needs to be occupied.

### Solitary confinement

Prolonged solitary confinement as a form of security classification should always be avoided. This matter is referred to in chapter 6.



## *Assessment of risk*

**A**ssessment of risk can help to identify those prisoners who present a threat to themselves, to staff, to other prisoners and to the wider community. Criteria for assessing security risk have been developed in many countries. Issues to be taken into account include:

- the threat to the public were the prisoner to escape;
- previous history of attempting to escape and access to external help;
- in the case of pre-trial prisoners, any potential threat to witnesses;
- the nature of the crime for which the prisoner was convicted;
- length of sentence, which usually reflects the nature of the crime;
- the potential for threat to other prisoners.

## *Security level for pre-trial prisoners*

**I**n many prison systems there is an assumption that all pre-trial prisoners must be held in high security conditions. This is not always the case and it should be possible to apply an assessment of security risk to prisoners in this group just as to those who have been sentenced.

## *Security classification to be decided by prison management*

**I**n some countries the judge who passes sentence specifies the security of the regime in which the prisoner should be held. In other countries prisoners who are sentenced to life imprisonment or who are sentenced under a particular law are automatically held in the highest security conditions, regardless of any personal risk assessment. This is not the best way of determining levels of security. It is for the judicial authority to determine the appropriate length of sentence for an individual crime but it is better that the prison authorities should be responsible for determining the security requirements using professionally agreed criteria.

## *Regular review of security level*

**S**ecurity levels for individual prisoners should be reviewed at regular intervals as the sentence is served. It is generally the case that a person becomes less of a security risk as his or her sentence progresses. The prospect of progressing to a lower security category during the sentence can also act as an incentive for good behaviour.

## *Physical security*

**A**spects of physical security include the architecture of the prison buildings, the strength of the walls of those buildings, the bars on the windows, the doors of the accommodation units, the specifications of the perimeter wall and fences, watchtowers and so on. They also include the provision of physical aids to security such as locks, cameras, alarm systems, radios and such like.

In designing the physical aspects of security, a balance needs to be found between the best way of achieving the required security level with the need to respect the dignity of the individual. For example, it is possible to use architectural designs which meet the need for cell and dormitory windows to be secure while, at the same time, meeting the standards for access to natural light and fresh air. Physical aids to security such as cameras, monitoring and alarm systems by definition intrude on personal privacy. In making decisions about where they have to be placed, there needs to be a balance between legitimate security requirements and the obligation to respect individual privacy.

The safety of individual prisoners must also be borne in mind. The design of many prisons leads to the creation of places in which prisoners may congregate unobserved. This may be a source of potential threat both to the security of the prison and to the safety of individual prisoners. Prison administrations should develop procedures for identifying and managing these areas.



## *Procedural security*

This relates to those procedures which have to be followed to prevent escape. Some of the most important of these are procedures concerned with searching, both of physical spaces and of individuals.

In each prison there should be a clearly understood set of procedures which describe in detail the circumstances in which searches should be carried out, the methods to be used and their frequency. These procedures must be designed to prevent escape and also to protect the dignity of prisoners and their visitors.

There should be procedures for regularly searching all places where prisoners live, work or congregate. These should include searches of living accommodation, such as cells and dormitories, to make sure that security features, including doors and locks, windows and grilles, have not been tampered with. Depending on the security category of the prisoner, his or her personal property should also be subject to search from time to time. Staff need to be specially trained to carry out these searches in such a way as to detect and prevent any escape attempt or secretion of contraband, while at the same time respecting the dignity of prisoners and showing respect for their personal possessions. The procedure for such searches should allow the prisoner to be present whilst the search is carried out.

## *Searching prisoners*

Individual prisoners, particularly those subject to medium or maximum security restrictions, will also have to be personally searched on a regular basis to make sure that they are not carrying items which can be used in escape attempts or to injure other people or themselves, or items which are not allowed, such as illegal drugs. The intensity of such searches will vary according to circumstances. For example, when prisoners are moving in large numbers from their place of work back to their living accommodation it is normal to subject them to the sort of rub-down searches which are now common for all air travellers. On other occasions, especially if there is reason to believe that individual prisoners have something secreted about their person or when they are designated as high risk prisoners, it will be necessary to carry out what is known as a strip search. This involves requiring prisoners to remove all clothing and to show that they have nothing hidden about their person.

## *Searching procedures*

There should be a detailed set of procedures which staff have to follow when carrying out personal searches. These procedures:

- should define the circumstances in which such searches are allowed;
- should ensure that prisoners are not humiliated by the searching process, for example, by having to be completely naked at any time;
- should stipulate that prisoners should be searched by staff of the same gender;
- should prohibit security staff from carrying out internal searches of a prisoner's body.

## *Searching visitors*

There should also be a clearly defined set of procedures for making sure that visitors to prisoners do not attempt to breach reasonable security requirements. These may include the right to search visitors in person. Such procedures have to recognise that visitors are not themselves prisoners and that the obligation to protect the security of the prison has to be balanced against the right of visitors to their personal privacy. The procedures for searching visitors should be sensitive to the needs of children, women and other vulnerable groups. Procedures for searching professional visitors, such as legal representatives, social workers and doctors should be agreed with the appropriate professional bodies to ensure a balance between security and the right of confidential professional access.

## Searching staff

It is important to recognise that prison staff may also pose a threat to security by smuggling into the prison banned or illegal material. They too should be subject to appropriate searching procedures. Such arrangements can also make it less likely that staff will be put under pressure by prisoners and others to bring banned items into the prison.

## Other security procedures

There are a variety of other security procedures which should be used as a matter of course. These will include:

- roll calls at specific times of the day;
- discharge arrangements which ensure that the correct prisoner is being released;
- selective censoring of mail and telephone calls. This is dealt with more fully in chapter 8.

## Dynamic security

While physical and procedural security arrangements are essential features of prison life, they are not of themselves sufficient. Security also depends on an alert staff who interact with prisoners, who have an awareness of what is going on in the prison and who make sure that prisoners are kept active in a positive way. This is often described as dynamic security. In the United States, prisons based on the principles of dynamic security are sometimes known as direct supervision jails. Where there is regular contact between staff and prisoners, an alert guardian will be responsive to situations which are different from the norm and which may present a threat to security. Staff who are engaged with prisoners in these ways will be able to prevent escapes more effectively by being aware of what is happening in the prison community before an incident occurs. The strength of dynamic security is that it is likely to be proactive in a way which recognises a threat to security at a very early stage. It will operate best where there is a professional and well-trained staff.

“ Studies in the United States report that direct supervision jails have resulted in better control of prisoners with a significant reduction in violence, noise and vandalism. The increased interaction between staff and prisoners has meant that officers are able to anticipate problems and deal with them proactively.

It is also suggested that prisoners in direct supervision jails have a better chance of leading productive lives after they finish their sentences.<sup>2</sup>

## Prisoner informants

A number of prison administrations gather intelligence on planned breaches of control or security by using certain prisoners to give information anonymously about the other prisoners. This procedure has great dangers. If an informant is discovered, the other prisoners can vent their anger with extreme violence. Informants can give inaccurate information in order to victimise other prisoners or maintain their control over them. The very fact of the existence of an informant system or the suspicion of it can create a climate of tension, suspicion and violence in a prison. The development of a system where staff get to know prisoners as individuals, as described throughout this handbook, will lead to much more trustworthy information about security and control issues.

## The use of physical restraints

Every prison system must have clear and transparent procedures for the use of physical restraints and key staff should be trained in their use. These procedures must be specific as to:

- the circumstances in which restraints may be used;
- who can authorise their use;
- how they are to be applied;
- who is to monitor that the prescribed procedures are being carried out correctly.

<sup>2</sup> Direct Supervision: A Safer, More Effective Jail (Oswego County Sheriff's Department, New York)

### *Use of physical restraints a last resort*

**P**hysical restraints, such as handcuffs, chains, irons and strait jackets, should only be applied in exceptional circumstances. They should not be used as an alternative to other physical measures of security. For example, it is never permissible to keep prisoners chained by the ankle or wrist to walls or to long iron bars, either individually or in groups, simply because the physical security of buildings is very weak.

Physical restraints should not be used as a matter of course when a prisoner is being transferred from one location to another, either within a prison or outside the prison. In each case, their use should be based on an individual assessment of the risk posed by the prisoner.

Restraints may have to be used as a last resort to control a violent prisoner who is threatening the safety of others. As soon as that person stops the violent behaviour the restraint must be removed. Only in exceptional circumstances should restraints be used to prevent a prisoner harming him or herself. Best practice suggests that this should rarely be necessary, because there are alternative methods to prevent self-injury.

### *Authorisation of use of physical restraints*

**T**he senior member of staff on duty must authorise the use of physical restraints and should ensure that they are used properly. The director of the prison and a medical officer must see any prisoner restrained because of violent behaviour or self-injury as soon as possible and authorise the continuing use of restraints if necessary. The decision and the procedure for each use of restraints must be closely monitored by higher authority and, according to best practice, by an authorised independent monitor.

### *Security outside the prison*

**E**ither the prison authorities or another appropriate authority should be responsible for the custody of a prisoner when outside the perimeter of the prison, for example, on transfer to another prison, a court or a civilian hospital. Special care needs to be exercised about the level of security to be used when a prisoner requires a period of in-patient care in hospital. Whatever the circumstances, security must not interfere with medical treatment.

The nature of physical security required during these periods may vary according to the individual security risk but the principle should always be that the lowest possible security classification necessary for safe custody should be applied. The most common restraint when necessary in such circumstances is the handcuff.

Where a prisoner has been escorted to court with physical restraints, these should be removed before the court hearing unless the presiding judge or adjudicator authorises otherwise.

## **The balance between security and contact with the outside world**

The need to hold prisoners in appropriate conditions of security needs to be balanced with their right to maintain contact with the outside world. However strong the security considerations, contact with the outside world in reasonable conditions must continue to be permitted. This is an important element in safeguarding the rights of the individual prisoner. It can also assist in the process of rehabilitation for individual prisoners. In addition, it is in the interest of the prison administration to encourage prisoners to have contact with the outside world because it can enhance stability within the prison. Chapter 8 deals more fully with contact with the outside world during imprisonment.

## What the international instruments say

Declaration on the Protection of All Persons from Enforced Disappearance, Article 7:

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

Declaration on the Protection of All Persons from Enforced Disappearance, Article 10(2):

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

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18:

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.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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.

Body of Principles for the Protection of All Persons under Any Form 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.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Chapter III, Article 8, 2(c):

[The European Committee for the Prevention of Torture shall have] unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Chapter III, Article 8, 3:

The Committee may interview in private persons deprived of their liberty.

## Putting it into practice

### *Right to contact the family and lawyers*

Chapter 3 on admissions procedures referred to the need to inform family members and legal representatives when a person is deprived of his or her liberty. There are never any circumstances which justify a refusal by prison authorities to let family members or counsel know that a person is being detained and where he or she is being held. The only exception is when the person him or herself requests this.

All persons deprived of liberty have the right of access to legal counsel and to have this in private; that is, out of hearing of staff. The right of access to lawyers for pre-trial prisoners is dealt with in chapter 11.

### *Independent monitoring as an element of outside contact*

Chapter 10 deals with independent monitoring and inspection of places of detention. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is one of the best examples of this form of inspection. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, under which the Committee was set up, confirms that its members have the right of unlimited access to people deprived of their liberty and to interview them in private. This principle should also be extended to local independent monitoring bodies.

## The balance between control and a well-ordered community

By definition, imprisonment involves deprivation of liberty and, therefore, a reduction of freedom of movement. Prison authorities have an obligation to impose such security restrictions as are necessary to ensure that prisoners do not escape from lawful custody and also to ensure that prisons are safe places, where all concerned can go about their legitimate business without fear for their physical well-being. The level of control over the daily lives and movement of prisoners must not be more than is necessary to meet these requirements.

### What the international instruments say

Standard Minimum Rules for the Treatment of Prisoners, Rule 27:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 60(1):

**The regime of the institution should seek to minimise any differences between prison life and life at liberty.**

Standard Minimum Rules for the Treatment of Prisoners, Rule 57:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 28(1):

**No prisoner shall be employed in the services of the institution in any disciplinary capacity.**

## Putting it into practice

*No more restrictions than necessary*

The task of prison authorities is to carry out the sentence of the court by depriving prisoners of their liberty. It is not their role to impose further restrictions on prisoners which will increase the suffering inherent in this punishment. On the contrary, they should do everything possible to minimise any differences between prison life and life at liberty. One reason for doing this, as discussed in chapter 7, is to increase the possibility that the prisoner will resettle into the civil society as a law-abiding citizen after the sentence has been served. Staff also have to understand that this method of managing prisons can be an aid to security, safety and good order.

*Prisoners should never be employed to control other prisoners*

In a well managed prison all prisoners will be treated equally. Whenever possible they should be encouraged to become involved in constructive activities during their time in prison, as is explained in chapter 7. These may include helping in certain aspects of the daily running of the prison, such as working in the kitchen or the infirmary. Prisoners who are skilled or well educated may also be encouraged to help other prisoners in these respects. However, it is never permissible to employ or to use prisoners to control other prisoners. This sometimes happens when there is a shortage of staff. Such prisoners are often given special treatment in terms of accommodation, food or other facilities, to encourage them to monitor or manage other prisoners. These arrangements are always open to abuse and should never be allowed.

*Firm but legitimate management essential*

The challenge facing a professional prison administration is to ensure that its prisons are secure, safe and well-ordered but are not run in an oppressive or brutal manner. What is required is consistency of approach, neither harsh nor liberal. The vast majority of prisoners will welcome firm and fair management by staff because if the staff are not in control of a prison the resulting vacuum will be filled by strong willed prisoners. Alternatively, if there is not firm management from the top, individual members of staff may well resort to delivering their own informal form of control. In either case life will become very unpleasant for the majority of prisoners.

## When control and good order break down

The potential for a break down in good order exists even in the best managed prisons. It is always possible that an individual prisoner will attack staff or other prisoners as a result either of pre-planning or of going suddenly berserk. Similarly a group of prisoners may decide that they are not prepared to observe the legitimate rules of the prison and will attempt a concerted revolt, either through a riot or by taking hostages. In every prison there should be a clear set of procedures for dealing with such incidents should they occur. Such procedures should be framed in the context of the international instruments.

### What the international instruments say

Standard Minimum Rules for the Treatment of Prisoners, Rule 54(3):

- (1) Officers of the institutions 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. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.



- (2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.
- (3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,  
Principle 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.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,  
Principle 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.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,  
Principle 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.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,  
Principle 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

Inter-American Convention to Prevent and Punish Torture, Article 5:

Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.

### Putting it into practice

*Prevention is  
always  
better than  
reaction*

The first message which staff must learn is that prevention is always better than cure. It is extremely rare that a major incident will occur without any prior warning. In almost all cases there will be some prior indication of a build up of tension at an individual or group level. This is where the benefits of dynamic security will become apparent. On entering an accommodation block or a working area where tension is brewing an alert staff will immediately be conscious that something is wrong with the atmosphere. They will sense tension in the air. Since they will know all their prisoners, they will be able to identify any who are unsettled or likely to threaten violence and deal with them in a way which prevents the onset of violence. It will also be more difficult for prisoners who wish to create trouble to stir up other prisoners if the general approach of staff has been fair and consistent. However, even where there is good dynamic security there may be an outburst of individual or collective violence.

### *Need for dialogue and negotiation*

**G**ood professional relationships between staff and prisoners are an essential element of dynamic security. Where such relationships exist they can be put to good effect in de-escalating potential incidents or in restoring good order through a process of dialogue and negotiation. Only when these methods fail or are considered inappropriate should physical methods of restoring order be considered.

### *Use of minimum force*

**A**ll staff who deal directly with prisoners should be trained in techniques which enable them to physically subdue prisoners using minimal force. They should not have to rely on simply overpowering troublesome prisoners by a show of superior physical force. On many occasions this will not be possible. Even when it is possible, the result may well be serious injury to both staff and prisoners. There are a variety of control and restraint techniques in which staff can be trained which will allow them to gain control without injuring either themselves or the prisoners involved. Management should be aware of what these are and should ensure that all staff are competent in the basic skills and that sufficient staff are trained in advanced techniques.

### *Weapons*

**S**taff who work directly with prisoners may carry weapons, such as sticks or batons, for their own defence. Good practice implies that these weapons should not be carried in an ostentatious or threatening manner. A common practice is to carry a baton in a special trouser pocket, so that it is concealed but easily available. Larger batons should not be carried routinely but should be stored in strategic positions so that they are available to be issued quickly in an emergency. It is not good practice to allow staff who work directly with prisoners to carry firearms or similar weapons which may either be used inappropriately or may fall into the hands of prisoners.

### *Use of firearms*

**I**n some prison systems staff guarding the perimeter of the prison carry firearms. These staff should have clear instructions about the circumstances in which these weapons may be used. This must only be when there is immediate threat to life, either of the officer concerned or of someone else. It is not permissible to shoot a prisoner solely on the grounds that he or she is escaping. There must be additional exceptional circumstances which lead the marksman to conclude that the escaping prisoner presents an immediate threat to the life of another person and that he or she cannot be stopped by any other means. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are quite explicit on this point.

Prison administrations should establish clear guidelines and procedures for the use of any kind of force or firearms together with a training programme for staff who may be authorised to use them. The procedures should include formal arrangements for the investigation of any incident in which force or firearms are used.

A number of the issues mentioned above are also dealt with in chapter 2.



## Conditions of maximum security

In some jurisdictions groups of prisoners are routinely held, usually in isolation, in conditions of maximum security. In some cases this may be a condition set by the courts as part of their sentence; in many cases, however, prisoners are assigned to these conditions as a result of a security assessment carried out by the prison administration. International instruments are clear in stating that all restrictions should be limited to the minimum necessary.

### What the international instruments say

Standard Minimum Rules for the Treatment of Prisoners, Rule 27:

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

### Putting it into practice

*Minimum use  
of special  
maximum  
security*

**W**here large numbers of prisoners are assigned to special maximum security facilities there is a danger that, for many, these conditions will be excessive and disproportionate to the potential threat which they pose. As a general rule prisoners should only be confined to special maximum security conditions where their behaviour has shown them to pose such a threat to safety and security that the prison administration has no other choice. Any assignment to such conditions should be for as short a time as is possible and should be subject to continuous review of the individual prisoner's behaviour.

