

C. TREATMENT OF OFFENDERS

Introduction

The treatment of offenders was one of the first areas in crime prevention and criminal justice to attract international attention. In fact, the International Penal and Penitentiary congresses, which preceded the United Nations congresses on the prevention of crime and treatment of offenders, focused primarily on the response to crime, i.e. the treatment of offenders and prisoners.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955 by the First United Nations Congress, originated from the standards for the treatment of prisoners developed by the International Penal and Penitentiary Commission, as endorsed with some modifications by the League of Nations in 1934. ^{1/} While the Commission was dissolved in 1951 and succeeded by the International Penal and Penitentiary Foundation, its main function was transferred to the United Nations, which assumed leadership for the promotion of international work in crime prevention and criminal justice. ^{2/}

The First Congress unanimously adopted the Rules, which were approved by the Economic and Social Council in its resolution 663 CI(XXIV) of 31 July 1957. ^{3/} The Rules embody the principles of humanity, respect for human dignity, social purpose and managerial performance, which comprise a coherent and effective basis for the administration of prison systems. They set out what is generally accepted as being good principle and practice in the treatment of prisoners and management of institutions. They are considered to serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application and represent the minimum conditions that are accepted as suitable by the United Nations. They are also intended to guard against mistreatment, particularly in connection with the enforcement of discipline and the use of instruments of restraint in penal institutions.

On the recommendation of Fifth Congress, held in 1975, ^{4/} the Economic and Social Council, in its resolution 1993 (LX) of 12 May 1976, requested the Committee on Crime Prevention and Control to study the range of application of the Rules and to formulate a set of implementing procedures.

Upon the recommendation of the Committee on Crime Prevention and Control, ^{5/} the Economic and Social Council, in its resolution 2076

(LXII) of 13 May 1977, to adopted an additional rule 95, which explicitly extends the scope of the Rules protect persons arrested or imprisoned without charge by according them the same protection as persons under sentence, without any undue imposition of rehabilitative measures.

Also on the recommendation of the Committee, ^{6/} the Council, in its resolution 1984/47 of 25 May 1984, adopted the Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, and invited Member States to take them into consideration when implementing the Rules and when preparing their periodic reports to the United Nations. The Secretary-General was asked to assist Governments, if they so request, in implementing the Rules in accordance with the new procedures.

The procedures, accompanied by commentaries, set forth various measures to promote the implementation of the Rules, such as their embodiment in national legislation, wide distribution of the Rules to concerned personnel as well as to persons under detention, periodic reports to the Secretary-General on implementation and technical assistance through the United Nations or its regional research and training institutes.

So far, five reports on the implementation of the Rules have been submitted by the Secretary-General to the last five congresses, based on information provided by Governments and other parties concerned. ^{7/}

The Model Agreement on the Transfer of Foreign Prisoners, adopted by the Seventh Congress ^{8/} and welcomed by the General Assembly in its resolution 40/146 of 13 December 1985, was elaborated by the Committee on Crime Prevention and Control as well as regional and interregional preparatory meetings for the Seventh Congress, in pursuance of resolution 13 of the Sixth Congress. ^{9/} Recognizing the problem of foreigners detained in prisons abroad, the Model Agreement emphasizes that the aim of social resettlement of offenders could best be achieved by affording foreign prisoners the opportunity to serve their sentences within their country of nationality or ordinary residence. Accordingly, the Model Agreement is intended to assist Member States in the development of bilateral and multilateral arrangements in order to facilitate the return of foreign prisoners to serve their sentences in their home countries. Based on the general principle of international cooperation and mutual respect for national sovereignty and jurisdiction, the Model Agreement includes articles concerning informed consent of the prisoners and other requirements,

procedural regulations, enforcement and pardon.

The Recommendations on the treatment of foreign prisoners, also adopted by the Seventh Congress, complement this instrument. 8/ They include recommendations on equal access by foreign prisoners to education, work and vocational training in prison as well as equal eligibility to alternative measures; respect for their religion and customs; and their rights to contact with their consular authorities or families and assistance by interpreters.

The Basic principles for the treatment of prisoners, adopted by the General Assembly in its resolution 45/111 of 14 December 1990, on the recommendation of the Eighth Congress, were elaborated by the Latin American regional preparatory meeting for the Eighth Congress, 10/ on the basis of previous work accomplished by several non-governmental organizations. 11/ They confirm certain fundamental prisoners' rights and stipulate, inter alia, that all prisoners should be treated with due respect to their inherent dignity and value as human beings, without discrimination of any kind. Except for the necessary limitation of the freedom of movement, all prisoners should be afforded the human rights and fundamental freedoms, as set out in universally recognized international instruments. By declaring those rights, the Basic Principles complement the provisions of the Standard Minimum Rules for the Treatment of Prisoners.

The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) are the result of a long and intensive debate which was initiated by the Seventh Congress. 12/ The Rules were principally elaborated by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Fuchu, Tokyo. 13/ They were extensively discussed by experts at an interregional preparatory meeting for the Eighth Congress on topic II 14/ and by the Committee on Crime Prevention and Control, 15/ as well as by the International Penal and Penitentiary Foundation. On the recommendation of the Eighth Congress, 16/ the General Assembly adopted the Rules in its resolution 45/110 of 14 December 1990.

The Rules form a set of recommendations representing a balanced approach, taking into account the views and experiences of Governments, legal scholars, experts in the field and practitioners. They emphasize that imprisonment should be considered as a last resort and encourage the promotion of non-custodial measures with due

regard to an equilibrium between the rights of individual offenders, the rights of the victims and the concern of society. The Rules set forth a wide range of non-custodial measures at various stages of criminal procedures. They also contain rules on implementation of non-custodial measures, staff recruitment and training, involvement of the public at large and of volunteers, research, planning, policy formulation and evaluation, thus providing a comprehensive set of rules to enhance alternative measures to imprisonment.

The Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released was adopted by the General Assembly in its resolution 45/119 of 14 December 1990, also on the recommendation of the Eighth Congress. 16/ The Model Treaty was elaborated by the Committee on Crime Prevention and Control, the interregional and regional preparatory meetings for the Eighth Congress and the International Expert Meeting on the United Nations and Law enforcement, held at Baden, Austria. 17/ Their purpose is to provide States with a framework to allow offenders on probation, parole or under suspended sentence to return to their home country or move to another country, by transferring responsibility for supervision and applying the terms of non-custodial measures. Two basic concepts motivated and supported the development of the Model Treaty: first, the possibility of the transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released might contribute to an increase in the use of alternatives to imprisonment also with respect to foreign prisoners; and second, the supervision in the offender's home country rather than the enforcement of the sentence in a country where the offender has no roots is expected to contribute to an earlier and better reintegration into society.

NOTES

- 1/ For the preparation of the Rules, see Bulletin of the International Penal and Penitentiary Commission, new series October 1929. League of Nations, Penal and Penitentiary Questions; and "Improvement in Penal Administration", Report of the Fifth Committee to the Assembly; Rapporteur: Prof. V. Pell, Geneva, 21 September 1931 (A.70.1931.IV). For the text of the resolution, see League of Nations resolution of 26 September 1934, Official Journal, Special Supplement No. 123, vol.

- VI, p.4.
- 2/ General Assembly resolution 415 (V) of 1 December 1950.
- 3/ Report of the First Congress (A/CONF.6/1).
- 4/ Report of the Fifth Congress (A/CONF. 56/10).
- 5/ Committee on Crime Prevention and Control, Report on the fourth session (E/CN. 5/536).
- 6/ Committee on Crime Prevention and Control, Report on the eight session (E/AC.57/1984/18). See also "Procedures for the effective implementation of Standard Minimum Rules for the Treatment of Prisoners", Report of the Secretary-General (E/AC. 57/1984/10).
- 7/ The first survey was submitted to the Fourth Congress in 1970 (A/CONF. 43/3, annex); the second to the Fifth Congress in 1975 (A/CONF. 56/6, annex); the third to the Sixth Congress in 1980 (A/CONF. 87/11 and Add.1); the fourth to the Seventh Congress in 1985 (A/CONF. 121/15); and the fifth to the Eight Congress in 1990 (A/CONF. 144/11).
- 8/ Report of the Seventh Congress (A/CONF. 121/22/Rev. 1). For the preparation of the Model Agreement, see E/AC. 57/1984/CRP.2 and A/CONF. 121/10.
- 9/ Report of the Sixth Congress (A/CONF. 87/14/Rev.1)/
- 10/ A/CONF. 144/RPM.3.
- 11/ Statement submitted by non-governmental organisation to the Committee on Crime Prevention and Control at its tenth session (E/AC. 57/1988/NGO/3).
- 12/ Resolution 16 on reduction of the prison population, alternatives to imprisonment and social integration of offenders. (See also footnote 8 above.)
- 13/ UNAFEI Resource Material Series No. 32, 1987, p. 179; No. 34, 1988, p. 195.

- 14/ A/CONF. 144/IPM.4.
- 15/ Committee on Crime Prevention and Control, Report on the eleventh session (E/AC.57/1990/8).
- 16/ Report of the Eight Congress (A/CONF. 144/28).
- 17/ Report of the International Expert Meeting on the United Nations and Law Enforcement; the role of criminal justice and law enforcement agencies in the maintenance of public safety and social peace, Baden, Austria, 16-19 November 1987.

[12] 663(XXIV).

World social situation

C

Recommendations Of The First United Nations Congress On The Prevention Of Crime And The Treatment Of Offenders

I

The Economic and Social Council

1. Approves the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders;³⁷
2. Draws the attention of Governments to those Rules and recommends:
 - (a) That favourable consideration be given to their adoption and application in the administration of penal and correctional institutions;
 - (b) That the Secretary-General be informed every five years of the progress made with regard to their application;
 - (c) That Governments arrange for the widest possible publicity to be given to the Rules, not only among governmental services concerned but also among non-governmental organizations interested in social defence;

3. Authorizes the Secretary-General to make arrangements for the publication, as appropriate, of the information received in pursuance of sub-paragraph 2(b) above and to ask for supplementary information if necessary.

**994th plenary meeting
31 July 1957**

³⁷ A/CONF/6/1. annex I. A. United Nations publication Sales No. 1956. IV. 4.