*Virtual  
isolation to  
be avoided*

**M**any special security facilities involve the virtual isolation of prisoners with no, or minimal, interaction with staff and other prisoners. This in itself takes away an important opportunity for prisoners to demonstrate changes in the behaviour which caused them to be assigned to these conditions in the first place.

## Difficult and disruptive prisoners

From time to time a small minority of prisoners may not accept the need for control and good order in prisons and for them special measures may need to be adopted. It is important that this number should be kept to an absolute minimum.

### What the regional instruments say

Recommendation No. R (82) 17 of the Committee of Ministers of the Council of Europe to Member States concerning the Custody and Treatment of Dangerous Prisoners:

**The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe ... recommends the governments of member states:**

- 1 to apply, as far as possible, ordinary prison regulations to dangerous prisoners;
- 2 to apply security measures only to the extent to which they are necessarily required;
- 3 to apply security measures in a way respectful of human dignity and rights;

- 4 to ensure that security measures take into account the varying requirements of different kinds of dangerousness;
- 5 to counteract, to the extent feasible, the possible adverse effects of reinforced security conditions;
- 6 to devote all necessary attention to the health problems which might result from reinforced security;
- 7 to provide education, vocational training, work and leisure-time occupations and other activities to the extent that security permits;
- 8 to have a system for regular review to ensure that time spent in reinforced security custody and level of security applied do not exceed what is required;
- 9 to ensure, when they exist, that reinforced security units have the appropriate number of places, staff and all necessary facilities;
- 10 to provide suitable training for all staff concerned with the custody and treatment of dangerous prisoners.

### Putting it into practice

#### *Isolation is not good practice*

There are at least two models for the management of violent and disruptive prisoners. The first is by placing them in isolated conditions, either on their own or with one or two other prisoners. Under this arrangement prisoners spend all day and night in their living accommodation. In the most extreme of these conditions prisoners have no access to any activity or external stimulation and have nothing at all to do. They may be allowed an hour of solitary recreation in an empty outdoor exercise cage. They are strip searched and shackled every time they leave their cell. In some jurisdictions prisoners can spend years in this kind of regime. This method of dealing with prisoners, however dangerous, is not good practice and often arises from an absence of proper management techniques.

#### *Separation in small units*

A much more positive model is that of housing problem prisoners in small units of up to ten prisoners, based on the premise that it is possible to provide a positive regime for disruptive prisoners by confining them to “group isolation” rather than individual segregation. The principle on which these units operate is that it should be possible for a professionally trained staff to develop a positive and active regime for even the most dangerous prisoners. The intention is that, within a secure perimeter, prisoners should be able to move relatively freely within the units and to have a normal prison routine. In such an environment prisoners will only be placed in isolation when all else fails and then only for a short period of time.

#### *The exception and not the norm*

One of the most important conclusions of the Council of Europe Recommendation referred to above is that this group of prisoners constitutes the exception rather than the rule. They are not typical of all long-term prisoners, nor should the problems which they present be extended to encompass the much larger group of prisoners who are serving long prison sentences.

#### *A test of professionalism*

The way in which prison officials deal with the small group of very violent prisoners, who refuse to conform to legitimate expectations, is not only the greatest challenge to the professionalism of prison staff. The manner in which prison authorities respond, on behalf of the rest of society, to people who have little or no respect for other human beings is also a real test of everyone’s humanity.



# Disciplinary Procedures and Punishments

## The framework

### *The rule of law must prevail in prison*

It is important to acknowledge that the rule of law does not end at the prison gate. For example, a person who is assaulted in prison is just as entitled to the protection of the criminal law as is someone who is assaulted in a public place. It should be normal practice in any prison when a serious criminal act has or is thought to have taken place that a system of investigation similar to that used in civil society should operate. In some jurisdictions special judges or prosecutors are appointed to carry out this function in prisons. In others the civil prosecutor or police are informed and given the opportunity to investigate as if the offence had taken place outside the prison. It may be that an incident, which is serious in the prison context, will not be regarded as worthy of investigation by the criminal investigatory authorities. An example might be when a prisoner is found to be in possession of a small quantity of drugs for personal use or when there has been an assault in which no-one is seriously injured. On the other hand, an assault in which a weapon is used or in which a bone or limb is broken would usually justify reference to the prosecutor or police. One way of dealing with these matters is that the prison authorities and the investigatory authorities should agree a policy concerning which incidents the prosecutor or police wish to have referred to them.

### *Need for a clear set of procedures to deal with offences against discipline*

By their nature prisons are closed institutions in which large groups of people are held against their will in confined conditions. From time to time it is inevitable that some prisoners will break the rules and regulations of the prison in a variety of ways. This may be by attacking another person physically, by taking something which does not belong to them, by refusing to follow the daily routine, by disobeying a legitimate order, by attempting to smuggle into the prison items which are not allowed or in some other way. There has to be a clear set of procedures for dealing with such incidents.

### *Administrative discipline*

This chapter of the Handbook is concerned with the procedure for dealing with breaches of prison discipline which are primarily administrative in nature and which are not to be referred to external investigatory or judicial agencies.

### *External standards*

In cases where external authorities are involved, they should use the same criteria as if the accused were not already a prisoner.

# The fairness of disciplinary procedures

## What the international instruments say

Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, Principle 30:

- 1 The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the adoption and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.
- 2 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.

Standard Minimum Rules for the Treatment of Prisoners, Rule 35:

- (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorised methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.
- (2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

Standard Minimum Rules for the Treatment of Prisoners, Rule 29:

- The following shall always be determined by the law or by the regulation of the competent administrative authority:
- a) Conduct constituting a disciplinary offence;
  - b) The types and duration of punishment which may be inflicted;
  - c) The authority competent to impose such a punishment.

Standard Minimum Rules for the Treatment of Prisoners, Rule 30:

- (3) When necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

European Prison Rules, Rule 36(2):

Reports of misconduct shall be presented promptly to the competent authority who shall decide on them without undue delay.

Standard Minimum Rules for the Treatment of Prisoners, Rule 28(1):

No prisoner shall be employed in the services of the institution in any disciplinary capacity.

## Putting it into practice

*Natural justice must be respected*

As in all matters of administrative justice, it is important that the principles of natural justice should be respected. The first of these is that all prisoners should know in advance what are the rules and regulations of the prison. This means that all prisons should have a set of regulations which clearly lists the acts or omissions which constitute a breach of prison discipline and which are liable to lead to formal disciplinary action. These regulations should have the status of a legal document. In many countries they will require

parliamentary approval. The regulations should be publicised widely in the prison and a copy should be made available to every prisoner on first admission. The need to do this in general terms is referred to in chapter 3. Arrangements must be made to ensure that prisoners who cannot read are fully aware of these regulations.

### *Observing proper procedures*

**A**ny prisoner who is to be charged under a disciplinary proceeding has the right to know in advance the charge which is being faced and who has made the charge. Without undue delay, the competent authority should hear any such charge. The prisoner him or herself should be given sufficient time to prepare a proper defence. The member of staff laying the charge may also need time to collect all available evidence. However, this should not be used as an opportunity to delay proceedings, particularly if the prisoner is held in isolation pending the hearing. In that case any unreasonable delay would amount to an informal form of punishment. This must also be borne in mind in those cases where prisoners are held in isolation pending investigation by an external authority.

### *A competent authority should hear the cases*

**T**he case should be heard before a competent authority. In some jurisdictions, independent magistrates or specialist judges are appointed to hear prison disciplinary cases. The advantage of such an arrangement is that it brings judicial independence and a greater likelihood that proper procedures will be observed. In other jurisdictions, such as Turkey, there is a special board for disciplinary hearings. In others, such as the United Kingdom, the head of the prison hears these cases.

Where disciplinary hearings are conducted by prison management it is important to ensure that they have received appropriate training and that they have not had any prior knowledge of the case which they are to hear.

### *Preparing a proper defence*

**I**n all cases the accused prisoner should be present at the hearing. He or she should hear the evidence as it is presented and should be entitled to question the staff member who is presenting the case. If a prisoner is not capable, for whatever reason, of defending him or herself, he or she should be allowed to call another person to assist him or her. If the case is a complex one or the possible punishment severe, consideration should be given to providing the prisoner with legal representation.

### *Right of appeal*

**I**f the prisoner is found guilty of the charge, he or she should have the right of appeal to a higher authority.

### *Informal warnings*

**I**n some administrations it is customary to issue informal warnings for minor breaches of discipline before resorting to formal action. This can prove useful in alerting a prisoner to the fact that his or her behaviour is giving cause for concern. However, care must be taken to ensure that the use of such warnings is fair and consistent. It should not give rise to a system of unofficial sanctions.

## **Punishments should be just and proportionate**

The clearly defined and published list of disciplinary offences should be accompanied by a complete list of potential punishments that may be imposed on any prisoner who commits one of these offences. As with the list of offences, the list of punishments should be set down in a legal document approved by the appropriate authority. They should always be just and proportionate to the offence in question.

## What the international instruments say

Standard Minimum Rules for the Treatment of Prisoners, Rule 30:

- (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.
- (2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

Standard Minimum Rules for the Treatment of Prisoners, Rule 31:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 32:

- (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
- (2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.
- (3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Standard Minimum Rules for the Treatment of Prisoners, Rule 33:

Instruments of restraint, such as handcuffs, chains, irons and strait jackets, shall never be applied as a punishment.

European Prison Rules, Rule 37:

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

African Charter on Human and Peoples' Rights, Article 7(2):

Punishment is personal and can be imposed only on the offender.

American Convention on Human Rights, Article 5(3):

Punishment shall not be extended to any person other than the criminal.



## Putting it into practice

*Punishment always on an individual basis*

**A** prisoner may only be punished after a formal disciplinary hearing, conducted according to the procedures described above, which results in a finding of guilt. Such hearings should be conducted on an individual basis. If, for example, there has been a mass refusal to obey a rule or an assault involving a number of prisoners, the case of each must be heard separately and punishments imposed on an individual basis.

*Never punished twice for same offence*

**N**o prisoner should be punished twice for the same offence. This means that if the offence, for example an assault or an attempted escape, has been referred to an external court, this should not be followed by an internal disciplinary hearing.

*Administrative punishments*

**A**dministrative punishments may include a formal recorded warning, exclusion from work, forfeiture of wages (where these are paid for prison work), restriction on involvement in recreational activities, restriction on use of certain personal possessions, restriction on movement in the prison. Punishments should not include any restriction on family contact, either by letter or by visit. Apart from any other consideration, this would be a punishment on the family or friends of the prisoner.

*Restrictions on punishment*

**T**he punishment imposed by a disciplinary hearing should always be proportionate to the offence which has been committed. There are specific prohibitions against all forms of corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments. It is now widely held that a reduction of diet is a form of corporal punishment and constitutes inhuman punishment; this reflects professional opinion which has developed since the Standard Minimum Rules were approved by the United Nations in 1957.

*No physical restraints as punishment*

**I**nstruments of physical restraint may never be applied as punishments. The circumstances in which such instruments may be used was covered in chapter 5.

*Restricted role of the doctor*

**T**he involvement of doctors in certifying that prisoners are fit for a particular type of punishment is a sensitive one and is dealt with in chapter 4. The Standard Minimum Rules (32) provide that a medical officer should examine all prisoners who are to undergo punishment that may be prejudicial to their physical or mental health and should certify in writing that they are fit to sustain this. Taken in context, this rule is intended to ensure that no prisoner who is not fit to sustain such a punishment will be required to do so; it is not intended to imply medical approval for the punishment.

This Rule has to be balanced against the provision 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:

3. It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

## *No unofficial punishments*

It must be made very clear to staff that the only kind of punishments which may be imposed on prisoners are those which follow from a formal disciplinary hearing. It is not permissible for staff to have a separate informal system of punishments which bypasses the official procedures. Senior management must be especially vigilant in this regard.

## Solitary confinement

The international instruments make clear that solitary confinement is not an appropriate punishment other than in most exceptional circumstances; whenever possible its use should be avoided and steps should be taken to abolish it. These instruments acknowledge the fact that, potentially, periods of solitary confinement are prejudicial to the mental health of the prisoner.

### What the international instruments say

Basic Principles for the Treatment of Prisoners, Principle 7:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 31:

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

European Prison Rules, Rule 37:

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

European Prison Rules, Rule 38 (1):

**Punishment by disciplinary confinement... shall only be imposed if the medical officer after examination certifies in writing that the prisoner is fit to sustain it.**

European Prison Rules, Rule 38(3):

**The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if the termination or alteration of the punishment is considered necessary on grounds of physical or mental health.**

### Putting it into practice

## *Sensory deprivation and dark cells prohibited*

There are various forms of solitary confinement. The most extreme occurs when an individual is held entirely on his or her own and is subject to sensory deprivation by lack of access to light, sound or fresh air in what are often called “dark cells”. This form of isolation should never be imposed as a punishment. There should be a similar injunction against holding small groups of prisoners in such an environment.

“ In a judgement in 1983 the European Commission of Human Rights was quite clear about the consequences of such confinement:

...complete sensory isolation coupled with total social isolation, can destroy the personality and constitutes a form of treatment which cannot be justified by the requirements of security or any other reason.

[Application No. 843/78 (1983)] in the case of Kröcher and Möller v. Switzerland, para 62]

### *Daily monitoring*

**A**nother form of solitary confinement occurs when a prisoner is held in a single cell with access to normal light and air and can hear prisoners moving in adjacent areas. This type of punishment should only be used in exceptional circumstances for short periods of time. In all such cases prisoners should be carefully monitored on a daily basis by a doctor to note any deterioration in their health; in that case the punishment should be ended.

### *Dangers of solitary confinement*

**T**he European Committee for the Prevention of Torture (CPT) pays particular attention to the use of solitary confinement, or any conditions similar to it:

“ Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.

[CPT, 2nd General Report on the CPT's Activities, para 56]

“ The delegation met certain Grade 1 prisoners who had for very long periods been subject to a regime of isolation and were held under austere material conditions of detention with little or nothing by way of activity; in the CPT's view, this constitutes inhuman treatment.

[CPT, Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, from 1 to 12 April 1991, CPT/Inf (96) 9 Part 1, para 113]

### *Solitary confinement and maximum security*

**S**ome jurisdictions make increasing use of administrative solitary confinement for prolonged or indefinite periods as part of a special maximum security regime. The dangers of this procedure are covered more fully in chapter 5.



# Constructive Activities and Social Reintegration

## The framework

### *Preventing deterioration in prisoners*

Depriving a human being of liberty is a very severe punishment. Of itself imprisonment is a severe deprivation of rights and thus it is only to be imposed by a judicial authority in clearly defined circumstances and when there is no other reasonable alternative. This handbook has already made clear that the prison authorities should not seek to increase the punishment of the court by treating prisoners inhumanely or with unjustified severity. On the contrary, they should do all that they can to prevent the physical and mental deterioration of those in their care.

### *Providing opportunities to change and develop*

It is not sufficient for prison authorities merely to treat prisoners with humanity and decency. They must also provide the prisoners in their care with opportunities to change and develop. This requires considerable skill and commitment. Most prisons are filled with people from the margins of society. Many of them come from extreme poverty, and disrupted families; a high proportion will have been unemployed; levels of education are likely to be low; some will have lived on the streets and will have no legitimate social network. Changing the prospects in life of people with such disadvantages is no easy task.

### *The obligation to provide activities*

Prisons should be places where there is a full programme of constructive activities which will help prisoners to improve their situation. At the very least the experience of prison should not leave prisoners in a worse condition than when they started the sentence but should help them to maintain and improve their health and intellectual and social functioning.

## What the international instruments say

International Covenant on Civil and Political Rights, Article 10 (3):

**The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.**

Standard Minimum Rules for the Treatment of Prisoners, Rules 65–66:

65 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.

66 (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 social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

- (2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, 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.

### Putting it into practice

#### *Equipping prisoners for life after release*

**A** rehabilitated prisoner is not one who learns to survive well in prison but one who succeeds in the world outside prison on release. If prison authorities are to give priority within their programme of activities to what the International Covenant on Civil and Political Rights describes as the “reformation and social rehabilitation” of prisoners, they will need to base the activities in the prison on giving prisoners the resources and skills they need to live well outside prison. This means, for example, linking the work that prisoners do in prison to the work possibilities outside. Prisoners should be helped to get the skills and capacity to earn a living and support a family, bearing in mind the discrimination that ex-prisoners are likely to face when trying to find work.

During the time that men and women are in prison, arrangements should be set in place to help them find somewhere to settle after they are released and to create some form of social structure which will help them to be re-accepted into society.

#### *Using civil society organisations*

**N**one of this will be easy to achieve, especially in circumstances where many jurisdictions face severe overcrowding, a shortage of trained prison staff and few opportunities to make links with the world outside the prison, as well as a hostile reception for prisoners from outside society when they leave. The principles set out in this chapter establish a goal towards which prison administrations should work within the limits of the resources available to them. They should also consider developing partnerships with civil society and educational organisations in the community in order to increase the opportunities available to prisoners.

“ In Mauritius the Government minister responsible for prisons wanted to increase the opportunities for prisoners’ social reintegration and combat the prejudice which faces ex-prisoners particularly in a small society where most people are known to each other. He therefore organised a week of opening the prisons to the media, encouraging journalists to interview prisoners and staff about the problems prisoners faced on release and stimulating a debate about the importance of society making an effort to help ex-prisoners re-establish themselves.

### Recognising the prisoner as an individual

If the programme of activities in prison is to have its desired effect it will be important that each prisoner should be recognised as far as possible as an individual. It is not sufficient to expect all prisoners to undergo similar training or development; this will be neither efficient nor effective. Some prisoners will be illiterate; others might have been teachers before they came to prison. Some prisoners will have to come to prison from a life on the street; others may come from a strong family background with work to return to. Therefore

when rehabilitative activities for prisoners are being arranged and prisoners allocated to them, the prisoner's background will be an important deciding factor.