Standard Minimum rules for the Treatment of Prisoners

Resolution adopted on
30 August, 1955

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Having adopted the Standard Minimum Rules for the Treatment of Prisoners annexed to the present Resolution,

1. Requests the Secretary-General, in accordance with paragraph (d) of the annex to resolution 415(V) of the General Assembly of the United Nations, to submit these rules to the Social Commission of the Economic and Social Council for approval;

2. Expresses the hope that these rules be approved by the Economic and Social Council and, if deemed appropriate by the Council, by the General Assembly, and that they be transmitted to governments with the recommendation (a) that favourable consideration be given to their adoption and application in the administration of penal institutions, and (b) that the Secretary-General be informed every three years of the progress made with regard to their application;

3. Expresses the wish that, in order to allow governments to keep themselves informed of the progress made in this respect, the Secretary-General be requested to publish in the International Review of Criminal Policy the information sent by

governments in pursuance of paragraph 2, and that he be authorized to ask for supplementary information if necessary;

4. Expresses also the wish that the Secretary-General be requested to arrange that the widest possible publicity be given to these rules.

ANNEX

Standard Minimum Rules For The Treatment Of Prisoners

Preliminary Observations

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

4.(1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.

(2) Part II contains rules applicable only to special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally

applicable to categories of prisoners dealt with in sections B,C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

5.(1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.

(2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

PART I

Rules Of General Application

Basic principle

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

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

Register

7.(1) In every place where persons 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 therefore;
- (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.

Separation of categories

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 necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

(b) Untried prisoners shall be kept separate from convicted prisoners;

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

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

Accommodation

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

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the 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 content 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 installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

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.

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

Personal hygiene

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.

Clothing and bedding

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 authorized 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, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Food

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.

Exercise and sport

21.(1) Every prisoner who is not employed in out-door work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

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

Medical services

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 suitably trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.

23.(1) In women's institutions there shall be spe-

cial accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

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

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.

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 specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26.(1) The medical officer shall regularly inspect and advise the director upon;

(a) The quantity, quality, preparation and service of food;

(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.

(2) The director shall take into consideration

the reports and advice that the medical officer submits according to rules 25(2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

Discipline and punishment

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.

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

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

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 punishment.

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 through examination of the case.

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

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.

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.

Instruments of restraint

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

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Information to and complaints by prisoners

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 authorized 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.

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 authorized 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.

Contact with the outside world

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.

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.

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 authorized or controlled by the administration.

Books

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.

Religion

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 shall 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.

Retention of prisoners' property

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

(2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to

destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

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

(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

Notification of death, illness, transfer, etc.

44.(1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

Removal of prisoners

45.(1) When prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

Institutional personnel

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.

(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

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

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 organized at suitable intervals.

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 examples and to command their respect.

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.

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.

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.

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.

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.

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.

Inspection

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.

PART II

Rules Applicable To Special Categories

A. Prisoners Under Sentence

Guiding principles

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.

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.

58. The purpose and justification of a sentence of imprisonment or a similar measure derivative 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.

59. To this end, the institution should utilize all

the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

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

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

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connexion with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

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.

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

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open 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.

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

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

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

Treatment

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.

Classification and individualization

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.

Privileges

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of the prisoners in their treatment.

Work

71.(1) Prison labour must 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.

72.(1) The organization 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 of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

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 the labour is supplied, account being taken of the output of the prisoners.

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.

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.

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 the 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.

Education and recreation

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.

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

Social relations and after-care

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.

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.

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 centralized or co-ordinate as far as possible in order to secure the best use of their efforts.

B. Insane And Mentally Abnormal Prisoners

82.(1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

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

C. Prisoners Under Arrest Or Awaiting Trial

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.

(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.

85.(1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

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.

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

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.

D. Civil Prisoners

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 be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. Persons Arrested Without Charge

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.

[13]1984/47. Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners

The Economic and Social Council,

Considering the importance of the recommendations contained in the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and approved by the Council in its resolution 663 C(XXIV) of 31 July 1957,

Noting with satisfaction the impact of the

Rules on national laws and practices,

Concerned, however, that there still exist obstacles of various kinds to the full implementation of the Rules, as evidenced in the periodic United Nations reports on their implementation,

Recalling the recommendations of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,¹⁰⁷ and Council resolution 1993(LX) of 12 May 1976, in which the Committee on Crime Prevention and Control was requested at its fourth session to study the range of application of the Rules and to formulate a set of implementing procedures for the Rules,

Taking note with appreciation of the work accomplished in pursuance of that mandate by the Committee on Crime Prevention and Control at its fourth session in 1976¹⁰⁸ and at its eighth session¹⁰⁹ in pursuance of the recommendations of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which invited the Committee to finalize the procedures in the light of its report,¹¹⁰

1. Approves the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, as set out in the annex to the present resolution;

2. Invites Member States to take the procedures annexed hereto into consideration in

¹⁰⁷ See Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975: report prepared by the Secretariat (United Nations publication, Sales No. E. 76. IV. 2 and corrigendum), para. 23.

¹⁰⁸ See E/CN. 5/536.

¹⁰⁹ See Official Records of the Economic and Social Council, 1984, Supplement No. 6(E/1984/16), chap. IV

¹¹⁰ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offender. Caracas, 25 August - 5 September 1980: report prepared by the Secretariat (United Nations Publication, Sales No. E.81. IV.4) Chap. I. Sect. C.6. para.4.

the process of implementing the Rules and in their periodic reports to the United Nations;

3. Requests the Secretary-General to bring the present resolution to the attention of the Governments of the Member States, and to assist them at their request in implementing the Rules in accordance with the procedures annexed hereto.

**21st plenary meeting
25 May 1984**

ANNEX

Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners

Procedure 1

All States whose standards for the protection of all persons subjected to any form of detention or imprisonment fall short of the Standard Minimum Rules for the Treatment of Prisoners shall adopt the Rules.

Commentary

The General Assembly, in its resolution 2858(XXVI) of 20 December 1971, invited the attention of Member States to the Standard Minimum Rules and recommended that they should be effectively implemented in the administration of penal and correctional institutions and that favourable consideration should be given to their incorporation in national legislation. Some States may have standards that are more advanced than the Rules, and the adoption of the Rules, is therefore not requested on the part of such States. Where States feel that the Rules need to be harmonized with their legal system and adapted to their culture, the emphasis is placed on the substance rather than the letter of the Rules.

Procedure 2

Subject, as necessary to their adaptation to the existing laws and culture but without deviations from the spirit and purpose of the Rules, the Standard Minimum Rules shall be embodied in national legislation and other regulations.

Commentary

This procedure emphasizes that it is necessary to embody the Rules within national legislation and regulations, thus covering also some aspects of procedure 1.

Procedure 3

The Standard Minimum Rules shall be made available to all persons concerned, particularly to law enforcement officials and correctional personnel, for purposes of enabling their application and execution in the criminal justice system.

Commentary

This procedure stresses that the Rules, as well as national statutes and regulations implementing the Rules, should be made available to all persons concerned with their implementation, in particular law enforcement officials and correctional personnel. The effective implementation of the Rules might also involve the organization of training courses by the central administration in charge of correctional matters. The dissemination of procedures is discussed in procedures 7 to 9.

Procedure 4

The Standard Minimum Rules, as embodied in national legislation and other regulations, shall also be made available and understandable to all prisoners and all persons under detention, on their admission and during their confinement.

Commentary

To achieve the goal of the Standard Minimum Rules, it is necessary to make the Rules, as well as the implementing national statutes and regulations, available to prisoners and all persons under detention (rule 95) in order to further the awareness that the Rules represent the minimum conditions that are accepted as suitable by the United Nations. Thus, this procedure supplements the provisions contained in procedure 3.

A similar requirement, that the Rules be made available to the persons for whose protection they have been elaborated, has been already established in the four Geneva Conventions of 12 August 1949,¹¹¹ of which articles 47 of the first Convention, 48 of the second, 127 of the third and 144 of the fourth state in common:

"The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains."

Procedure 5

States shall inform the Secretary-General of the United Nations every five years of the extent of the implementation and the progress made with regard to the application of the Standard Minimum Rules, and of the factors and difficulties, if any, affecting their implementation, by responding to the Secretary-General's questionnaire. This questionnaire should, following a specified schedule, be selective and limited to specific questions in order to secure an in-depth review and study of the problems selected. Taking into account the reports of Governments as well as other relevant information available within the United Nations system, the Secretary-General shall prepare independent periodic reports on progress made with respect to the implementation of the Standard Minimum Rules. In the preparation of those reports the Secretary-General may also enlist the co-operation of specialized agencies and of the relevant intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council. The Secretary-General shall submit the above-mentioned reports to the Committee on Crime Prevention and Control for consideration and further action, as appropriate.

¹¹¹ United Nations, Treaty Series. vol. 75. Nos. 970-973.

Commentary

It will be recalled that the Economic and Social Council, in its resolution 663 C (XXIV) of 31 July 1957, recommended that the Secretary-General be informed every five years of the progress made with regard to the application of the Standard Minimum Rules and authorized the Secretary-General to make arrangements for the publication, as appropriate, of such information and to ask for supplementary information if necessary.

Seeking the cooperation of specialized agencies and relevant intergovernmental and non-governmental organizations is a well-established United Nations practice. In the preparation of his independent reports on progress made with respect to the implementation of the Standard Minimum rules, the Secretary-General will take into account, inter alia, information available in the human rights organs of the United Nations, including the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Human Rights Committee functioning under the International Covenant on Civil and Political Rights, and the Committee on the Elimination of Racial Discrimination. The implementation work under the future convention against torture could also be taken into account, as well as any information which might be gathered under the body of principles for the protection of prisoners and detainees currently under preparation in the General Assembly.

Procedure 6

As part of the information mentioned in procedure 5 above, States should provide the Secretary-General with:

- (a) Copies or abstracts of all laws, regulations and administrative measures concerning the application of the Standard Minimum Rules to persons under detention and to places and programmes of detention;
- (b) Any data and descriptive material on treatment programmes, personnel and the number of persons under any form of detention. and statistics, if available;
- (c) Any other relevant information on the implementation of the Rules, as well as information on the possible difficulties in their application.

Commentary

This requirement derives from both resolution 663 C(XXIV) of the Economic and Social Council and the recommendations of the United Nations congresses on the prevention of crime and the treatment of offenders. Although the items of information suggested here are not specifically provided for, it seems feasible to collect such information in order to assist Member States in overcoming difficulties through an exchange of

experience. Furthermore, the request for such information is analogous to the existing periodic reporting system on human rights originally established by the Economic and Social Council in its resolution 624 B(XXII) of 1 August 1956.