### What the international instruments say

Standard Minimum Rules for the Treatment of Prisoners, Rules 67–69:

- 67 The purposes of classification shall be:
- (a) To separate from others those prisoners who, by reason of their criminal records or bad 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.
- 68 So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.
- 69 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 in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

### Putting it into practice

#### *Encouraging the individual to develop*

Each person who comes to prison has had previous life experiences and almost all prisoners will one day be released. If a person is to benefit from his or her time in prison the experience should be linked to what is likely to come after release. The best way to do this is to prepare a plan as to how the prisoner can make use of the various facilities which are available within the prison system. Prisoners need to be given things to do which ensure that they are not idle and which also have a purpose. All the activities, whether they are agricultural, prisoners becoming literate, or being involved in cultural and artistic programmes should be organised so as to contribute to an atmosphere where prisoners do not deteriorate but rather develop new aptitudes that will help them when they are released.

#### *Short sentence prisoners*

For prisoners who are serving short sentences there may be little time to embark on useful activities. In their case the main emphasis will be on preserving the links with the family and the outside world.

### Work and skills training

Finding a way of earning a living is the most important part of a prisoner's ability to reintegrate into society on release from prison. For many prisoners their time in prison may be the first opportunity that they have had to develop vocational skills and to do regular work. The main purpose of requiring prisoners to work is to prepare them for a normal working life on their release from prison, not to make money for the prison administration or to run factories for the benefit of other parts of the Government.

It should be remembered that employment is only one element of social rehabilitation. A full response will require opportunities to develop all the skills needed to return to society; differing societies will require differing skills. Other important initiatives to maintain links with the outside community are dealt with in chapter 8.



## What the international instruments say

International Covenant on Civil and Political Rights, Article 8:

- 3 (a) No one shall be required to perform forced or compulsory labour.
- (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
- (c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:
  - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention.

Basic Principles for the Treatment of Prisoners, Principle 8:

Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their integration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

Standard Minimum Rules for the Treatment of Prisoners, Rule 71:

- (1) Prison labour shall not be of an afflictive nature.
- (2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.
- (3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.
- (4) 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.
- (5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
- (6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

Standard Minimum Rules for the Treatment of Prisoners, Rule 72:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 73:

- (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.
- (2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom labour is supplied, account being taken of the output of the prisoners.

Standard Minimum Rules for the Treatment of Prisoners, Rule 74:

- (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.
- (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 workmen.

Standard Minimum Rules for the Treatment of Prisoners, Rule 75:

- (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 workmen.
- (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 the prisoners.

Standard Minimum Rules for the Treatment of Prisoners, Rule 76:

- (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 administration so as to constitute a savings fund to be handed over to the prisoner on his release.

### Putting it into practice

#### *The value of work*

Prisoners should not have to spend their days in idleness or monotony. This is important for their own personal wellbeing and also for the smooth management of the prison: prisoners who are not kept occupied are more likely to become depressed and disruptive. This is linked to the concept of dynamic security, which is described in chapter 5 of this handbook. However, there is also a much more positive reason for providing prisoners with meaningful work. Some people become involved in criminal activities because they have no legitimate form of income, often because they cannot find employment. This may be because they have never experienced regular work, so have never learnt the discipline which is necessary to follow a regular regime each day. It may also be that they wish to work but do not have the skills and training which are necessary for regular employment.

#### *Working conditions*

There is a general prohibition against compulsory or forced labour. However, the international instruments make clear that work done by prisoners does not automatically fall into that category. Sentenced prisoners can be obliged to work provided certain safeguards are observed. These are:

- that the work should have a purpose;
- that the work should help them to acquire skills which will be useful to them after they are released;
- that prisoners should be paid for the work which they do;
- that the conditions of work should be broadly similar to those in any civilian workplace, particularly in respect of health and safety requirements;
- that the hours of work are not excessive and leave time for other activities.

## *Developing a routine*

Prison work can have two main aims. The first is the simple one of encouraging prisoners to become involved in a regular routine which involves getting up, going to a place of work and spending several hours each day working alongside other people in an organised manner. However, this is not sufficient in itself. There is little point in forcing prisoners to go each day to a workshop where the work is monotonous and not likely to be of any use to other people. The worst example of this was the system in the 19th century in which prisoners were required to turn great cylinders of sand for many hours each day for no purpose at all. There are many modern equivalents of this type of meaningless work.

## *Developing skills*

The other aim of work is to give prisoners confidence and skills to carry out work which has a purpose, where they feel that they are learning in a way that will make it much more likely that they will find employment after their sentence has been completed. This means that prison work should be linked to training aimed at providing prisoners with work skills which will enable them to gain qualifications to work as craftsmen in traditional employment such as building, engineering, administration or farming. It may also be possible to include training in new skills such as computer work. This vocational training is especially important for younger prisoners. In designing these programmes it is particularly important to be aware of the type of employment opportunities which may be available in the local community to which the prisoner will return.

## *Women prisoners*

The special needs of women prisoners are dealt with in chapter 13. It is important that they should have access to a full range of work opportunities while in prison. They should not be restricted to activities such as sewing or handicrafts.

## *Ways of finding work*

In many countries prison administrations find it very difficult to secure sufficient work for prisoners. There are a variety of models for dealing with this problem.

- In some jurisdictions other government ministries are required to offer certain types of work to the prison administration. This might be for internal government contracts. In South Africa, for example, all the furniture for civil service offices is made by prisoners. It might be work on behalf of external agencies, for example, making car number plates.
- In many instances prison staff can be creative in finding purposeful work for prisoners. Selected prisoners can, for example, learn useful skills by working with prison staff in maintaining and repairing prison buildings. Where the prison has land, prisoners work under supervision to cultivate it to provide food for themselves and others. Prisoners can also be involved in essential daily tasks such as kitchen work and cleaning.
- There are also many instances in which prisoners can help governmental and non-governmental organisations in their work with disadvantaged people, for example by making furniture for a homeless persons' hostel or toys for a children's home.
- Self-employment in one-person businesses or in small co-operatives can be a viable option for some prisoners on leaving prison. Prisoners can use and develop the skills they already have to make objects which can be sold on the open market. Such work can be carried on after release from prison and does not bring the ex-prisoner up against discrimination.
- In recent years there has been a growing tendency to involve private commercial and industrial companies in providing work for prisoners. Where this happens, the prison authorities must make sure that the prisoners are not used merely as a source of cheap labour or in order to undercut the wages of local workers. In these cases, prisoners should be paid the full rate for the work they do.

“ In Senegal prisoners practise traditional crafts such as leather-work and jewellery making and a non-governmental organisation arranges for the items to be displayed and sold.

“ In Turkey a voluntary organisation, Tur Hiz, comprising commercial interests and vocational trainers, works with the prison administration to provide training for prisoners in areas where there is currently a shortage of skilled labour. The training in commercial cleaning is particularly linked to the growing tourism industry. Volunteer trainers provide training in prisons to industry standards; practical placements are provided in hotels and the offices of the provincial government.

“ In the Indian province of Andhra Pradesh two prisons in Rajahmundry have been involved in a joint initiative with the Central Government's Coir Board to provide training in the manufacture of coir products. It was anticipated that prisoners would form a co-operative to continue this production and that they would be given equipment to enable them to continue this work on their release from prison.

### *Payment for work*

If the experience of work is to prepare prisoners for life after release and not merely to be seen by them as forced labour, it is important that they should receive some form of remuneration for the work which they do. This can be done in a variety of ways. One of the most creative methods is where prisoners are paid a wage equivalent to that which would be paid to a similar worker in civil society. They are then expected to pass on a proportion of the money to their families, in some cases to donate a proportion to some form of reparation for the offence which they committed and to save some for their release. One such example from the United States is given below.

“ In 1993 Ellsworth Correctional Facility entered into a contract with Century Manufacturing for the production of a variety of products. Prisoners working on these programmes receive a standard minimum wage salary (as opposed to the notional wage normally paid in prison). From this salary deductions were made to contribute towards room and board, family support, victim compensation and taxes. Once all deductions had been made 10% of the remaining salary was placed in a savings account to be paid to the prisoner on release from custody.

Kansas Department of Corrections

### *Safe working conditions*

It is important that the conditions in which prisoners work should be subject to the same laws on health, safety, industrial injury and occupational disease as is work among the general public. This means that the prison authorities should be aware of national legislation about health and safety at work and should make sure that it is observed in the prison setting. These safeguards should also apply to the length of time which prisoners have to spend in work. The hours should not be excessive and should leave time for prisoners to be involved in other activities.

### *Work for pre-trial prisoners*

The considerations about work apply in the first place to prisoners who have been convicted. Different considerations apply in respect of prisoners who are awaiting trial. Since they have not been found guilty of any offence they should not be obliged to work. However, they can also suffer from the boredom of long periods of monotony and idleness, sometimes for years. Wherever possible, work should be available for them and they should be encouraged to take part. The circumstances of pre-trial prisoners are dealt with in chapter 11 of this handbook.

## Education and cultural activities

Many people who are in prison have poor standards of education. A significant proportion lack basic skills of reading and writing. In England and Wales research indicates that 65% of prisoners perform at the level of literacy usually expected of an eleven year old child, while the comparable figure for the general population is fewer than 23%.<sup>1</sup> This low educational level will have affected their lives before coming in to prison and may well have played a part in their committing a crime. It is an unfortunate reality that for some individuals the very fact of being in prison, of having to remain in one location for a fixed period of time, may be the first real opportunity that they have had of pursuing a course of proper education.

It is also important to provide opportunities for cultural activities alongside more formal education since this will provide a further context in which prisoners may develop their sense of self-worth.

### What the international instruments say

Universal Declaration of Human Rights, Article 26:

- (1) Everyone has the right to education.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

Universal Declaration of Human Rights, Article 27:

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Basic Principles for the Treatment of Prisoners, Principle 6:

All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

Standard Minimum Rules for the Treatment of Prisoners, Rule 77:

- (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 illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the 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.

Standard Minimum Rules for the Treatment of Prisoners, Rule 78:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 40:

Every institution 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.

<sup>1</sup> Social Exclusion Unit, 2002. Reducing re-offending by ex-prisoners. Stationery office: London

Resolution 1990/20 of the UN Economic and Social Council refers to education in prisons in the following terms:

- (a) Education in prisons should aim at developing the whole person, bearing in mind the prisoner's social, economic and cultural background;
- (b) All prisoners should have access to education, including literacy programmes, basic education, vocational training, creative, religious and cultural activities, physical education and sports, social education, higher education and library facilities;
- (c) Every effort should be made to encourage prisoners to participate actively in all aspects of education;
- (d) All those involved in prison administration and management should facilitate and support education as much as possible;
- (e) Education should be an essential element in the prison regime; disincentives to prisoners who participate in approved formal educational programmes should be avoided;
- (f) Vocational education should aim at the greater development of the individual and be sensitive to trends in the labour market;
- (g) Creative and cultural activities should be given a significant role since they have a special potential for enabling prisoners to develop and express themselves;
- (h) Wherever possible, prisoners should be allowed to participate in education outside the prison;
- (i) Where education has to take place within the prison, the outside community should be involved as fully as possible;
- (j) The necessary funds, equipment and teaching staff should be made available to enable prisoners to receive appropriate education.

The Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) underline the particular importance of education in juvenile custodial institutions and are dealt with in greater detail in chapter 12 of this handbook.

### Putting it into practice

#### *Importance of education*

**E**ducation is not to be regarded as an optional extra to the list of activities for prisoners. Instead it is central to the whole concept of using the period in prison as an opportunity to help prisoners to re-order their lives in a positive manner. In the first place it should be focussed on basic needs so that everyone who is in prison for any length of time can be taught to read, write and make basic arithmetical calculations which will help them to survive in the modern world.

#### *Developing the whole person*

**E**ducation should go much further than teaching these basic skills. Education in the fullest sense should be aimed at developing the whole person, taking account of prisoners' social, economic and cultural background. It should, therefore, include access to books, classes and cultural activities, such as music, drama and art. This form of activity should not be regarded as merely recreational but should be focussed on encouraging the prisoner to develop as a person.

#### *A balanced programme*

**W**hat is needed is a balanced programme of activities which include the industrial work and skills training described earlier in this chapter, education and cultural activities and physical education. All elements of this programme should be provided at some level in all prisons, although the exact balance may vary from one to another depending upon the age, abilities and needs of prisoners. Some prisoners, especially the younger ones, may

need to have education during the day as if they were at school. For others it may be provided in the evening after a normal working day. In other situations prisoners may spend half of the day working and half on educational activities. This is not unusual when there is not enough work to keep all prisoners busy for a full day.

### *No loss of pay*

**T**he previous section of this chapter referred to the right of prisoners to be paid for doing work. It is important that prisoners should not be penalised in this respect for attending education. If prisoners lose payment by attending education classes this will be an important disincentive to them.

### *Using the talent of prisoners*

**P**risons are often places where there is a great deal of untapped potential among the prisoners. Some of them may be educated to a high level; some may even have been teachers before coming to prison. Consideration should be given to encouraging such prisoners to help with the education of less able prisoners under appropriate supervision.

### *Using community resources*

**C**hapter 8 of this handbook deals with the importance of ensuring that prisoners have as much contact as possible with civil society. In this regard it is important that the prison authorities should, whenever possible, make use of community facilities, rather than creating parallel structures. A good example of this is the way that some prison systems make provision for teachers who normally work in local schools and colleges to work also in prisons. There are a variety of methods for achieving this. One is for the prison system to contract with the local education authorities to provide education for prisoners. This brings a degree of normality to prison education. It also ensures that prisoners are taught according to the educational content and methods used in civil society. It will also make it more possible that prisoners may continue with their education in the community after they are released.

Prison authorities can also invite local cultural groups to come into the prison to work alongside prisoners in appropriate activities. There is a tradition in some prisons of the prison inviting selected groups of local people, such as the old or the mentally handicapped, to come into the prison to be entertained by the prisoners and staff giving concerts and cultural entertainment.

## Preparation for release

### What the international instruments say

Basic Principles for the Treatment of Prisoners, Principle 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.**

Standard Minimum Rules for the Treatment of Prisoners, Rule 80:

**From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.**



Standard Minimum Rules for the Treatment of Prisoners, Rule 81:

- (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be 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 institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.
- (3) It is desirable that the activities of such agencies shall be centralised or co-ordinated as far as possible in order to secure the best use of their efforts.

European Prison Rules, Rule 70:

- (2) Treatment programmes should include provision for prison leave which should also be granted to the greatest extent possible on medical, educational, occupational, family and other social grounds.

### Putting it into practice

*Starts at the beginning of the sentence*

**A**lmost all prisoners will eventually be released back to civil society. It is important, especially for those who are serving relatively short sentences, that preparation for this release should begin right at the beginning of the time in prison. This is in their own interest and in that of civil society, since a person who has a place to stay, the opportunity of earning a living and a social support structure will have greater incentives to live successfully outside.

*Prisoners serving short sentences*

**I**n many jurisdictions the majority of prisoners are serving short sentences and will return to the community quite quickly. There is sometimes a temptation for prison authorities to overlook the rehabilitation of such prisoners since they will only be in prison for a short time. If this happens, there is a real danger that prisoners serving short sentences will quickly return to a life of crime and will return to prison again and again. The need for support in the community has to be given a high priority.

*Prisoners serving long sentences*

**S**pecial arrangements also need to be made to prepare prisoners who have served very long sentences for release because their support structures within the community may have broken down or disappeared while they have been in prison.

*Using external organisations*

**T**he prison authorities cannot prepare prisoners for release without the help of other agencies based in civil society. Governmental and non-governmental organisations which work with former prisoners after release should be encouraged to come into prison to build relationships with prisoners before they are released and to begin to plan their re-integration into society.

*Different kinds of help*

**N**early all prisoners will benefit from help to prepare them for life after release. For some this might involve helping them to improve their confidence and belief in themselves. For others, it might involve assistance in finding jobs, accommodation when they leave prison or providing them with sufficient money to enable them to travel to their home area. The longer a person has spent in custody the more important such programmes will be. General agencies which help unemployed people or homeless people could be involved in

helping prisoners to prepare themselves for release. These might include probation and social services, religious groups and other non-governmental organisations.

### *Using special programmes*

**I**n many countries work is done to help people who have addictions which are often associated with criminality, such as excessive drinking or gambling or dependence upon drugs. Where such programmes already exist in society, prison authorities should introduce these programmes to the prison setting instead of creating new ones just for prisoners. In recent years there has been an increase in programmes aimed at specific types of prisoners, such as sex offenders, or programmes to help those convicted of violent offences to control their anger and violence.

### *Short term release*

**P**reparation for release often includes the opportunity for prisoners to leave prison on a daily basis before their actual release date. This may be used to give them the opportunity to attend a training course or to obtain new work skills, sometimes in a workplace where they can continue to work after release.

Sensitive preparation is often needed for prisoners, especially those who have served long sentences, who are returning home. This preparation may be essential not only for the prisoner but also for other members of the family who have become unused to having their imprisoned family member in the immediate family circle. One method of achieving this is to allow the prisoner to return home regularly for a few days at a time as the end of the sentence approaches.

### *Respecting victims*

**T**here is a need to respect the feelings of people who have been the victims of crime. In cases which attracted a high public profile, for example, in small communities, or where there was violence against an individual victim or his or her family, it may be necessary to advise them when a prisoner comes to his or her release date. Such cases need to be dealt with in a very sensitive manner. In some cases it may not be possible for a prisoner to return to the area in which the crime was committed. In such instances alternative arrangements have to be made in order to respect the needs of the victim and of the former prisoner. Some prisoners, such as those who have served long sentences or those who are still considered to be a danger to the public, might be given conditional release or parole, which means that they will be subject to formal supervision in the community.

# Contact with the Outside World

## The framework

### *The right to family life*

People who are sent to prison lose the right to free movement but retain other rights as human beings. One of the most important of these is the right to contact with their families. As well as being a right for the prisoner, it is equally a right for the family members who are not in prison. They retain the right of contact with their father or mother, son or daughter, brother or sister who has been sent to prison. Prison administrations have a responsibility to ensure that these relationships can be maintained and developed. Provision for all levels of communication with immediate family members should be based on this principle. It follows that the loss or restriction of family visits should not be used as a punishment under any circumstances.

The main international human rights instruments are very specific about universal rights in respect of these issues:

Universal Declaration of Human Rights, Article 12:

**No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...**

International Covenant on Civil and Political Rights, Article 23:

**The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.**

These rights apply also to prisoners. In 1979 the European Court of Human Rights ruled that prisoners have the right to marry whilst in prison.<sup>1</sup>

The expectation should be that the best possible arrangements should be made to allow contact between prisoners and their families to be maintained. This expectation arises not only from the assertion of the right to family life in the international human rights instruments but also from Article 10 of the ICCPR:

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

Ensuring the best possible access to family must be part of a system that treats prisoners with humanity.

### *Nearness to home*

Giving importance to the maintenance of contact with family places some requirements on prison authorities. First of all, it has implications for the organisation of the prison system and is an argument for the prisoner's home area being a major determining factor in deciding which prison prisoners should be sent to. This has cultural implications for the prisoner and it also means that it will be easier for families to travel to visit their family member. Given that many prisoners come from marginalised and impoverished backgrounds, the cost involved in travelling long distances may mean that it will not be

<sup>1</sup> Hamer v United Kingdom 1979

possible for families to visit if the prison is a long distance from the area where the family lives. In countries where prisoners are dependent on family members to bring in clothes, food, medicines and other necessities, the prisoners' nearness to home is of particular importance.

### *Home leave*

**E**fforts also need to be made to establish and develop a system of allowing prisoners to visit their families at home for short periods. If there is no threat to the security or safety of the public or to other family members, prisoners should be allowed home visits under temporary release provisions. These home visits are especially appropriate for prisoners who are serving short sentences and also for those serving long sentences who are coming near to their date of release. It needs to be recognised that there will be cases where it would be very unwise to allow prisoners to leave prison for a short period to visit their families before the end of their sentence. Decisions of this nature should be based on the sort of careful individual assessment of risk described in chapter 5 of this handbook.

### *Private family visits*

**F**amily members and friends should be able to come to visit prisoners in prison. These visits should take place in conditions which are as natural as the prison environment will permit. As much privacy as possible should be allowed. It should never be forgotten that visits, especially with close family members, are not to be regarded as privileges but rather as a basic human right. Any restriction on their frequency or on the conditions in which they take place needs to be justified in each case. The presumption should be to maximise visiting and to allow the most favourable conditions possible.

### *Women and their children*

**W**omen prisoners need particular recognition because in most societies women take prime responsibility for childcare and imprisoned mothers are often separated from their children. Thus, when mothers are imprisoned they will normally be very anxious about the arrangements which have been made for their children's welfare. Their children will also be upset and disoriented. Both for the welfare of mother and child, and for the smooth running of the prison, prison staff should make every effort to assist them and to ensure that special arrangements can be made for the bonds between mothers and children to be maintained. This matter is referred to in greater detail in chapter 13 of this handbook.

### *Juveniles and their parents*

**T**he vulnerable status of juveniles and young prisoners also requires that attention be paid to how to preserve any relationships which could provide support, physical or moral, and stimulus. Visits with parents are especially important. This matter is also dealt with in chapter 12 of the handbook.

### *Treatment of visitors*

**T**he way that families and other visitors are treated on arrival at a prison is often a good measure of how well the prison is managed. It is also of great importance to the prisoner and, therefore, can have a positive or negative impact on security and stability within the prison.

### *Letters and telephones*

**F**orms of contact other than family visits are also important. Prisoners should be able to send and receive correspondence as freely as possible and where feasible to make and to receive telephone calls.

## *Access to reading material, television and radio*

Prisoners should also be able to keep up to date with events which are taking place in civil society, both in the communities from which they have come and in the wider world. This is a way of reducing the abnormality of the prison experience and also of making sure that the prisoner does not become completely detached from the community to which he or she will return on release. For these reasons prisoners should have access to books, newspapers, magazines, radio and television wherever possible.

## *Foreign prisoners*

Increasingly in many jurisdictions there is a large number of prisoners who are foreign nationals. All these considerations also apply to them. Prison authorities should recognise the need to make special arrangements to make sure that this group of prisoners does not lose contact with their families and their own culture.

## Visits, letters, telephones

### What the international instruments say

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18:

**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.**

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

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 37:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 79:

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

### Putting it into practice

## *Maintaining family and personal links through visits*

If prison authorities are to respect the universal human right to family life and wish to encourage prisoners to recognise the obligations which they still have to spouses, parents and children, arrangements should be made for a form of visit which recognises the need for families to visit the member who is in prison for reasonable periods with a degree of privacy which does not weaken legitimate security requirements. The family visits described next come closest to accommodating this need.

## Family visits

In a number of jurisdictions there are arrangements for what are often called family visits or long visits. These can take different forms. In Eastern Europe and Central Asia many prisons and colonies have a group of small apartments within the perimeter of the prison where visitors can live for periods of up to 72 hours with the family member who is in prison. A typical arrangement might include a common kitchen, social area and toilet/washing facilities for up to six family groups together with a number of small units with one or two bedrooms for each group. Prisoners who are eligible can have visits in these units up to four times a year. There will often be three or four visitors at a time; they may include a wife/husband or partner, a parent, grandparent, children or siblings. In Canada and some prison systems in the United States of America similar facilities are provided, often with a form of mobile home, surrounded by a wooden fence for privacy, which is located within the prison perimeter. The prisoners involved are required to show themselves at set times each day for security checks. Visits such as these cannot be described as normal family life but they do create an environment in which family members can reinforce their links with the member who is in prison.

“ In Rajasthan and some other states in India open village-type prisons have been established for long-term prisoners who have served a part of their sentence and have proved they are not a danger. They can live in these prisons in individual dwellings with their families, and to go to work either in agriculture or other activities in the neighbourhood. School and other facilities are provided for the prisoners' family members.

## Conjugal visits

The family visits described above are different from the conjugal visits which are permitted in some West European jurisdictions, including Denmark, Sweden, the Netherlands and Spain. These allow prisoners to be visited by one person, usually a spouse or a long term partner, for a period of up to three hours. The couple spend the visit in private in a small unit which contains a bed and a shower with other sanitary facilities. A much less formal version of these visits occurs in many Latin American prisons where the norm is that at the weekend there are family visits for male prisoners. The same applies to women prisoners in some places but not all. Such visits normally take place in the cell areas, and often sheets and blankets are hung on ropes to create some private space.

## Public visits

It will not be possible in practical terms to allow private family visits for all prisoners at all times. In some countries prison visits take place in large rooms specially dedicated to the purpose. These rooms should be arranged in such a way as to balance legitimate security needs against the need to maintain family contact. The norm should be that prisoners and their visitors can talk directly to each other without any physical barrier. This may be across a table or a desk. The prisoner should not be prevented from touching his or her visitors unless there are specific grounds for prohibiting this. This is especially important when the visitor is a child who has come to visit his or her parent. In some countries visits are limited to 15 minutes conversation between prisoner and visitor standing each side of a wall talking through a barred grille. In such prisons there is often scope for improving the conditions of visits at no great cost by using some part of the prison grounds as a visiting area and providing benches and a roof covering.

## Visiting arrangements for pre-trial prisoners

The right to contact with family and friends applies to prisoners who are awaiting trial as well as to those who have been convicted. There will be instances in which there is real concern that a prisoner who is awaiting trial may seek to influence potential witnesses in the case or to pass information about the case to third parties. For these reasons, restrictions will have to be placed on the arrangements made for visits. Each case needs to be decided on the basis of the evidence available. The prison authorities should not

accede to requests from investigating police or prosecuting authorities to restrict the condition of visits for pre-trial prisoners simply as a means of putting pressure on them to confess their guilt. This matter is referred to in greater detail in chapter 11 of this handbook.

### *Searching visitors*

**I**t needs to be recognised that in a prison environment there will always be a danger that some visitors will try to smuggle illicit articles to the prisoner being visited, including drugs or weapons. Reasonable security arrangements need to be enforced to prevent this happening. It may be necessary, for example, to search prisoners before and after visits have taken place. It may also be necessary to search visitors before they go into the visit area. It is possible to make arrangements which meet all security needs while at the same time being sensitive to the need to respect the privacy of visitors. The implications of this issue are referred to in chapter 5 of this handbook.

### *Closed or non-contact visits*

**E**ven after all reasonable precautions have been taken, a small number of prisoners and visitors will still do everything they can to breach security. In these cases it may be necessary to have a physical barrier between the prisoner and the visitor; these are often described as closed or non-contact visits. A typical arrangement will be a panel of strengthened glass to prevent contact and a telephone arrangement to allow speech. If these restrictions are to be applied to a prisoner for any length of time it will be inevitable that normal relationships will be put under increasing strain. For that reason these restrictions should be applied only when absolutely necessary. They should not be applied automatically to groups of prisoners, such as all those awaiting trial or those in high security prisons. In each case there should be a form of individual assessment of risk, as described in chapter 5 of the handbook, which should be based on security considerations and should not be used as a form of punishment or deterrence. The need for these restrictions in each case should be reviewed at regular intervals.

### *Video conferencing*

**I**n a number of jurisdictions there are now arrangements to enable prisoners to speak to their families through video links. This is useful as an additional facility where the prisoner is held in custody a long way from home or where members of the prisoner's family have difficulty in travelling to the prison. The use of such technology must not become a substitute for direct contact between the prisoner and his or her family.

“ Queensland (Australia) Corrective Services Commission has established video conferencing facilities between some of its prisons and remote aboriginal home communities. This enables prisoners to have face to face contact with relatives, particularly during times of emotional hardship in the home community.

“ The Prisons Department in Singapore has also introduced its first in-prison televisiting unit. The scheme is designed to help relatives who live too far away from the prison or who would rather not attend in person.

### *Volunteer visiting*

**F**or a variety of reasons there may be many prisoners who do not have family or friends to visit them. This may be because of the circumstances in which they were living before imprisonment or because they have been disowned as a result of the nature of their offence. In such cases the prison authorities should consider establishing a system for volunteers from the local community to visit these prisoners on a regular basis to help them to maintain contact with outside society.



## *Benefits to the prison*

All the arguments considered so far have related to the rights of prisoners and their families to be allowed to maintain relationships which are as normal as possible. It is also in the operational interests of prison administrators to ensure that this happens. Prisoners who are able to maintain good contact with their families will have a greater incentive to observe the normal rules and regulations of prison life. They are also likely to be able to resolve practical and other domestic problems which cause them anxiety. Staff will also learn about aspects of the prisoner's behaviour, life and character beyond the confines of the prison which will help them to treat each prisoner as an individual. In short, good visiting facilities are likely to help the prison function well in many different ways.

## *Letters*

There are other forms of communication with family and close friends in addition to visits. One of the most important of these is by letter. In many jurisdictions prisoners are allowed to send a minimum number of letters at state expense while paying the postage on any additional ones which they wish to send. There is generally no operational need to place any restriction on the number of incoming letters which a prisoner may receive.

## *Censoring or reading prisoners' correspondence*

There was a tradition in some prisons until fairly recently that all correspondence from and to prisoners had to be censored by staff. There were two main justifications for this. The first was that prisoners might discuss escape plans or other threats to security with their correspondents. The second was that this was a useful way for staff to intercept any bad news, for example about a death or the break-up of a marriage. It is now generally held that there is no operational justification on security grounds for censoring all mail. It is extremely unlikely, for example, that a prisoner who is contemplating escape would be foolish enough to refer to this in a letter. At the same time, it is accepted that prisoners have the same right as other people to receive family news, good or bad, directly. For those prisoners who have been assessed as a high security risk it may be necessary to censor incoming and outgoing correspondence and also to have a list of approved correspondents. For other prisoners it should not be necessary to censor correspondence on a continuous basis. In most cases random or sample reading is likely to be sufficient.

## *Checking for forbidden contents*

The authorities have a right to make sure that incoming correspondence does not contain any material which is forbidden, such as weapons or drugs. Good practice in some countries is that all incoming correspondence is opened in the presence of the prisoner to whom it is addressed. The member of staff checks that the envelope does not contain anything that is forbidden and then hands the letter to the prisoner without reading it.

## *Telephone calls*

In many prison systems it is now possible for prisoners to make or to receive telephone calls. Logistical arrangements differ from country to country. In some cases the person receiving the call from the prisoner has to agree to meet the cost of the call. This can be a very expensive arrangement since such calls are normally charged at a higher rate than normal calls. In other prison systems prisoners can purchase special telephone cards, which sometimes will only permit calls to be made to approved telephone numbers. Telephone conversations become especially important when the prisoner is being held many miles from home and it is difficult for his or her family to visit.

## *Monitoring and recording calls*

As with letters, there will be a need to maintain a balance between the right to privacy of the prisoner and his or her family on one hand and the legitimate needs of security on the other. Given the immediacy of communication by telephone, the prison authorities need to be sure that prisoners are not using telephone calls to arrange illegal activities, such as bringing goods into the prison or arranging escape attempts. In some countries this is done by recording all calls and retaining the taped record for a specific period of time. The

only telephone calls which are listened to by staff as they are made are those by or to prisoners who have been assessed as presenting a high degree of risk.

### *Electronic mail*

**S**ome prison administrations allow prisoners to have access to other forms of communication including electronic mail. This is allowed, for example, in Tihar prison in New Delhi. For some prisoners, especially foreign nationals, this may be the only reliable and inexpensive method of maintaining contact with their families.

### *Contact with legal and professional advisers*

**I**n addition to access to family and friends, prisoners often require access to lawyers, and other professional persons, including members of non-governmental organisations and human rights monitors. Visits and communication with such persons are in a category of their own. This is especially important for pre-trial prisoners and those convicted prisoners who are still involved in the judicial process. In such cases the prison authorities must consider very carefully the justification for any proposed restriction on access which might prejudice a prisoner's defence or appeal. Good grounds for such restrictions are likely to be very few.

In making arrangements for visits by professional advisers privacy will be an important consideration. It is normal, for example, that such visits will take place out of the hearing of staff. There also has to be special sensitivity about searching official correspondence and materials carried by or sent in by such visitors. Some of these issues are dealt with in chapter 11 of this handbook.

## Access to reading material, television and radio

### What the international instruments say

Standard Minimum Rules for the Treatment of Prisoners, Rule 39:

**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 authorised or controlled by the administration.**

### Putting it into practice

### *Regular access to external information*

**I**n addition to maintaining contact with family and friends, prisoners should be able to keep up to date with events in the wider world. For this reason they should have regular access to newspapers, radio and television. There is no operational reason, other than in exceptional circumstances, to censor access to the media. Neither should there be any moral censorship beyond that which is the norm in the country.

### *The internet*

**P**rison administrations will need to give careful consideration to providing access to the internet. This can be an important source of information on the outside world but may also provide an opportunity for inappropriate activity.

**A**ccess to a range of external information is important in helping prisoners to realise that beyond the prison walls and fences there is still a world to which they will one day return. Awareness of what is happening in the outside world can also help prisoners to behave in a more normal manner while living in the closed world of the prison. For long-term prisoners access to television, in particular, will enable them to maintain some contact with the very rapid changes which may be taking place in society outside the prison.

“ In Malawi paralegal workers from non-governmental organisations visit prisons to help prisoners with legal advice. When they visit they also bring with them copies of national newspapers which are then displayed in the yards so that prisoners and staff can read them.

## Foreign national prisoners

### What the international instruments say

In many prison systems there are large number of foreign national prisoners whose families are resident in other countries. Special attention needs to be paid to their needs.

In the first place these prisoners should be able to make contact with the diplomatic representative of the country to which they belong.

Vienna Convention on Consular Relations, Article 36:

- 1 With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
  - (a) Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
  - (b) If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded to the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;
  - (c) Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

Standard Minimum Rules for the Treatment of Prisoners, Rule 38:

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

## Putting it into practice

### *Free letters or telephone calls*

**F**or many of these prisoners there will be little or no possibility of receiving visits from family or friends. The prison authorities should make special arrangements to allow them to maintain contact with their families. This may be by permitting additional letters with free postage or it may be by allowing such prisoners to make periodic telephone calls to their families at the expense of the administration.

### *Foreign language press*

**W**henever possible such prisoners should be allowed access to newspapers and journals in their own language.

### *Using community contacts*

**I**n many cases contact with the prisoner's diplomatic representative may be difficult or infrequent. The prison authorities should also consider whether there are other foreign nationals in the local community who could provide a voluntary visiting service which would enable such prisoners to maintain some contact with their own culture.



# Requests and Complaints

## The framework

*Fair and just  
prison  
management*

It is essential that all prison systems should be administered in a manner which is fair and just and which is perceived by everyone involved to be so. The prison is a community with rules and regulations which apply in different ways to everyone concerned, staff, prisoners and visitors. Since it has a hierarchical structure it is especially important that its regulations should be understood and followed by everyone, not solely by prisoners.

*Clear  
procedures  
for requests  
and  
complaints*

If there is a clear set of procedures to ensure that decisions are made properly there will be less need for complicated arrangements to deal with the consequences of poor decision making. Since prisoners are expected to obey the rules of the prison, and eventually those of the outside society to which they are to return, it is important that rules should be implemented fairly and equitably. From time to time prisoners are likely to perceive an element of unfairness in the way they are treated, either individually or in a group. This will happen even in the best managed prisons. It is important that there should be a set of procedures which allow prisoners to make special requests and to register any complaints which they have. These procedures should be clearly laid out in a way that can be understood both by prisoners and by the staff who deal directly with the prisoners.

*Raising  
complaints  
at different  
levels*

In the first instance prisoners should be able to raise any issue which concerns them with the staff who are their immediate supervisors. If the matter cannot be resolved at that level, there should be an opportunity to raise the request or complaint with the authorities who are in charge of the prison. If the matter still cannot be resolved, the prisoner should have the right of access to a superior authority outside the prison. Many prison administrations also provide a parallel external system through which requests and complaints may be pursued. These may include local monitoring bodies, ombudsmen and local and national politicians.

*No  
victimisation  
of those who  
complain*

There are implications in a prison where those who are complaining live under the control of those about whom many of their complaints are made. In such circumstances it can often not be in the prisoners' interests to raise complaints however justified they might be. It should always be clear that the prisoner will not be punished for raising complaints and procedures should be in place to prevent such victimisation.

*Complaints  
by family or  
represent-  
atives*

If prisoners are not in a position to raise complaints personally, it should be open to their family or representative to raise the issue on their behalf.

## What the international instruments say

International Covenant on Civil and Political Rights, Article 2:

Each State party to the present Covenant undertakes:

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

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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 power.
- (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.

Standard Minimum Rules for the Treatment of Prisoners, Rule 36:

- (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorised to represent him.
- (2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.
- (3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.
- (4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.