Procedure 7

The Secretary-General shall disseminate the Standard Minimum Rules and the present implementing procedures, in as many languages as possible, and make them available to all States and intergovernmental and non-governmental organizations concerned, in order to ensure the widest circulation of the Rules and the present implementing procedures.

Commentary

The need for the widest possible dissemination of the Standard Minimum Rules is self-evident. Close co-operation with all appropriate intergovernmental and non-governmental organizations is important to secure more effective dissemination and implementation of the Rules. Therefore, the Secretariat should maintain close contacts with such organizations and should make relevant information and data available to them. It should also encourage those organizations to disseminate information about the Standard Minimum Rules and the implementing procedures.

Procedure 8

The Secretary-General shall disseminate his reports on the implementation of the Rules, including analytical summaries of the periodic surveys, reports of the Committee on Crime Prevention and Control, reports prepared for the United Nations congresses on the prevention of crime and the treatment of offenders as well as the reports of the congresses, scientific publications and other relevant documentation as from time to time may be deemed necessary to further the implementation of the Standard Minimum Rules.

Commentary

This procedure reflects the present practice of disseminating such reports as part of the documentation for the United Nations bodies concerned, as United Nations publications or as articles in the Yearbook on Human Rights and the International Review of Criminal Policy, the Crime Prevention and Criminal Justice Newsletter and any

other relevant publications.

Procedure 9

The Secretary-General shall ensure the widest possible reference to and use of the text of the Standard Minimum Rules by the United Nations in all its relevant programmes, including technical co-operation activities.

Commentary

It should be ensured that all relevant United Nations bodies include or make reference to the Rules and the implementing procedures, thus contributing to wider dissemination and increasing the awareness of specialized agencies, governmental, intergovernmental and non-governmental bodies and the general public of the Rules and of the commitment of the Economic and Social Council and the General Assembly to their implementation.

The extent to which the Rules have any practical effect on correctional administrations depends to a great extent on the measures through which they permeate local legislative and administrative practices. They should be known and understood by a wide range of professionals and non-professionals throughout the world. Therefore there is a great need for more publicity in any form, which could also be attained by frequent references to the Rules, accompanied by public information campaigns.

Procedure 10

As part of its technical co-operation and development programmes the United Nations shall:

- (a) Aid Governments, at their request, in setting up and strengthening comprehensive and humane correctional systems;
- (b) Make available to Governments requesting them the services of experts and regional and interregional advisers on crime prevention and criminal justice;
- (c) Promote national and regional seminars and other meetings at the professional and non-professional levels to further the dissemination of the Standard Minimum Rules and the present implementing procedures;

(d) Strengthen substantive support to regional research and training institutes in crime prevention and criminal justice that are associated with the United Nations.

The United Nations regional research and training institutes in crime prevention and criminal justice, in co-operation with national institutions, shall develop curricula and training materials based on the Standard Minimum Rules and the present implementing procedures, suitable for use in criminal justice educational programmes at all levels, as well as in specialized courses on human rights and other related subjects.

Commentary

The purpose of this procedure is to ensure that the United Nations technical assistance programmes and the training activities of the United Nations regional institutes are used as indirect instruments for the application of the Standard Minimum Rules and the present implementing procedures. Apart from regular training courses for correctional personnel, training manuals and the like, particularly at the policy and decision-making level, provision should be made for expert advice on the questions submitted by Member States, including an expert referral system to interested States. This expert referral system seems particularly necessary in order to implement the Rules according to their spirit and with a view to the socio-economic structure of the countries requesting such assistance.

Procedure 11

The United Nations Committee on Crime Prevention and Control shall:

- (a) Keep under review, from time to time, the Standard Minimum Rules, with a view to the elaboration of new rules, standards and procedures applicable to the treatment of persons deprived of liberty;
- (b) Follow up the present implementing procedures, including periodic reporting under procedure 5 above.

Commentary

As most of the information collected in the course of periodic inquiries as well as during technical assistance missions would be brought to the attention of the Committee on Crime Prevention

and Control, ensuring the effectiveness of the Rules in improving correctional practices rests with the Committee, whose recommendations would determine the future course in the application of the Rules, together with the implementing procedures. The Committee should therefore clearly define existing shortcomings in or the reasons for the lack of implementation of the Rules, inter alia, through contacts with the judiciary and ministries of justice of the countries concerned, with the view to suggesting appropriate remedies.

Procedure 12

The Committee on Crime Prevention and Control shall assist the General Assembly, the Economic and Social Council and any other United Nations human rights bodies, as appropriate, with recommendations relating to reports of ad hoc inquiry commissions, with respect to matters pertaining to the application and implementation of the Standard Minimum Rules.

Commentary

As the Committee on Crime Prevention and Control is the relevant body to review the implementation of the Standard Minimum Rules, it should also assist the above mentioned bodies.

Procedure 13

Nothing in the present implementing procedures should be construed as precluding resort to any other means or remedies available under international law or set forth by other United Nations bodies and agencies for the redress of violations of human rights, including the procedure on consistent patterns of gross violations of human rights under Economic and Social Council resolution 1503(XLVIII) of 27 May 1970, the communication procedure under the Optional Protocol to the International Covenant on Civil and Political Rights¹¹² and the communication procedure under the International Convention on the Elimination of All Forms of Racial Discrimination.¹¹³

Commentary

Since the Standard Minimum Rules are only partly concerned with specific human rights issues, the present procedures should not exclude any avenue for redress of any violation of such rights, in accordance with existing international or

regional standards and norms.

[14] **Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners**

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders

Recalling resolution 13 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 36/ in which states Members of the United Nations were urged to consider the establishment of procedures whereby transfers of offenders might be effected,

36/ See Sixth United Nations Congress chap. I, sect. B.

Recognizing the difficulties of foreigners detained in prison establishments abroad owing to such factors as differences in language, culture, customs and religion,

Considering that the aim of social resettlement of offenders could best be achieved by giving foreign prisoners the opportunity to serve their sentence within their country of nationality or residence,

Convinced that the establishment of procedures for the transfer of prisoners, on either a bilateral or a multilateral basis, would be highly desirable,

Taking note of the existing multilateral and bilateral international agreements on the transfer of foreign prisoners,

1. Adopts the Model Agreement on the Transfer of Foreign Prisoners contained in annex I to the present resolution;
2. Approves the recommendations on the treatment of foreign prisoners contained in annex II below;
3. Invites Member States, if they have not yet established treaty relations with other Member

States in the matter of the transfer of foreign prisoners to their own countries, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Agreement on the Transfer of Foreign Prisoners annexed hereto;

4. Requests the Secretary-General to assist Member States, at their request, in the development of agreements on the transfer of foreign prisoners and to report regularly thereon to the Committee on Crime Prevention and Control.

ANNEX I

Model Agreement on the Transfer of Foreign Prisoners

Preamble

The _____ and the

Desirous of further developing mutual co-operation in the field of criminal justice,

Believing that such co-operation should further the ends of justice and the social resettlement of sentenced persons,

Considering that those objectives require that foreigners who are deprived of their liberty as the result of a criminal offence should be given the opportunity to serve their sentences within their own society,

Convinced that this aim can best be achieved by transferring foreign prisoners to their own countries,

Bearing in mind that the full respect for human rights, as laid down in universally recognized principles, should be ensured,

Have agreed on the following;

I. General Principles

1. The social resettlement of offenders should be promoted by facilitating the return of persons convicted of crime abroad to their country of nationality or of residence to serve their sentence at the earliest possible stage. In accordance with the above, States should afford each other the widest measure of co-operation,

2. A transfer of prisoners should be effected on the basis of mutual respect for national sovereignty and jurisdiction.

3. A transfer of prisoners should be effected in cases where the offence giving rise to conviction is punishable by deprivation of liberty by the judicial authorities of both the sending (sentencing) State and the State to which the transfer is to be effected (administering State) according to their national laws.

4. A transfer may be requested by either the sentencing or the administering State. The prisoner, as well as close relatives, may express to either State their interest in the transfer. To that end, the contracting State shall inform the prisoner of their competent authorities.

5. A transfer shall be dependent on the agreement of both the sentencing and the administering State, and should also be based on the consent of the prisoner.

6. The prisoner shall be fully informed of the possibility and of the legal consequences of a transfer, in particular whether or not he might be prosecuted because of other offences committed before his transfer.

7. The administering State should be given the opportunity to verify the free consent of the prisoner.

8. Any regulation concerning the transfer of prisoners shall be applicable to sentences of imprisonment as well as to sentences imposing measures involving deprivation of liberty because of the commission of a criminal act.

9. In cases of the person's incapability of freely determining his will, his legal representative shall be competent to consent to the transfer.

II. Other Requirements

10. A transfer shall be made only on the basis of a final and definitive sentence having executive force.

11. At the time of the request for a transfer, the prisoner shall, as a general rule, still have to serve at least six months of the sentence; a transfer should, however, be granted also in cases of indeterminate sentences.

12. The decision whether to transfer a prisoner shall be taken without any delay.

13. The person transferred for the enforcement of a sentence passed in the sentencing State may not be tried again in the administering State for the same act upon which the sentence to be executed is based.

III. Procedural Regulations

14. The competent authorities of the administering State shall: (a) continue the enforcement of the sentence immediately or through a court or administrative order; or (b) convert the sentence, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for a corresponding offence.

15. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, this State may adapt the sanction to the punishment or measure prescribed by its own law for a corresponding offence.

16. In the case of conversion of sentence, the administering State shall be entitled to adapt the sanction as to its nature or duration according to its national law, taking into due consideration the sentence passed in the sentencing State. A sanction involving deprivation of liberty shall, however, not be converted to a pecuniary sanction.

17. The administering State shall be bound by the findings as to the facts in so far as they appear from the judgement imposed in the sentencing State. Thus the sentencing State has the sole competence for a review of the sentence.

18. The period of deprivation of liberty already served by the sentenced person in either State shall be fully deducted from the final sentence.

19. A transfer shall in no case lead to an aggravation of the situation of the prisoner.

20. Any costs incurred because of a transfer and related to transportation should be borne by the administering State, unless otherwise decided by both the sentencing and administering States.