## Putting it into practice

### *Understandable procedures*

**T**he objective of good prison management should be, as far as possible, to prevent serious complaints from arising in the first place. One way of achieving this is by having and adhering to a very clear set of procedures covering all aspects of the daily life of the prison. The obligation to provide these procedures and to make them available was dealt with in chapter 3 of this handbook. These procedures should be written in simple language which can be understood by all and should be made available to all prisoners and staff. They should form part of the information pack which is made available to a prisoner on arrival at each prison. Where resources are scarce the rules and regulations should be put on posters and fixed to a wall in a prominent place. Prisoners who are not literate should have the rules read and explained to them.

### *Information on the methods of complaint*

**T**hese procedures should contain a description of how a prisoner can go about making a request about his or her treatment and should also describe the avenues of complaint which are available to prisoners, beginning at the local level and going on to the most senior level in the prison and, if need be, beyond the prison.

### *Removing deterrents to making complaints*

**N**o procedures should be in place which might deter prisoners from raising legitimate complaints and grievances. The disciplinary code should not contain any regulations that make it difficult for prisoners to complain, for example, by punishing them for making allegations against staff which then turn out to be unfounded.

### *Preventing victimisation*

**A** major deterrent to prisoners making complaints is their knowledge that prison staff have the power to exact retaliation. It should be made clear that prisoners will not be punished or suffer in any way as a result of making a complaint and procedures should be in place to ensure prisoners are not victimised for complaining. If necessary, prisoners should be able to make a complaint in confidence. Eventually the person complained of will need to know that the complaint has been made and at that stage senior staff should be vigilant to ensure that no retaliatory action is taken. Prison staff need to be confident that if they are accused they will have the chance to defend themselves according to the principles of natural justice.

“ In China and some other countries the prosecutors who inquire into prisoners' complaints require complaints to be deposited in locked boxes to which only the prosecutors have the key.

### *Resolving requests and complaints*

**M**any complaints are likely to be about issues concerning daily routine or treatment. Matters which will be of little importance to people in normal civil society can take on great significance in the highly disciplined world of the prison, in which there are likely to be regulations affecting almost every aspect of daily life. One of the main objectives of the prison administration in this area should be to prevent a simple request developing into a complaint, or a complaint developing into a formal grievance, or a grievance developing into an appeal to a higher body.

### *Resolving grievances informally*

**T**he best way of achieving this is to encourage good personal relationships between first line staff and the prisoners they deal with directly on a daily basis. This subject was dealt with in detail in chapter 2 of this handbook. If such relationships exist, the prisoner will be more likely to go directly to the staff member involved to make a request or complaint in the

expectation that the issue will be dealt with in a fair and speedy manner. A well-trained member of staff will know which matters he or she can deal with directly and which will have to be referred to a more senior level. The staff member will be able to explain the process to the prisoner. One of the most important features of good practice in this respect is that the prisoner should be given a response as soon as is reasonably possible. If the response is negative it is particularly important to provide an explanation. In such a case the prisoner will be more likely to accept the answer which is given, even when it is negative, and so the request will not turn into a complaint.

### *A formal procedure*

**I**t will not be possible to resolve all requests and complaints in this informal manner. In addition, each prison system needs to have a formal procedure for dealing with requests and complaints which cannot be resolved informally between individuals. On each working day the prison director or a senior member of staff designated by the director should consider all such approaches from prisoners. Wherever possible the prisoner should be allowed to make the request or complaint in person. If the volume of requests makes this impossible, arrangements should be made for it to be submitted in writing. Regardless of whether the request is submitted orally or in writing the prison should make a formal written record of the request and of the response to it.

### *Speed is important*

**R**equests and complaints should be dealt with as quickly as possible. The general procedure should indicate how many days it will normally take to give a response. If the request is a complicated one which cannot be resolved in the normal time, the prisoner should be told how long it will take.

### *Taking complaints to the next level*

**I**f the director of the prison rejects the request or complaint, or if the complaint is being made against the director, the prisoner should be able to make a written application to a more senior person in the prison administration, usually at regional or national headquarters. In the interests of justice and fairness it is important that a complaint being made against an individual member of staff should not have to be channelled through that person. For this reason, there should be a procedure which allows prisoners to submit confidential requests and complaints to higher authority.

### *Complaining to independent outside bodies*

**A**rrangements for making requests or complaints to independent inspectors and others outside the prison system are dealt with in chapter 10 of this handbook. Prison administrators should not prevent or discourage prisoners from making complaints to external judicial authorities or independent inspectors. Providing prisoners with such external avenues of complaint can help to reduce potential tension.

“ In Ghana and a number of other countries prisoners have a right of access to raise their concerns with a member of the Human Rights Commission.

“ In South Africa the Inspecting Judge (Inspector of Prisons) is required under the Correctional Services Act to appoint Independent Prison Visitors at the various prisons throughout South Africa. Independent Prison Visitors are lay persons in the field of prisoners' rights who have been identified, through a process of publicly calling for nominations and consulting with community organisations, as people who are interested in the promotion of the social responsibility and human development of prisoners. The primary functions of Independent Prison Visitors are to deal with the complaints of prisoners.

### *Allegations of torture*

**W**hile all requests and complaints should be dealt with as speedily as possible, some require to be handled with greater urgency than others. For example, it is of prime importance that any allegation of torture or inhuman treatment should be dealt with immediately in a manner which inspires confidence on the part of the person making the complaint. A procedure should exist to make sure that any allegation of this nature goes immediately to the head of the prison or, if the allegation is made against that person, to a superior external body.

### *Allegations of criminal activity*

**S**imilarly, there should be a clear procedure for handling any complaint which includes an allegation of criminal behaviour on the part of either a member of staff or another prisoner. Such allegations should normally be referred to the agency in civil society which is responsible for investigating or prosecuting criminal acts. This agency can then decide whether it should pursue the matter as a criminal investigation or refer it back to the prison authorities for administrative action.

### *Complaining about the legal process*

**P**risoners may also raise issues to do with their detention, their sentence or their release date. Requests of this nature should be passed to the appropriate legal authority.

### *Appeals against disciplinary decisions*

**P**risoners may also wish to complain about disciplinary decisions which have been taken against them when they feel that the proper procedures were not followed in their case or that they were punished unjustly. As described in chapter 6 of this handbook, there should be a procedure to allow such an approach to a higher authority.

### *Complaints are important to prisoners*

**T**he vast majority of requests and complaints by prisoners are likely to be concerned with administrative matters. Many of them may be relatively unimportant in objective terms but each will be of great importance to the prisoner concerned. They may be concerned with food, with lost property, with delays in correspondence, about problems with visits or about the attitude of staff. Very often all that the prisoner asks for is an acknowledgement that something has gone wrong and that an apology should be offered. If the prisoner sees that such complaints are dealt with honestly and frankly there will be less likelihood of a continuing sense of grievance.

### *Group complaints*

**T**he procedures described thus far have been concerned with requests and complaints raised by individual prisoners. Prison administrations will also need to be sensitive to any cultures or traditions where concerns are raised through a group or family leader rather than individually.



## The framework

*Prisons must be open to public scrutiny*

All prisons are places where men and women are detained against their will. The potential for abuse is always present. Therefore they must be institutions which are managed in a way which is fair and just. All institutions which are managed by or on behalf of the state should be subject to public scrutiny. This is especially important in the case of prisons because of their coercive nature.

*External inspection is essential*

This handbook describes in detail what is involved in good prison management. However, even in the best managed prisons questions will be asked from time to time about what is going on and complaints will be made. Since ordinary members of civil society cannot easily discover for themselves what goes on behind the high walls and fences of a prison, there has to be a system of inspection which checks that everything is as it should be.

*The value of outside scrutiny*

Inspection procedures protect the rights of prisoners and their families. They are meant to ensure that proper procedures exist and that they are observed by staff at all times. Inspections should cover all the aspects of prison life which are dealt with in this handbook.

*Outside scrutiny is a safeguard for prison staff*

It is equally important to recognise that inspections can also be a safeguard for prison staff. They are a means of dealing with any allegations of mistreatment of prisoners or improper behaviour by staff. Where these occur they should be acknowledged and the staff involved identified. This will also be a way of protecting staff against unjust allegations. However, inspections are not only about failures. It is just as important that they should identify good practice which can be used elsewhere as a model. They can also give credit to staff who are doing their work in a professional manner.

*Civil society involvement is a form of scrutiny*

Inspection can take several forms. There is an important level of informal scrutiny which exists in a prison where there is regular contact between the prison and community agencies. In situations where members of civil society come into prison on a regular basis there will be less likelihood of impropriety on the part of the prison administration and a greater likelihood that people in the community will understand what goes on inside their prisons. The people coming into prison regularly from civil society may be teachers from local schools, health care workers from local hospitals, or members of religious and cultural groups. Their activities are described elsewhere in this handbook. They are not inspectors in the strict sense of that term but their presence can amount to a type of informal inspection. Importantly they also bring a different perspective from that of prison professionals.

*Independent lay monitoring*

Some administrations have developed a more formal role for members of the local community through systems of independent lay monitoring. These local monitoring bodies take on responsibility for more formal scrutiny of the work of the prison and for reporting back to the prison authorities and, in some cases, to the local community. Such systems can provide an effective means of preserving and promoting human rights and of preventing abuse. They also provide formal links between prisons and the society on whose behalf prisons are run.

## *Administrative inspections*

There is a more formal type of inspection which is carried out on individual prisons by staff from the central prison administration. This type of inspection often takes the form of an audit of procedures. It can cover a wide range of topics, such as security, finance, activities for prisoners, staff training or discrimination. In many administrations these procedures will be measured against standards which have been developed centrally so as to ensure consistency between prisons. Some administrations also appoint supervisors to their prisons who are responsible for monitoring compliance with prison regulations. These audits frequently concentrate on administrative processes. This form of inspection or audit is very important but is not in itself sufficient.

## *Independent inspections*

An important type of inspection is that which is carried out by a body which is independent both of individual prisons and of the prison system. In some cases the staff of such an agency are appointed by the government. The most independent arrangement is when they are appointed by parliament and report back to it. In some instances they will carry out a regular programme of inspections. In others they will undertake these on an ad hoc basis. They will inspect the daily operation of prisons and from time to time they will carry out an inspection in the wake of a serious incident.

The most comprehensive form of inspection is when all of the above types exist side by side and complement each other in their activities.

## *Regional and other inspection mechanisms*

The Special Rapporteur on Torture appointed by the United Nations has developed an important role in commenting on abuses affecting people deprived of their liberty. In recent years his influence has been increased by his habit of visiting prisons and commenting publicly on what he finds.

At a regional level the Special Rapporteur on Prison Conditions in Africa, who is appointed by the African Commission on Human and Peoples' Rights, carries out inspections of prison systems in Africa and publishes reports detailing both problems found and good practices seen.

The Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is the oldest established example of an inter-governmental mechanism which exerts considerable influence on the improvement of conditions of detention and imprisonment in the countries, stretching from the Atlantic to the Pacific Ocean, which form part of the Council of Europe.

The International Committee of the Red Cross is very active in the area of prison inspection in special circumstances such as time of war.

Some jurisdictions allow formal rights of access to their prisons to both national and international human rights NGOs.

## **What the international instruments say**

International instruments are clear in requiring that all prisons and places of detention should be subject to a system of inspection which is independent of the authority responsible for administering those prisons. They also give prisoners the right of full and confidential access to inspectors subject to legitimate security considerations.

Body of Principles for the Protection of All Persons under Any Form 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.

Standard Minimum Rules for the Treatment of Prisoners, Rule 55:

There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

## Putting it into practice

### *Civil society involvement can prevent abuses*

Other chapters of this handbook describe the benefits of having a good working relationship between prisons and local civil society, as part of which respected members of civil society will regularly come into prison to take part in various activities. An added benefit of this type of arrangement is that this interchange can act as an informal type of independent monitoring of all that goes on in the prison. The visitors will interact with staff and will come into regular contact with prisoners in a way which will enable them to observe problems and spot signs of abuse. Their presence should be an encouragement to good inter-personal relations. The presence of civil society representatives can be preventive, stopping abuses before they occur. Formal inspection procedures will often only identify failures after they have occurred. The comments of these visitors on what they see in prison will have an added importance in that they will be based on their experience and expectations of society outside the prison. As a result they may be in a position to question and challenge established prison procedures.

The more formal types of inspectors, who are described next, should always make sure that they consult these regular visitors to the prison whenever they are carrying out formal inspections.

### *Formal lay monitoring*

Some administrations have well-established arrangements for formal monitoring of prisons by bodies composed of lay members of the community. Other administrations have recently introduced or are beginning to consider similar arrangements. The best such arrangements are those in which independent members of civil society are appointed to monitor all aspects of life in prison and to report publicly on their findings. In order to be effective, lay monitors should have unrestricted access to all areas of a prison and should be responsible to the public, through parliament for example, rather than to the prison administration.



“ Turkey has recently introduced a system in which a small independent monitoring council has been appointed to each judicial commission to monitor and report on the prisons under the jurisdiction of that commission. Typically each council has responsibility for four or five prisons. Each monitoring council is required to submit a report every three months to the Ministry of Justice. Turkish legislation also requires public bodies to respond within a fixed time limit to reports which are submitted to them.

*Monitoring serious incidents is an important task*

In England and Wales there is a requirement that lay monitors must be summoned to attend and observe any serious incident in prison. This serves the dual purpose of helping to protect prisoners from abuse and safeguarding staff against unjust allegations.

*Most prison systems have administrative inspections*

Within most prison administrations there is some form of internal inspection process. The individuals who carry out this work are usually senior members of the prison administration who are knowledgeable about prisons and prison management. They are likely to be based in a team which works within the central prison administration and has no immediate link to individual prisons. They may inspect all prisons within a region. Alternatively they may work as teams on a functional basis, for example, inspecting all prisons for women or for juveniles.

*Checking adherence to government procedures*

In some prison systems these teams act as auditors rather than inspectors. Their main function is to check that proper procedures are in place, that administrative instructions are being observed and that there is no malpractice or corruption. In practical terms there should be a clear distinction between the role of an auditor and that of an inspector. An auditor usually concentrates on how things are being done whereas an inspector will concentrate on what is being done and what are its results. It is possible for a prison to satisfy government inspectors that the procedures are being properly followed yet it could still be a badly managed prison in the terms set out in this handbook. Prison auditors have an important management role to play but they should be in addition to independent inspectors, not replace them.

*Internal inspectors should have unrestricted access*

An internal inspection team should have unlimited access to all places and people within prisons and places of detention. They may have a programme of inspections which is announced in advance but they should also carry out ad hoc inspections on an unannounced basis and outside normal working hours. They should usually report directly to the head of the national prison administration.

*Identifying good practice is important*

The role of formal audit and inspection is not simply to identify unacceptable practices. These processes also have an important part to play in identifying and disseminating good practice.

“ In France the government appointed a joint team from the General Inspectorate of Judicial Services in the Ministry of Justice and the General Inspectorate of Social Affairs in the Ministry of Employment and Social Affairs to evaluate and report on the organisation of health care for prisoners. Their report was submitted to the Ministers of Employment and Social Affairs, Justice and Health.

## *Independent inspection is vital for good prison management*

In addition to internal inspection procedures there should also be a form of inspection which is entirely independent of the prison system. One possible arrangement is that the inspectors are appointed by the government. This is not entirely satisfactory since it is the government which is ultimately responsible for the management of the prison system. The best way of guaranteeing independence is if the inspector is appointed in some way through a parliamentary process, for example as an ombudsman. If the inspector then reports his or her findings directly to parliament, there is less likelihood of any administrative interference in his or her reports.

“ The Office of the Inspector of Custodial Services was established in Western Australia in 2000 to bring independent external scrutiny to prisons. The office is responsible to the Minister for Justice and answers directly to Parliament.

## *Judicial oversight*

In some countries, such as France, judges are given the responsibility of ensuring that prisons are managed according to the law and that prisoners are treated humanely. This arrangement should ensure independence since judges will not be a part of the prison system, but it is important that these ‘juges d’application des peines’ are able to give priority to the work of inspecting prisons.

## *The public standing of the independent inspector*

The status of the independent prison inspectors will be enhanced by public awareness of their role, so the appointment of persons with public credibility as prison inspectors is important. If the inspector comes from a non-prison profession, as for example a judge, at least some members of the inspection staff should have direct knowledge of prisons and prison administration. There should also be specialist inspectors in subjects such as health care and mental health, education, buildings and minority issues.

## *Inspectors have a role after serious incidents*

In addition to their normal programme of inspections, independent inspection teams should also have the right to carry out inspections following any serious incident or riot. In cases such as this they should have access to all available evidence and should be able to interview everyone who was involved, staff and prisoners.

## *Other forms of inspection*

In addition to the specialist prison inspection unit, some jurisdictions also place a responsibility on other government or central agencies to inspect certain aspects of a prisoner’s life. These may include agencies such as the Human Rights Commission or Auditor General. There may also be formal links between inspection and agencies which investigate complaints from prisoners.

## Reporting and responding to inspections

Independent inspectors should publish all parts of their reports on prisons except those that are related to confidential security information or details of individual persons. The effectiveness of any system of inspection, formal or informal, will be undermined if inspectors do not submit reports on their findings or if such reports are ignored.

All forms of inspection should specify a clear reporting procedure with appropriate arrangements for matters which may require urgent attention.

The individual prison, the prison administration and the government should also undertake to respond promptly and fully to the reports which they receive. It is useful if reports and the responses to them are made public, subject to legitimate security considerations.

The publication of reports, for example by the Council of Europe's Committee for the Prevention of Torture and the African Special Rapporteur, has had an important secondary effect in helping to eliminate unacceptable practice and disseminate good practice in other prisons and administrations.

# Pre-trial Prisoners and all others Under Detention Without Sentence

## The framework

### *Some definitions*

In many countries a large proportion, sometimes even a majority, of people in prison or jail have not yet been convicted. They may be under investigation; a decision may not have been made about whether their case should go to trial or they may be simply awaiting trial.