IV. Enforcement And Pardon

21. The enforcement of the sentence shall be governed by the law of the administering State.
22. Both the sentencing and the administering State shall be competent to grant pardon and amnesty.

V. Final Clauses

23. This agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.
24. This agreement is subject to ratification. The instruments of ratification shall be deposited as soon as possible in _____.
25. This agreement shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.
26. Either Contracting Party may denounce this agreement in writing to the _____. Denunciation shall take effect six months following the date on which the notification is received by the _____.

In witness whereof the undersigned, being duly authorized thereto by the respective Governments, have signed this treaty.

ANNEX II

Recommendations on the treatment of foreign prisoners

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.
2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.
3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison according to the same principles as nationals.
4. Foreign prisoners should be informed

promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations.

5. The religious precepts and customs of foreign prisoners should be respected.
6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly.
7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or programme staff and in such matters as complaints, special accommodation, special diets and religious representation and counselling.
8. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations, such as the International Committee of the Red Cross, should be given the opportunity to assist foreign prisoners.
9. The conclusion of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign offenders.

[15] 45/111. Basic Principles for the Treatment of Prisoners

The General Assembly

Bearing in mind the long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights,

Bearing in mind also that sound policies of crime prevention and control are essential to viable planning for economic and social development,

Recognizing that the Standard Minimum Rules for the Treatment of Prisoners,^{1/} adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, are of

great value and influence in the development of penal policy and practice,

1/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

Considering the concern of previous United Nations congresses on the prevention of crime and the treatment of offenders, regarding the obstacles of various kinds that prevent the full implementation of the Standard Minimum Rules,

Believing that the full implementation of the Standard Minimum Rules would be facilitated by the articulation of the basic principles underlying them,

Recalling resolution 10 on the status of prisoners and resolution 17 on the human rights of prisoners, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 2/

Recalling also the statement submitted at the tenth session of the Committee on Crime Prevention and Control by Caritas Internationalist, the Commission of the Churches on International Affairs of the World Council of Churches, the International Association of Educators for World Peace, the International Council for Adult Education, the International Federation of Human Rights, the International Prisoners' Aid Association, the International Union of Students, the World Alliance of Young Men's Christian Association and the World Council of Indigenous Peoples, 3/ which are non-governmental organizations in consultative status with the Economic and Social Council, category II,

Recalling further the relevant recommendations contained in the report of the interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic II, "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures", 4/

2/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the

Secretariat (United Nations publication, Sales No.E.86.IV.1), chap. I, sect. E.

3/ See E/AC.57/1988/ngo/3.

4/ A/CONF.144/IPM.4.

Aware that the Eighth Congress coincided with International Literacy Year, proclaimed by the General Assembly in its resolution 42/104 of 7 December 1987,

Desiring to reflect the perspective noted by the Seventh Congress, namely, that the function of the criminal justice system is to contribute to safeguarding the basic values and norms of society,

Recognizing the usefulness of drafting a declaration on the human rights of prisoners,

Affirms the Basic Principles for the Treatment of Prisoners, contained in the annex to the present resolution, and requests the Secretary-General to bring it to the attention of Member States.

**68th plenary meeting
14 December 1990**

ANNEX

Basic Principles for the Treatment of Prisoners

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, 5/ and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, 6/ and the International Covenant on Civil and Political Rights and the Optional Protocol thereto,6/ as well as such other rights as are set out in other United Nations covenants.

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

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

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

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

10. With the participation and help of the community and social institution, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

11. The above Principles shall be applied impartially.

6/ See resolution 2200 A (XXI), annex.

[16] 45/110. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights^{1/} and the International Covenant on Civil and Political Rights,^{2/} as well as other international human rights instruments pertaining to the rights of persons in conflict with the law,

Bearing in mind also the Standard Minimum Rules for the Treatment of Prisoners,^{3/} adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and the important contribution of those Rules to national policies and practices,

Recalling resolution 8 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders^{4/} on alternatives to imprisonment,

Recalling also resolution 16 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders^{5/} on the reduction of the prison

1/ Resolution 217 A (III).

2/ See resolution 2200 A (XXI), annex.

3/ See Human Rights: A Compilation of International Instruments (United Nations publication, sales No. E.88. XIV.1), sect. G.

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

5/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

5/ Resolution 217 A (III).

population, alternatives to imprisonment, and social integration of offenders,

Recalling further section XI of Economic and Social Council resolution 1986/10 of 21 May 1986, on alternatives to imprisonment, in which the Secretary-General was requested to prepare a report on alternatives to imprisonment for the Eighth United Nations Congress on the prevention of Crime and the Treatment of offenders and to study that question with a view to the formulation of basic principles in that area, with the assistance of the United Nations institutes for the prevention of crime and the treatment of offenders.

Recognizing the need to develop local, national, regional and international approaches and strategies in the field of non-institutional treatment of offenders and the need to formulate standard minimum rules, as emphasized in the Section of the report of the Committee on Crime Prevention and Control on its fourth session, concerning the methods and measures likely to be most effective in preventing crime and improving the treatment of offenders,^{6/}

Convinced that alternatives to imprisonment can be an effective means of treating offenders within the community to the best advantage of both the offenders and society,

Aware that the restriction of liberty is justifiable only from the viewpoints of public safety, crime prevention, just retribution and deterrence and that the ultimate goal of the criminal justice system is the reintegration of the offender into society,

Emphasizing that the increasing prison population and prison overcrowding in many countries constitute factors that create difficulties for the proper implementation of the Standard Minimum Rules for the Treatment of Prisoners,

Noting with appreciation the work accomplished by the Committee on Crime Prevention and Control, as well as by the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic

^{6/} E/CN.5/536, annex IV.