- Different jurisdictions have different legal terms to describe such persons. They may be referred to as being under investigation, under trial, awaiting trial or on remand. For ease of reference this handbook describes all such persons as being pre-trial.
- In some jurisdictions the word prisoner is used only to refer to people who have been convicted. Those who are not yet convicted or who are in prison for some other reason may be referred to as detainees. Again for ease of reference, in this handbook the word prisoner is used to refer to everyone who is in any form of detention authorised by a legal authority.
- Finally, some jurisdictions use the word prison only for places which hold convicted prisoners. The places which hold those who have not yet been convicted are referred to as detention houses or jails. In this handbook the word prison is used to describe every place holding a person in legal detention.

### *The presumption of innocence*

The most important principle in the management of pre-trial prisoners is the fact that they must always be presumed to be innocent. Unlike convicted prisoners they are not being held in prison as a punishment. Prison administrations must ensure that their unconvicted status is reflected in their treatment and management.

### *The problems of pre-trial detention*

Not only must pre-trial prisoners be presumed to be innocent while awaiting trial, but in many cases they will in fact be found to be innocent once their cases come to trial. In addition, the judicial process in many countries is such that cases are often slow to come to court and even those who are found guilty may serve a much longer period of pre-trial detention than the sentence which they eventually receive. All of this may contribute to a legitimate sense of grievance which may affect the behaviour of many pre-trial prisoners and which should be borne in mind by prison administrations.

### *Too many pre-trial prisoners*

In many jurisdictions the slowness of the judicial system and the resultant large numbers of pre-trial prisoners are major factors in prison overcrowding. Poverty is also a significant element in this since many prisoners may be unable to afford the high costs of release on bail. In various parts of the world pre-trial prisoners make up more than half the prison population, with rates in excess of 70% in countries like Honduras, Burundi, Mozambique and India. Often these figures refer only to those detained under the prison administration and do not include those in police cells or other forms of detention.

## Separating investigative and prison authorities

There should be a clear separation of functions between the agencies which are responsible for investigating crimes, which are usually the police and the prosecuting authority, and the prison administration which is responsible for detaining accused persons on the order of a judicial authority. The fact that an accused person is detained may assist the investigating authorities in their work but the conditions of imprisonment should never be an element of the investigation. In other words, it is not permissible to hold pre-trial prisoners in very restricted conditions simply in order to encourage them to co-operate with investigators or to confess to their guilt. The investigating or prosecuting authority should not be able to influence the prison authorities as to how they treat prisoners who are awaiting trial.

“ India has extended its system of ‘People’s Courts’ to prisons by authorising Chief Magistrates to transfer their courts to prison once or twice each month. In a typical example of one such ‘Lok Adalat’ held in Rajahmundry Central Prison the visiting magistrate was able to deal in one day with 23 cases which might otherwise have taken a long time to reach court.

## What the international instruments say

Universal Declaration of Human Rights, Article 11:

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

International Covenant on Civil and Political Rights, Article 9:

- 1 Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.
- 2 Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- 3 Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
- 4 Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- 5 Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Standard Minimum Rules for the Treatment of Prisoners, Rule 84:

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

## Putting it into practice

### *Special situation of pre-trial prisoners*

**P**rison rules and regulations are directed primarily at the management of convicted prisoners. Pre-trial prisoners are to be presumed to be innocent and, therefore, should not be subject to the same rules and regulations as convicted prisoners. Chapter 3 of this handbook deals with admission procedures. These procedures are particularly important since the first experience of imprisonment for the majority of prisoners will be as pre-trial prisoners. For this group of prisoners the first few days in prison can be a specially confusing time; the admissions procedures need to take this into account and the staff responsible for administering them need to be aware of it.

### *Safeguard against arbitrary detention*

**P**rison authorities provide an important safeguard against arbitrary detention. They need to establish clear procedures to make sure that there is a properly authorised warrant or legal document for the detention of everyone who is admitted to custody. This is particularly important in the case of all pre-trial prisoners, who are entitled to know the legal authority for their detention and when they will next appear before a judicial authority. The authorities will also need to ensure that prisoners are presented to the courts promptly and at the proper time.

### *Monitoring time spent in pre-trial detention*

**T**he status of prisoners who are awaiting trial usually means that the length of their detention will be indeterminate and subject to decisions taken by agencies other than the prison authorities. Some jurisdictions have time limits within which prisoners must either be brought to trial or released. As part of the process of ensuring the continuing legitimacy of the detention order prison authorities will want to monitor these arrangements. It will be particularly important for prison authorities to maintain accurate records so that pre-trial prisoners are not lost within the judicial system.

“ In the report of her visit to prisons in Mozambique in 2001 the Special Rapporteur On Prisons and Conditions of Detention in Africa noted that there had been a reduction in the number of prisoners since the previous visit. She suggested this could partly be explained by ‘the setting up of “Commissions to strengthen legality” which regularly review the legality of detention by touring the prisons and checking prisoners’ files. They can decide to release prisoners awaiting trial or even bail those who have served their sentence but cannot pay a fine. The Commissions also release those prisoners who can prove that they are under 16’.<sup>1</sup>

“ Honduras and Panama have introduced legislation as a result of which pre-trial prisoners may be released once they have served a set proportion of the sentence which they might normally receive if found guilty of the offence with which they are charged.

### *Legal advice*

**A**ll pre-trial prisoners should have access to proper legal representation. People who are first admitted to prison are often confused and uncertain about their situation and their surroundings. They are entitled to independent legal advice.

### *A separate set of rules*

**P**rison staff need to be aware of the legal distinction between pre-trial and convicted prisoners. There has to be a separate set of rules for the management of pre-trial prisoners.

<sup>1</sup> ACHPR, Prisons in Mozambique, Second Visit April 4-14 2001: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa

# The right to legal representation

## What the international instruments say

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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 the 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.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18:

- 1 A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
- 2 A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
- 3 The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
- 4 Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing of a law enforcement official.
- 5 Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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.

Standard Minimum Rules for the Treatment of Prisoners, Rule 93:

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

Basic Principles on the Role of Lawyers, Principle 7:

Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not more than forty-eight hours from the time of their arrest or detention.



All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

### Putting it into practice

#### *Role of prisons in ensuring legal representation*

**A**t a very early stage newly admitted prisoners should be told about their rights in respect of legal representation, especially if they are awaiting trial. Some of them will already have a lawyer. In that case, their concern will be about access: when, where and under what circumstances they may have contact with their lawyers. Many other prisoners will not yet have arranged legal representation. In that case they should be allowed to contact a lawyer as soon as possible in order to discuss their legal position and to begin to prepare their defence. The proper authorities should make sure that arrangements are in place so that prisoners who have no financial resources can still have adequate legal representation.

#### *Privacy of legal correspondence*

**T**he prison authorities should not interfere in any way in the communication between prisoners and their legal representatives. Written correspondence between a prisoner and his or her lawyer should not be subject to censorship. In a number of jurisdictions such correspondence is marked on the envelope and, therefore, incoming correspondence is passed directly to the prisoner without being opened; outgoing correspondence is sealed by the prisoner. If the prison authorities have legitimate reason to suspect that this arrangement is being abused, they may open incoming correspondence in the presence of the prisoner to check that it contains nothing which is forbidden; similarly, outgoing correspondence may be checked in the presence of the prisoner before being sealed. In no circumstances should the correspondence be read by the authorities.

#### *Privacy of meetings with legal representatives*

**D**iscussions between a prisoner and his or her legal representative should never be overheard by the prison authority. It is reasonable that such visits should take place within sight of prison staff, for example, with the staff being able to see the visit through a glass panel, but this should not allow them to hear what is being discussed.

## The management of pre-trial prisoners

### What the international instruments say

International Covenant on Civil and Political Rights, Article 10:

- 2 (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
- (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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.

Standard Minimum Rules for the Treatment of Prisoners, Rule 84:

(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 by a special regime which is described in the following rules in its essential requirements only.

Standard Minimum Rules for the Treatment of Prisoners, Rules 86–91:

- 86 Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.
- 87 Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.
- 88 (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.
- (2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.
- 89 An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.
- 90 An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.
- 91 An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

### Putting it into practice

#### *Different status for pre-trial prisoners*

Prisons are usually managed in a way which best suits the prison authorities. One consequence of this may be that everyone in detention is treated in a similar manner, whether they be male or female, adult or juvenile, convicted or pre-trial. This may be to the advantage of the prison administration; it does not meet the requirements of justice. Pre-trial prisoners have not been convicted of any offence and should not be managed as if they were convicted. The judicial authority has merely required that they should be deprived of their liberty, not that they should be subjected to any additional punishment.

#### *Separated from convicted prisoners*

Pre-trial prisoners should be held in accommodation separate from prisoners who have been convicted. In many jurisdictions the immediate consequence of such separation is that the conditions for pre-trial prisoners are much worse than those for convicted prisoners. Their conditions are the most overcrowded; they have the worst accommodation and are given least access to the facilities of the prison. This should not be the case. The fact that they remain innocent in the eyes of the judicial system means that their conditions of detention should be at least as good as those for convicted prisoners.

## *What the prison should provide*

The separate regulations for pre-trial prisoners should cover such practical issues as when they may wear their own clothes, access to food, books and other materials and visiting arrangements. They cannot be required to work but should be given the opportunity to do so.

In cases where pre-trial prisoners are held in prison for lengthy or indeterminate periods it will be especially important to ensure that they are given full access to the prison's facilities and the opportunity to work if they so choose.

## *Security levels should not be pre-determined*

All prisoners, whether convicted or awaiting trial, need to be held in conditions which meet their appropriate security needs. In many jurisdictions convicted prisoners are allocated to specific security categories but pre-trial prisoners are all treated as if they needed to be kept in high security conditions. This is not always the case. Pre-trial prisoners should also be subjected to an assessment of the risk which they present. There may not be any justification for holding those who are awaiting trial on relatively minor crimes in the same conditions as those who have been charged with very serious crimes.

## Other prisoners under detention without sentence

### What the international instruments say

Standard Minimum Rules for the Treatment of Prisoners, Rules 94–95:

- 94 In countries where the law permits imprisonment for debt or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall not be less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.
- 95 Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, 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.

### Putting it into practice

## *Administrative prisoners are not convicted*

Prison is primarily a place of detention for people who have been convicted or accused of a criminal offence. In some countries persons may be detained because they are facing a civil charge or for other administrative reasons. Where this happens, such persons should be treated in the same manner as other prisoners who have not been convicted. This will affect the conditions in which they are held and also the access which they have to legal representatives and other official persons.

## *Illegal immigrants and asylum seekers*

In current times the most obvious example is of persons who are detained because they have entered a country illegally or sometimes because they are seeking asylum. Such persons should not be detained alongside persons who are accused of or who have been convicted of criminal offences. If they are delivered to the custody of the prison authorities, they should not be treated in the same way as persons who have been convicted or accused of criminal offences.



# Juvenile and Young Prisoners

## The framework

### *Some definitions*

The age of criminal responsibility describes the age at which acts committed by children can be treated within the criminal law. This age varies greatly between countries. Equally, there are differing definitions in law of the age at which a child may be imprisoned in the prison system. Also within prisons there are differences in the age at which juveniles may be held in the same prisons as adults.

### *The position in international law*

International law is quite clear about who is to be regarded as a child:

Convention on the Rights of the Child, Article 1:

... a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

International human rights instruments on criminal justice apply the same definition of juvenile:

UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11:

(a) A juvenile is every person under the age of 18.

### *Those under 18 should not be in prison*

In some countries no-one who is under the age of 18 years is detained in prison service custody. This arrangement is to be encouraged. Where such young people need to be detained, they should be held in the custody of a welfare agency rather than one which is part of the criminal justice system.

### *Prison for juveniles a last resort*

The principles described in this handbook apply to all prisoners. In addition there are special considerations to be taken into account in respect of the management of juvenile and young prisoners. Prisons should be used to hold individuals who have committed very serious crimes or who are a threat to society. Very few juveniles fall into these categories. Those that do should be held in prison only when there is absolutely no available alternative. There is evidence from a number of countries which shows that the earlier a young person is dealt with in the criminal justice system the greater the danger that he or she will become involved in further criminality.

### *Legality of detention of juveniles*

Two recent trends in various parts of the world are adding to the numbers of young people in prison. In some countries concerns over juvenile delinquency have led to harsher sentencing, while in others detention without charge is seen as part of the solution to growing numbers of 'street children'. In some jurisdictions children are held in prison when they are below the age at which it is legally legitimate to do so. Chapter 11 of this handbook dealt with the responsibility of prison administrations to ensure that all persons presented to them for detention are the subject of a properly authorised warrant. This is especially important when dealing with children and juveniles together with other vulnerable groups.

## *Emphasis on the welfare of the juvenile*

If a young person does have to be kept in prison, special arrangements should be made to ensure that the coercive elements of prison life are kept to a minimum and that maximum use is made of the possibilities for training and personal development. A special effort needs to be made to help the young person to maintain and to develop family relationships.

## *Problem of absence of birth records*

In a number of countries the absence of records may make it difficult to establish a person's precise age and there are reports of falsification of data in order to admit juveniles to adult prisons.

## *Young adults*

Some jurisdictions make special arrangements for young adults who are in the care of the prison administration. In some countries young prisoners are kept separate from adult prisoners until they reach the age of 21 years. In others such as Japan this is extended to 24 years through the use of prisons for young adults. This is done so as to give priority to their educational and developmental needs and to prevent the adverse influence of older and more sophisticated offenders.

## What the international instruments say

Convention on the Rights of the Child, Article 37 (1):

State Parties shall ensure that:

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 13:

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

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 19:

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

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 21:

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

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 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.
- (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.
- (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.
- (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.
- (6) Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalised juveniles, with a view to ensuring that they do not leave the institution at an education disadvantage.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 27:

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

United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Rule 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.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11:

For the purpose 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.



## Putting it into practice

### *Young people in prison*

**P**rison staff are trained to protect society from serious adult criminals. It should not be part of their task to take care of the small number of children and young people who have committed such terrible offences that they require to be deprived of their liberty. Such young people should be held in the care of welfare or social care agencies.

### *Vulnerable to abuse*

**A**lthough this is the principle, the reality is that in several countries a number of children and young people are committed to prison custody. When this happens the prison administration has an obligation to care for them in a manner which takes account of their age and special needs. There are two main reasons for this special treatment. The first is that children and young persons are more vulnerable than adults and need to be protected from violence or abuse by older prisoners or even by staff. The second reason is that such young persons are generally more likely to respond to positive influences, to training and to educational opportunities.

For these reasons any children or juveniles who are in the care of the prison administration should be held in separate institutions and not in prisons for adults.

### *Staff skills*

**P**rison staff who work in institutions for young people need to be specially trained. Many of the skills which they need to use are quite different from those required of staff who work with adult prisoners. Many staff will prefer to work with adult prisoners and will regard work with long-term prisoners who are difficult to manage as being the real prison work. Work with juveniles, on the other hand, is often seen as a soft option for members of staff who are less qualified or who cannot cope with the more demanding work with adult prisoners. This is a false perception. Work with younger prisoners demands a special set of skills. Staff have to be able to combine the requirements of security and good order with the obligation to help the juveniles, many of whom may be volatile and unpredictable, to mature and to develop personal skills which will allow them to succeed in life. The staff who are to work in institutions for juveniles should be specially selected and then given the appropriate skills to carry out their difficult work. They will also need support to deal with the physical and emotional demands which working with young offenders can bring.

### *Welfare and educational needs*

**T**here is a wide range of practice in the systems used to detain children and juveniles who are deprived of their liberty. Much of this practice reflects the specific welfare and educational needs of young people. It is important that the part of the prison administration which is responsible for children and juveniles should develop close organisational links with other official departments which deal with juvenile welfare and education in civil society.

### *Close links to outside society*

**T**he regime in juvenile institutions should aim to minimise the coercive elements of imprisonment and should emphasise education and skills training. As far as possible this work should be linked with courses and programmes for young people in civil society. Teachers and other workers should come from local schools and colleges and certificates awarded to the young people should be awarded by local educational centres and not by the prison administration. Ideally, where security considerations permit, juveniles should be enabled to pursue their education outside the prison on the basis of day release.

Prison administrations should seek to establish links with the NGOs working with young people outside prison in order to extend the range of programmes available to young prisoners, particularly in physical, cultural and social activities.

## *Family links*

**A** high priority should be given to maintaining and developing links between the young person and his or her family. Whenever possible young persons should be allowed to make short visits home in the course of their sentence. Families should be encouraged to visit the institution as often as is feasible and to maintain contact by letter and telephone.

The fact that young prisoners form a small minority in most jurisdictions will mean that they are often imprisoned a long way from home. The prison administration will need to give particular attention to ensuring that family visits can take place.

Special attention needs to be paid to the environment in which visits take place, affording as much privacy and informality as is possible. Families should also be encouraged to become involved in decisions about the treatment which their son or daughter is given while in custody.

## *Release and reintegration*

**I**n many countries a significant proportion of young prisoners may have lost contact with their families before or as a result of their period of imprisonment. Prison administrations will need to ensure that they give particular attention to identifying those young people who may need additional support in re-establishing links with their families or for whom family links have irrevocably broken down. The main purpose should be to avoid returning the young persons to the social circumstances which contributed to their original offence. It will be important to enlist the help of the relevant governmental and non-governmental agencies in designing and delivering appropriate resettlement programmes.

“ Staff at the Tehran Juvenile Correctional and Rehabilitation Centre have tried to deal with the homelessness of young people leaving the Centre by taking over a disused building and converting it into accommodation where the newly released young people can live and continue to receive some support from the Centre staff.



## The framework

*Women prisoners are a small minority*

The proportion of women in prison in any prison system throughout the world varies between 2% and 8%. One consequence of this small proportion is that prisons and prison systems tend to be organised on the basis of the needs and requirements of the male prisoners. This applies to architecture, to security and to all other facilities. Any special provision for women prisoners is usually something which is added on to the normal male provision.

*Effect of anti-drugs laws*

In a number of countries tough anti-drugs legislation has had a significant effect on the numbers of women in prison and, as a result, the rate of increase in the number of women prisoners is often much greater than that for men. In some countries, such as the United Kingdom, this has also led to an increase in the numbers of foreign national prisoners who now form a disproportionately large percentage of women prisoners.

*Women prisoners have different problems*

In reality the situation of women prisoners is very different from that of male prisoners and particular attention should be given to the situation of women. Women who are sent to prison will frequently have suffered physical or sexual abuse and they will often have a variety of untreated health problems. The consequences of imprisonment and its effect on their lives may be very different for women.

“ In most countries women are in prison for a non-violent, property or drug offence: they are likely to have been convicted of what is known as ‘crimes of property’. When a violent crime is committed, it is often against someone close to them... In contrast to men, women in prison are often single parents, most have dependent children; they are less likely to be repeat offenders and between 1/3 and 2/3 were physically or sexually abused prior to being in prison.<sup>1</sup>

*Family responsibilities*

In most societies women have primary responsibility for the family, particularly when there are children involved. This means that when a woman is sent to prison the consequences for the family which is left behind can be very significant. When a father is sent to prison, the mother will frequently take on his family responsibilities as well as her own. When a mother is sent to prison, the father who is left with the family frequently finds it extremely difficult to take on all parental duties, especially if there is no wider family support. In many cases the mother may be the sole carer. All of this means that special provisions need to be made to ensure that women prisoners can maintain meaningful contact with their children. The matter of very small children requires particularly sensitive consideration.

<sup>1</sup> Julita Lemgruber, Women in the Criminal Justice System Keynote speech to the workshop which took place during the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in April 2000, HEUNI, Vienna 1 149

## Prevention of abuse

**P**regnant women should not be sent to prison unless there is absolutely no alternative. If this has to happen, special arrangements need to be made for them while they are awaiting the birth of their child and also during their nursing period. There are particularly sensitive issues concerning the application of any security restrictions during the actual birth. The presumption should always be that no expectant mother will give birth inside a prison.

## Pregnant women

**T**he physical safety of women should be guaranteed while they are held in prison. For this reason they should always be held separately from male prisoners and they should never be supervised exclusively by male staff. See also the paragraph on sexual abuse in chapter 3.

## What the international instruments say

Universal Declaration of Human Rights, Article 2:

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

International Covenant on Civil and Political Rights, Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Convention on the Elimination of All Forms of Discrimination Against Women, Article 2:

States Parties condemn the discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of equality of men and women in their national constitutions and other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

United Nations Declaration on the Elimination of Violence against Women, Article 2:

Violence against women shall be understood to encompass, but not be limited to, the following: (c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

United Nations Declaration on the Elimination of Violence against Women, Article 4:

- (i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitise them to the needs of women.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 5 (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 discriminatory.

Standard Minimum Rules for the Treatment of Prisoners, Rule 8:

The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus, (a) Men and women shall so far as possible be detained in separate institutions: in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate.

Standard Minimum Rules for the Treatment of Prisoners, Rule 23:

- (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practical for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.
- (2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

Standard Minimum Rules for the Treatment of Prisoners, Rule 53:

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

## Putting it into practice

### *Staff need special training*

It is important to recognise that the effects of imprisonment on women will often be very different from the effects on men. The domestic circumstances which they have left behind will usually be different since many women either are sole carers or have the primary caring role for their immediate family and others. In some cultures women who are imprisoned are also more likely to be abandoned by their families. Staff who work with women prisoners need to be aware of all these issues and to receive specific training for their role.

### *Women face discrimination*

On average about 19 out of every 20 prisoners are men. This means that prisons tend to be managed from a male perspective. Usually this means that the procedures and programmes are designed for the needs of the majority male population and adapted (or

sometimes not) to the needs of women. This results in discrimination against women in several respects.

### *Accommodation*

**O**ne of the first areas of discrimination is that of accommodation. Some prison systems have a small number of prisons used exclusively for women prisoners. This inevitably means that many of these women are held in accommodation which is far away from their families, making family contact much more difficult. This is of particular concern where women are the primary or sole carers for children or other dependent relatives.

An alternative is that women may be held in small units which are annexed to larger prisons for male prisoners. This may pose an increased risk to the safety of the women and may also result in the facilities available to them being determined by the needs of the larger number of male prisoners. Access to those facilities and time out of cell may be further restricted on security grounds. Both of these arrangements have obvious drawbacks.

### *Security should not be stricter than necessary*

**O**ne consequence of the limited availability of prison accommodation for women is that women prisoners may be held according to a security classification which is more strict than can be justified by the assessment of the risk which they pose. This effect may be worsened because these classification assessments are based on models of the typical male prisoner.

### *Equal access to activities*

**B**ecause of their smaller numbers or because of restricted accommodation the access which women prisoners have to activities is often more limited than that available to men. For example, there may be fewer opportunities for education or skills training. Work opportunities may be restricted to that which is regarded as traditional work for women, such as sewing or cleaning. The prison administration should make sure that women have the same opportunities as male prisoners to benefit from education courses and skills training. The same applies to access to facilities for physical exercise and sports. If there is a shortage of facilities or trained staff within prisons it may be possible to involve local agencies and non-governmental organisations in providing activities for women prisoners.

Wherever possible the activities which are made available to women prisoners should be designed for them rather than simply being adapted from programmes designed for men.

### *Family links*

**I**t is especially important that prisoners who are mothers should be given the opportunity to maintain links with their children left behind. Whenever possible women prisoners should be allowed to leave prison for short periods to be with their families. When the children visit the prison as much contact as possible should be allowed as well as privacy. Visits between mothers and children should always allow physical contact. They should never be closed or non-contact visits with some form of screen or physical barrier separating them. If possible the visits should last for a whole day. The longer family visiting arrangements described in chapter 8 of this handbook are particularly important for women prisoners. Any security arrangements for searching visitors should be carried out with the child's best interests in mind.

### *Prisoners' children should be born in hospital*

**P**regnant women should only be held in prison in the most extreme circumstances. If this is necessary, they should be provided with the same level of health care as is provided in civil society. When the time comes to give birth such women should whenever possible be transferred to a civilian hospital. This should ensure that professional medical care is available. For the baby this will avoid the stigma of having the prison recorded as the place of birth. In any case the birth certificate should give a non-prison address as the place of



birth. Any security restrictions which are necessary during this period should be as discreet as possible.

Where pregnant women are held in prison the administration should ensure that full consideration is given to any cultural issues surrounding childbirth.

### *Mothers with infants*

**T**he matter of mothers in prison who have small infants is a very sensitive one. In a number of jurisdictions mothers are allowed to keep new-born babies with them in prison. When this happens the mother and baby should be in a unit where they can live together on a continuous basis. Such units should have all the facilities which a nursing mother would normally require. This is preferable to keeping the baby in a separate nursery unit which the mother is only able to visit at certain times.

### *Age of separation*

**T**he right age at which infants should be taken away from their imprisoned mothers is difficult to determine. Since the link between mother and child is all-important it is argued that the child should be able to stay with his or her mother as long as possible, perhaps the whole length of the sentence. A contrary argument is that prison is an abnormal environment which is bound to affect a child's development from a very early age. For that reason a child should not be allowed to remain in prison with his or her mother much beyond the age of a few months. In practice, some prison administrations allow mothers in prison to keep their babies with them until the age of 9 months, 18 months, up to four years or longer if the child has nowhere else to go.

### *Where else can children be placed?*

**I**f children cannot stay with their mother in prison the prison authorities have to take responsibility for making good alternative arrangements either with the family or with the authorities who care for children without parents. The decision as to appropriate arrangements should be that which is in the best interests of the child given all the circumstances. It is important, therefore, that this decision should be considered in partnership with other competent agencies and not by the prison administration alone.

“ The Russian penal code allows for mothers who are convicted of a less serious offence, that is, one for which a prison sentence of five years or less may be imposed, to have their sentence deferred until their youngest child reaches the age of eight. At that stage the sentence will be reviewed to determine whether it should be implemented. A key factor in reaching that decision will be whether the woman has committed another crime.

### *Children growing up in prison*

**D**uring the period that an infant is in prison the environment in which he or she is kept should be made as normal as possible for both the child and the mother. The child's development must not be restricted simply because the mother is in prison. In addition, special arrangement should be made to support mother and infant when the time comes for release.

### *Other dependent relatives*

**W**omen are also more likely than men to be the sole or primary carer for dependent relatives other than children. Prison administrations will need to consider what arrangements are suitable in these circumstances.

### *Healthcare*

**C**hapter 4 of this handbook referred to the health care needs of prisoners. Women prisoners have specific health needs which have to be recognised and attended to. Wherever possible they should be attended to by women nurses and doctors and

specialists in women's health care matters should be available for consultation. In many cases concerns about their children will be a great cause of worry and stress for women prisoners which will have a significant impact on their mental well-being and make imprisonment psychologically more painful than it is for men. Healthcare arrangements available to women prisoners should reflect that.

### *Staffing women's prisons*

**W**omen prisoners are especially vulnerable in the closed environment of a prison and they should be protected from physical or sexual abuse by male members of staff at all times. The international instruments require that women prisoners should be supervised by women staff. If male staff are employed in a women's prison they should never be in sole control of the women. There should always be a female member of staff present.

### *Searches*

**C**hapter 5 of this handbook described procedures for searching prisoners. Staff should exercise special sensitivity when searching women prisoners. Male members of staff should never be involved in personal searches of women prisoners. The need to observe common decency, for example, by not requiring a prisoner to strip completely naked in the course of a body search, applies especially in the case of women prisoners.

### *Preparation for release*

**T**he obligation of the prison administration to prepare prisoners for release back into civil society was dealt with in chapter 7 of this handbook. Particular consideration should be given to the needs of women who are about to be released. It may be that return to their families is impossible because they have been prisoners. The prison authorities should work closely with community support agencies and non-governmental organisations to help former women prisoners to settle back into their communities. Training which gives them a skill to become self-supporting is particularly valuable for women in prison.

# Life and Long-term Prisoners

## The framework

### *Increase in long-term prisoners*

In many countries the majority of sentenced prisoners are serving relatively short terms of imprisonment. In some jurisdictions the average is a few months, in others a year or two. In recent years, however, there has been an increasing tendency for courts to pass much longer sentences. In many prison systems prisoners serving long sentences make up a comparatively small proportion of the total number of prisoners. Yet in organisational and managerial terms they consume a significant amount of the available resources.

### *A definition*

There is an immediate problem as soon as one attempts to define what is meant by a long-term prisoner. In a number of prison systems, for example in some Scandinavian countries, anyone serving more than six months is classed as a long-term prisoner. On the other hand in many prison systems of Eastern Europe a long-term prisoner is someone serving more than ten years. In the United States there are many examples of prisoners who are serving sentences of hundreds of years, much more than a normal life span.

### *Effect of abolition of the death penalty*

In some jurisdictions the definition of long-term imprisonment is closely linked with the abolition of the death penalty. In a number of countries over the last forty or so years, the consequence of abolition of the death penalty has been the introduction of sentences of life imprisonment, particularly for those who have been convicted of murder. This new category of long-term prisoner has brought a whole new set of dilemmas to prison administrations. This dilemma is currently seen in its starkest form in some of the newly abolitionist countries of Eastern Europe, where new arrangements have been introduced for the management of such prisoners. Courts have indicated that prisoners who would previously have faced the death penalty should now serve a minimum of 25 years in prison, with the first ten of those years in solitary confinement. There is no justification in terms of penal management for this kind of prolonged judicial isolation or for the use of special prisons and colonies for these prisoners.

### *Life sentence prisoners*

Life imprisonment is the most severe penal sanction which can be imposed in those jurisdictions which either do not have, or choose not to apply, the death penalty. In the absence of the death penalty, life imprisonment takes on a symbolic significance and may be seen as the ultimate retributive sentence. Although the term 'life imprisonment' may have different meanings in different countries, one common feature is that such sentences are indeterminate. In reality, in most jurisdictions only a few life sentence prisoners will be imprisoned for the remainder of their lives. The overwhelming majority will be released back into society, often under some form of supervision, and the sentence will need to be planned with this in mind.

### *Managing indeterminate sentences*

The indeterminate nature of the life sentence presents particular problems for prison administrations in the management of such prisoners. The fact that their release date is not known means that special attention will have to be given to planning an appropriate programme aimed at the eventual return of these prisoners to society.

“ The particular difficulties posed by life imprisonment are recognised in the constitutions of a number of countries.

In Portugal life imprisonment is specifically outlawed by the constitution (art. 30(1) of the 1989 Constitution of Portugal). In Spain there is no life imprisonment either. Penal doctrine in that country asserts that life imprisonment would be unconstitutional, as the Spanish constitution recognises a duty of the prison to provide sentenced prisoners with the opportunity to demonstrate in the open society that they had been ‘socially rehabilitated’ and the constitutional provision would be negated. In Norway too, life imprisonment is not a penalty allowed by the criminal code.<sup>1</sup>

Life imprisonment is also outlawed in the constitutions of a number of South American countries such as Brazil and Colombia.

*Not all long-term prisoners are specially dangerous*

**W**hen managing this group of prisoners considerations of dangerousness have to be taken into account. The automatic assumption that all long-term prisoners are dangerous is not supported by evidence. Life sentence prisoners, for example, do not in general present more disciplinary problems than any other group of prisoners. On the contrary, they often have better disciplinary records than prisoners serving much shorter sentences. There is no evidence that these prisoners are likely to be more disruptive or to pose a threat to good management merely because of the length of their sentences. Frequently, life sentence prisoners are older than the average of the convicted prison population. They are often first time offenders who have never previously committed violent acts. Typically, their victim will be someone they have known previously. Since the final date of release for long-term prisoners will often, at least in part, depend on how they respond in prison, they have an interest in not causing trouble of any kind. For all these reasons, they can often have a calming influence on other groups of prisoners, such as those who are younger or are serving shorter sentences.

*High risk prisoners*

**A**t the same time, a percentage of long-term and life sentence prisoners is likely to be highly dangerous. Some of them will have committed horrendous crimes and would pose a real threat to the safety of the public if they were to escape. It is the responsibility of prison administrations to make sure that prisoners like this do not escape and also that they do not present a threat to the safety of staff and other prisoners. Managing these prisoners in a manner which is decent and humane while at the same time ensuring the safety of other people is a great challenge to professional prison management. This topic is referred to in chapter 5.

*Prisoners defined as terrorists*

**A**nother set of difficulties arises when prison systems are required to deal with prisoners who have been defined as terrorists or enemies of the state. Unlike the vast majority of prisoners, these prisoners often do not accept the fact that they should be in prison, nor do they accept the legitimacy of the authority of the prison administration. Their management is complicated by the fact that they often have high political and public profiles and both the way they are treated and the manner in which they respond to imprisonment are matters of great media interest, which can have violent repercussions in civil society. The hands of prison administrators are frequently tied by the demands of political necessity. At the same time, the way in which the administration responds to the pressures created by having to manage such prisoners in a decent and humane manner is likely to be a real test of its professionalism.

<sup>1</sup> D. van Zyl Smit, “Abolishing Life Imprisonment?” (2001) 3 *Punishment and Society* 299-306

## *The problem of institutionalisation*

The most important issues in the management of life and long-term prisoners, however, will come from the potential damage to the prisoners' mental well-being caused by the length of sentence or the uncertainty of the release date. Prison administrators will need to help prisoners to plan their sentences in such a way as to maintain their sense of self-worth and avoid the dangers of institutionalisation.

## What the international instruments say

The international covenants and human rights instruments themselves have little to say directly about the treatment of prisoners who are serving life or other long sentences.

## *Providing opportunities*

The key international document governing the treatment of long-term prisoners is the United Nations Recommendations on Life Imprisonment.<sup>2</sup> The United Nations recommends that states should provide life sentence prisoners with 'opportunities for communication and social interaction,' as well as 'opportunities for work with remuneration, study, and religious, cultural, sports, and other leisure activities.' If these opportunities are to be offered to life sentence prisoners, they should equally be available for all other prisoners serving long sentences. Similarly, the Council of Europe's report on the Treatment of Long-Term Prisoners states that such prisoners should be given 'opportunities of doing something useful' and 'must be treated having regard to possible release and reintegration into the outside world.'<sup>3</sup>

## Putting it into practice

All the provisions of good prison management described in this handbook should be applied equally in the case of prisoners serving life or other long sentences. In addition, the following considerations are particularly relevant to this group of prisoners

## *Initial planning after sentence*

All prisoners are individuals and prison authorities need to treat them as such. One way of beginning this process for long-term prisoners is to have an initial assessment, as the start of planning the sentence of each prisoner. This matter was referred to in chapter 5 of this handbook. In a number of jurisdictions prisoners serving very long sentences are taken first to an induction unit. The objective of such units is to facilitate the entry of these prisoners into ordinary prison life, to which they are transferred after a few months.

## *Risk assessment*

In some jurisdictions initial assessment leads on to a sentence management process in which the profile of the prisoner will be assembled through consideration of a number of factors such as criminal history, family and background, past employment, problems such as alcohol and drugs, as well as reports from the police, welfare or probation service. Based on this profile a sentence plan is drawn up. This plan includes an assessment of risk presented by each prisoner to him or herself, to other prisoners and staff, and to the public. The overriding consideration in this process of risk assessment is the protection of the public. Care needs to be taken to ensure that the assessment of risk is neither higher nor lower than is indicated by the facts of the case. The sentence plan also includes the various activities and programmes in which the prisoner is likely to be involved throughout his or her sentence.

2 United Nations (1994), *Life Imprisonment*, United Nations, Vienna

3 Council of Europe (1977), *Treatment of Long-Term Prisoners*, Council of Europe, Strasbourg

### *Work, education and other activities*

**T**here is no reason why the provision for work, education and other activities which is described in chapter 7 of this handbook should not also apply to prisoners serving long sentences, including life. Indeed, given the length of time that they are likely to have to spend in prison, it can be argued that prisoners serving long sentences should be given priority over other prisoners for these activities when resources are scarce. Prisoners who are subject to life or long terms of imprisonment are more likely to become dislocated from their family and community and, therefore, will need more support in the rehabilitation process.

### *No justification for isolation*

**T**here is no operational justification for keeping this class of prisoner in isolation, either as individuals or in a group, simply because of the length of their sentence. On the contrary, it is good management practice to keep prisoners fully occupied, in their own interests and those of the smooth running of the prison.

### *Contacts with family and the outside world*

**I**f a person who has been sentenced to a long term of imprisonment is to maintain emotional and physical health while in prison and eventually to return safely to the community, he or she needs to be able to maintain and develop family links and contact. There is, of course, another important justification for the need to allow this contact. That is that the other members of the family, spouses, children and others are entitled to have contact with the family member who is in prison. For these reasons the arrangements for maintaining family contact which are described in chapter 8 apply with special emphasis to prisoners who are serving long sentences.

### *Progress through the system*

**A**n important feature of the different forms of initial assessment and planning described above is that they can be used to identify the small number of long-term prisoners who are likely to pose a serious threat to security or safety. The initial assessment will enable the administration to distinguish these prisoners from the majority of long-term prisoners who, although they may have committed serious crimes, will not necessarily present a threat within the prison setting. In a number of countries this latter group of prisoners are moved quite quickly to prisons of medium or low security status, even though they are serving comparatively long sentences.

### *Regular review is vital*

**I**t is important to recognise that both the security classification and the sentence plan for long-term prisoners will require regular review, to a greater extent perhaps than is the case for short-term prisoners. The United Nations document on life imprisonment recommends that 'training and treatment programmes should take into account changes in the prisoners' behaviour, interpersonal relations and motivation regarding work and educational goals.'

### *Transfer to lower security*

**S**everal years before the anticipated date of release most long-term prisoners will be suitable for transfer to a low security prison or hostel. Here they can have the opportunity to leave the prison from time to time, sometimes for several days, as part of the final preparation for return to the community. This latter part of the sentence is often monitored by a parole board or other releasing authority.

## Elderly Prisoners

### *Growing numbers of elderly prisoners*

**O**ne consequence of the increase in the length of sentences in some jurisdictions is that prison administrators are having to respond to the needs of growing numbers of elderly prisoners. In some jurisdictions the recent trend towards mandatory life or long sentences has led to a significant increase in prisoners who will become old in prison.

This may require the provision of a range of specialist facilities to deal with the problems arising from a loss of mobility or the onset of mental deterioration.

### *The problems of the elderly*

**P**rison administrations will need to give particular consideration to the different problems, both social and medical, of this group of prisoners. The growing numbers of prisoners in this category has led to the development of specialist units for the elderly in England and in some parts of the United States. The healthcare needs of this group of prisoners are also dealt with in chapter 4 of this handbook.

### *Losing contact with families*

**T**hose who are serving long sentences or who have a long history of involvement in crime are more likely to have lost contact with their families. This presents particular problems for older prisoners at the end of their sentence. Many of them may have no family to go to and may be seen as too old to work. Prison administrations will need to work carefully with outside agencies in order to help these prisoners re-settle into the community.





# Prisoners under Sentence of Death

## The framework

### *Use of the death penalty is reducing*

**A**lmost two thirds of the countries in the world have now abolished the death penalty and this proportion is increasing year by year. For example, member states of the Council of Europe, covering an area from Lisbon on the Atlantic Ocean to Vladivostok on the Pacific, have either abolished the death penalty or are observing a moratorium. The international covenants and other human rights instruments recommend strongly that state parties should move towards abolition of the death penalty.

### *Prisoners on death row*

**I**n those countries which still retain the death penalty prison authorities will usually be responsible for holding prisoners who are under sentence of death. In some cases the appeal process will be a very lengthy one and prisoners may be held on death row for many years. This may also be the case in countries where there is a moratorium on executions but existing death sentences have not been commuted.

### *Care of prisoners and staff*

**T**he responsibility of taking care of prisoners who have been sentenced to death is a heavy duty for the staff involved. Prison authorities have a special obligation to treat such prisoners decently and humanely and also to provide proper support for staff involved in this onerous task.

## What the international instruments say

The international instruments are unequivocal in calling for the abolition of the death penalty.

Second Optional Protocol to the International Covenant on Civil and Political Rights

The States Parties to the present Protocol, believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

International Convention on Civil and Political Rights, Article 6:

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

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

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

(6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Article 9:

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

## Putting it into practice

### *Decency and humanity*

One of the main challenges facing prison administrations in regard to prisoners under sentence of death is the need to make a clear distinction between the management of individual prisoners who are awaiting execution and the legal and political position about the use of the death penalty in the relevant country. One of the most important responsibilities of prison staff is to treat all prisoners, regardless of charge, crime or sentence, with decency and humanity. Prisoners who are facing the death penalty should not be subjected to unnecessary restriction on their movement within prison or to more severe treatment simply because they have been sentenced to death.

### *Separation of death penalty prisoners*

In countries which still retain the death penalty any appeal against such a sentence will often involve a lengthy process, in some cases extending over several years. In many prison systems these prisoners are held segregated from all other prisoners in an area which is often referred to as death row. In some countries this involves separation in some form of solitary confinement. In other countries prisoners are held in common cells along with other prisoners who are in the same legal position.

### *No justification for automatic separation*

In terms of good prison management there is no justification for holding such prisoners routinely in isolated conditions where they have no access to any facilities for work, education or cultural activities. Their death sentence should not involve additional punishment in respect of their conditions, and the prison administration should do all in its power to reduce the mental anguish commonly known as death row phenomenon which may result from the lengthy process of appeal. Regardless of the fact that they are under sentence of death such prisoners should be assessed in the same way as any other prisoner and allocated to appropriate conditions. As in other forms of assessment it is important to look at the individual circumstances and risks posed by each prisoner. Whilst some may require special conditions, the majority will not.

“ In Grenada’s Richmond Hill Prison those prisoners under sentence of death are able to circulate freely within the unit holding other high security prisoners.

### *Equality of treatment*

Prisoners under sentence of death retain all the rights to which prisoners in general are entitled. It is particularly important to ensure that they do not receive a lower standard of treatment in terms of such matters as food, health care, hygiene, exercise and association with other prisoners.

### *Full access to lawyers*

Prison authorities should be particularly careful to make sure that prisoners who are under sentence of death have full access to the lawyers who are dealing with any appeal against conviction or sentence. They are entitled to the normal safeguards in respect of access and privacy of communication as other prisoners.

### *Visitors*

**C**hapter 8 of this handbook refers to the manner in which visitors to prisoners should be treated by staff. Prison staff should be especially sensitive when dealing with family and friends who come to visit prisoners under sentence of death.

### *Staff should be specially selected*

**S**taff who are in charge of prisoners under sentence of death on a daily basis should be specially selected for this stressful responsibility. They should usually be experienced; they should be given special training, especially in the emotional aspects of their work; and they should have continuous support from management.

### *Response to an execution*

**I**f an execution is to take place within a prison this will have a serious effect at different levels. This effect will begin to be felt as soon as the date for execution has been set; it is likely to increase as this date approaches and will continue for some time after the execution has taken place. The prison authorities should have a strategy to deal with the consequences of this for everyone involved.



# Recognising Diversity

## The framework

### *Treating all prisoners fairly*

**T**raditionally prison authorities have tended to regard prisoners as a homogeneous group in which everyone can be treated the same. This has meant in practice that prisons have been organised in the interests of the majority, usually adult male prisoners from the main ethnic, cultural and religious grouping in the country. Chapter 12 of this handbook dealt with the particular needs of juveniles and young prisoners; chapter 13 dealt with women prisoners.

### *Recognising differences*

**S**pecial consideration also needs to be given to other groups of prisoners who are not part of the majority category on one or more grounds. These may include race, ethnicity, social origin, culture, religion, sexual orientation, language or nationality. Prison rules and regulations need to take account of the different requirements which prisoners may have on any or all of these grounds. There should be no discrimination against any prisoners on any of the above grounds.

### *Danger of discrimination*

**I**n many countries there are special concerns about discrimination against minority racial groups. The dangers of discrimination become much greater in the closed conditions of a prison. Prison administrations have a responsibility to ensure that they prevent the development of sub-groups that discriminate against minorities, both within their staff and within the prison population. This may require additional vigilance on any occasion when tensions are heightened in the community outside the prison.

### *Duty to combat discrimination*

**M**any of the prejudices which exist in society against minority groups are reflected in the world of the prison. This is no surprise since prisons to a great extent mirror the values of the society in which they exist. Prison authorities have a responsibility to ensure that there is no discrimination against any minority group of prisoners or staff. This includes institutional discrimination which is within the structure of the organisation as well as discrimination which is practised by individuals.

## What the international instruments say

Universal Declaration of Human Rights, Article 2:

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

Universal Declaration of Human Rights, Article 18:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

International Covenant on Civil and Political Rights, Article 27:

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

International Convention on the Elimination of All Forms of Racial Discrimination, Article 5:

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 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.

Standard Minimum Rules for the Treatment of Prisoners, Rule 38:

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

Standard Minimum Rules for the Treatment of Prisoners, Rule 41:

- (3) Access to a qualified representative of any religion shall not be refused to any prisoner.

## Putting it into practice

### *Monitoring discrimination*

There are a variety of ways of measuring whether discrimination is taking place, for example, in the allocation of jobs which are prized by prisoners. These include working in the kitchen or in the prison library where there is one. Prison management should check whether any minority groups are under-represented or even excluded from these valued jobs. The same checks should be applied to access to education. Which prisoners get the best living accommodation should also be kept under review. The frequency of disciplinary action taken against prisoners, broken down by the different groups, is also an important measure.



## *Reinforcing non-discrimination*

**O**ne way of reinforcing the fact that discrimination is not acceptable is to have public statements about the policy of non-discrimination on prominent display around the prison.

## *Staff from minority groups*

**A**n important method of reducing discrimination can be to recruit staff from different minority groups to work in prisons with a chance to progress to the more senior levels. Reference is made to this in chapter 2 of this handbook. During their training and throughout their service all staff should be given help in how to work positively with different groups of prisoners.

## *Taking positive action*

**E**quality of treatment involves more than ensuring that there is no discrimination. It also means taking positive action to make sure that the special needs of minority groups are met. This can involve providing special diets for some prisoners on either religious or cultural grounds. Such a provision may not involve any additional cost; it may simply mean better organisation.

Minority groups frequently have different religious needs. They should always be able to observe the tenets of their religion in terms of such matters as personal or communal prayers, hygiene and clothing requirements.

## *Foreign national prisoners*

**I**n recent years one result of increased travel has been a growth in the number of prisoners who are nationals of another country. They will often have specific needs which have to be catered for. Some of those needs, relating to maintaining contact with family and the outside community, are described in chapter 8 of this handbook. The need to make sure that the rules and regulations of the prison can be understood by all prisoners was dealt with in chapter 3. Prison administrations should make foreign national prisoners aware of any treaties concerning their transfer to their home countries.

## *Social reintegration*

**I**n running programmes for social reintegration it is important to recognise the specific community to which the prisoner will return.

## *Formal consultation*

**C**hapter 7 of the handbook referred to the need to encourage groups from the local civil society to visit prisons on a regular basis. These groups should include representatives of minority groups in the community.

In a number of administrations it has been found helpful to consult, on a formal basis, with representatives of minority groups on the potential impact of proposed regulations or to appoint advisers who will help shape appropriate policy.

### “ Canada – Corrections and Conditional Release Act (1992)

82 (1) The Service shall establish a National Aboriginal Advisory Committee, and may establish regional and local aboriginal advisory committees, which shall provide advice to the Service on the provision of correctional services to aboriginal offenders.

(2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with aboriginal communities and other appropriate persons with knowledge of aboriginal matters.



# The Use of Prison and Alternatives to Custody

## The framework

### *Expansion of the use of prison*

**P**rison systems have no control over the number of people sent to prison. However, they have to deal with consequences. The last twenty years have seen a massive expansion in the use of imprisonment across the world. These increases are not confined to any particular type of jurisdiction or political system; they occur in all parts of the world. In the United States, for example, the number of people in prison has risen from below half a million in 1980 to two million today. The number of prisoners in Thailand has increased from 73,000 in 1992 to 257,000 in 2002. In Western Europe there have been significant rises in countries such as the Netherlands and the United Kingdom. The use of prison varies greatly from country to country. Russia and the United States, for example, have imprisonment rates of almost 700 per 100,000 of their populations. Other countries have much lower rates, with India at 28 per 100,000, Indonesia at 29, Iceland at 38 and Denmark, Finland and Norway all at 59.<sup>1</sup> In some countries imprisonment is used only for those who have committed very serious crimes. Other countries choose to use imprisonment for large numbers of offenders who have committed minor offences, including men and women who are mentally ill, those who are substance abusers and even those who are children or juveniles.

### *An epidemic of overcrowding*

**M**ost prison administrations have been unable to allocate the additional resources, physical and human, necessary to cope with these rising numbers. The result is an epidemic of overcrowding. States find themselves unable to honour the duty of care for those that have been detained and the ability of prison administrations to guarantee basic human rights for prisoners, to work towards their primary purpose of rehabilitating prisoners, and preparing them for reintegration into society is undermined.

### *Prison administrations have an interest*

**T**hus prison administrations have a legitimate interest in how many people are sent to prison, for how long and whether the resources will be made available to enable the prisons to meet their responsibilities to the people sent to them to be detained. Related to this, they have an interest in the introduction of measures which reduce the numbers in prison through early release and in alternatives to prison at the sentencing stage.

### *They also have a role*

**T**he core work of prison administrators is to manage their systems. However, their role in ensuring that prison is not over-used and that other measures are available to deal with pre-trial detainees and with convicted people at the time of sentence can be an important one. For example, they can draw the attention of the public and parliament to the consequences of overcrowding in prisons and of a lack of resources to sustain a high number of prisoners. In some jurisdictions the same department has responsibility for prisons and for the administration of non-prison sanctions. This is the case in New Zealand, Denmark, Sweden, France and most Australian states. In these cases the most senior administrators have a responsibility for the implementation of prison and non-prison sanctions and can use their knowledge of the conditions of imprisonment to inform the work and development of the non-prison sector.

<sup>1</sup> World Prison Brief on ICPS website: [www.prisonstudies.org](http://www.prisonstudies.org)

## Post-sentencing dispositions

### *Early release of prisoners*

**A**lternatives to custody take a variety of forms. They may be used instead of proceeding to trial, at the trial and sentencing stage or post-sentence. The latter will be of particular importance to prison administrations. Since the International Covenant on Civil and Political Rights makes it clear that the essential aim of the treatment of prisoners should be their social rehabilitation (Article 10[3]) it follows that the custodial process should be designed so as to bring prisoners to the point of safe release into the community as early in the sentence as possible. Prison administrations will be particularly concerned with the arrangements for post-sentence dispositions since these are the non-custodial measures in which they have a major part to play.

### *Public acceptance of early release*

**T**he use of non-custodial community-based sanctions to replace the latter part of a sentence of imprisonment will require not simply the preparation of public acceptance but also the active involvement of community agencies. It will also require the establishment of effective liaison between them and the prison authorities.

### What the international instruments say

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 2:

- 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.
- (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 shall 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.

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Rule 9:

- 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.
- (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.
- (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.
- (4) Any form of release to a non-custodial programme shall be considered at the earliest possible stage.

## Non-prison sentences

The purpose of this handbook is to address issues of human rights which specifically concern prison management. Sentences which do not contain an element of imprisonment will not be the responsibility of prison administrations. The prison authorities do have an interest in such sentences, however, since their use may have a direct effect on the numbers of people in prison. When less serious offenders are given non-prison sentences the resources of the prison administration can be released to work more effectively in the treatment of those for whom imprisonment is the only option.

- “ 1 Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only where the seriousness of the offence would make any other sanction or measure clearly inadequate.
- 2 The extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding. Countries whose prison capacity may be sufficient in overall terms but poorly adapted to local needs should try to achieve a more rational distribution of prison capacity.

Council of Europe Committee of Ministers Recommendation No. R (99) 22 of the Committee of Ministers to member states concerning prison overcrowding and prison population inflation (Adopted by the Committee of Ministers on 30 September 1999)

### Putting it into practice

#### *A contribution to the debate*

The prison administration is well placed to make a major contribution to the establishment of alternatives to prison in jurisdictions where there is not yet a developed system of alternatives.

In any debate about the creation of new legislation on alternative sentencing, the prison authorities can bring to this:

- knowledge about the effectiveness of the existing system of punishments;
- information on the wide variety of convicted people that the prison system deals with;
- an assessment of the likelihood of convicted people complying with the requirements of non-prison punishments;
- expertise about the supervision of offenders.

“ In its statement for the new millennium the Ministry of Prisons and Correctional Services of Namibia stated that:

Penal administrations throughout the world are looking for acceptable alternatives to imprisonment. Increasing non-custodial sanctions are being advocated as one way of dealing with the ever increasing question of overcrowding in prisons. Apart from easing congestion in prisons, it is also a way of avoiding sending offenders with short sentences to prison. Currently one finds a big number of petty crimes offenders stocked in the prisons causing congestion. It is very expensive to keep such individuals in prisons when they could usefully be utilised in community services. Such services if well and properly administered could promote the following in prisons:

- reduction of overcrowding, reduction of the prisons budget, promotion and consolidation of rehabilitation and re-integration of offenders into society.

Such schemes do, however, require close supervision by non-Prison Service staff, bringing in additional costs for staff and administration.<sup>2</sup>

In Kazakhstan the prison administration supported the establishment of and played a large part in the work of a Senate Working Party which carried out research into sentencing in Kazakhstan, visited foreign countries to look at alternatives to prison in action and then produced proposals for change.

## *A place of last resort*

It is the responsibility of prison administrations to make legislators, the judiciary and the public aware that prison should only be used as a place of last resort, in cases where there is no other reasonable disposal. In all other cases it should be possible to make use of alternatives to custody.

<sup>2</sup> Office of the President of the Republic of Namibia, A Decade of Peace, Democracy and Prosperity 1990-2000

# Appendix

## *List of relevant human rights instruments*

### **International Bill of Human Rights**

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights

### **Prohibition against torture**

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

### **Prevention of discrimination**

- International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

### **Rights of women**

- Convention on the Elimination of All Forms of Discrimination against Women
- Declaration on the Elimination of Violence against Women

### **Rights of the child**

- Convention on the Rights of the Child

### **The administration of justice**

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of the Liberty
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- Safeguards guaranteeing protection of the rights of those facing the death penalty
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Basic Principles on the Role of Lawyers
- Guidelines on the Role of Prosecutors
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Basic Principles on the Independence of the Judiciary
- Model Treaty on the Transfer of Proceedings in Criminal Matters
- Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released
- Declaration on the Protection of All Persons from Enforced Disappearances
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

### **Regional Human Rights Instruments**

- African Charter on Human and Peoples' Rights
- American Declaration on the Rights and Duties of Man
- American Convention on Human Rights
- Inter-American Convention to Prevent and Punish Torture
- European Convention on Human Rights
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- European Prison Rules



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