II, "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures", and by the regional

preparatory meeting for the Eighth Congress,

Expressing its gratitude to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders for the work accomplished in the development of standard minimum rules for non-custodial measures, as well as to the various intergovernmental and non-governmental organizations involved, in particular, the International Penal and Penitentiary Foundation for its contribution to the preparatory work,

1. Adopts the United Nations Standard Minimum Rules for Non-custodial Measures, contained in the annex to the present resolution, and approves the recommendation of the Committee on Crime Prevention and Control that the Rules should be known as "the Tokyo Rules";

2. Recommends the Tokyo Rules for implementation at the national, regional and interregional levels, taking into account the political, economic social and cultural circumstances and traditions of countries;

3. Calls upon Member States to apply the Tokyo Rules in their policies and practice;

4. Invites Member States to bring the Tokyo Rules to the attention of, in particular, law enforcement officials, prosecutors, judges, probation officers, lawyers, victims, offenders, social services and non-governmental organizations involved in the application of non-custodial measures, as well as members of the executive, the legislature and the general public;

5. Requests Member States to report on the implementation of the Tokyo Rules every five years, beginning in 1994;

6. Urges the regional commissions, the United Nations institutes for the prevention of Crime and the treatment of offenders, specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations in consultative status with the Economic and Social Council to be actively involved in the implementation of the Tokyo Rules;

7. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the implementation of the present resolution;

8. Requests the Secretary-General to take the necessary steps to prepare a commentary to the Tokyo Rules, which is to be submitted to the Committee on Crime Prevention and Control at its twelfth session for approval and further dissemination, paying special attention to the legal safeguards, the implementation of the rules and the development of similar guidelines at the regional level;

9. Invites the United Nations institutes for the prevention of crime and the treatment of offenders to assist the Secretary-General in that task;

10. Urges intergovernmental and non-governmental organizations and other entities concerned to remain actively involved in this initiative;

11. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the Tokyo Rules, including their transmission to Governments, interested intergovernmental and non-governmental organizations and other parties concerned;

12. Also requests the Secretary-General to prepare every five years, beginning in 1994, a report on the implementation of the Tokyo Rules for submission to the Committee on Crime Prevention and Control;

13. Further requests the Secretary-General to assist Member States, at their request, in the implementation of the Tokyo Rules and to report regularly thereon to the Committee on Crime Prevention and Control;

14. Requests that the present resolution and the text of the annex be brought to the attention of all United Nations bodies concerned and be included in the next edition of the United Nations publication entitled Human Rights: A Compilation of International Instruments

**68th plenary meeting
14 December 1990**

ANNEX

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

1. General Principles

1. Fundamental aims

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

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

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

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

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

2. The scope of non-custodial measures

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.

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

2.3. In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal

justice system should provide a wide range non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.

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

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

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

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

3. Legal safeguards

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

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

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

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

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

3.6 The offender shall be entitled to make a

request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

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

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

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

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

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

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

4. Saving clause

4.1 Nothing in the present Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners,^{3/} the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),^{7/} the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment^{8/} or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

II. Pre-trial Stage

5. Pre-trial dispositions

5.1 Where appropriate and compatible with the

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

6. Avoidance of pre-trial detention

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

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or her competent

7/ Resolution 40/33, annex.

8/ Resolution 43/173, annex.

independent authority in cases where pre-trial detention is employed.

III. Trial And Sentencing Stage

7. Social inquiry reports

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

8. Sentencing dispositions

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

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

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

IV. Post-sentencing Stage

9. Post-sentencing dispositions

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

9.2 Post-sentencing dispositions may include:

- (a) Furlough and half-way houses;

- (b) Work or education release;
- (c) Various forms of parole;
- (d) Remission;
- (e) Pardon.

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

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

V. Implementation Of Non-custodial Measures

10. Supervision

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

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

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

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

11. Duration

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

11.2 Provision may be made for early

termination of the measure if the offender has responded favourably to it.

12. Conditions

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

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

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

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

13. Treatment process

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

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

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

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

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure

the effective implementation of treatment programmes.

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

14. Discipline and breach of conditions

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

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

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

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

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

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

VI. Staff

15. Recruitment

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

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional

training and practical experience. Such qualifications shall be clearly specified.

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

16. Staff training

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

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

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

VII. Volunteers And Other Community Resources

17. Public participation

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

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

18. Public understanding and co-operation

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

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

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

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

19. Volunteers

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

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

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

VIII. Research, Planning, Policy Formulation And Evaluation

20. Research and planning

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

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

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

21. Policy formulation and programme development

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

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

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

22. Linkages with relevant agencies and activities

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

23. International co-operation

23.1 Efforts shall be made to promote scientific co-operation between countries in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the

Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released. 2/

Nations at Baden, Austria,

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985, report prepared by the Secretariat (United Nations publication, Sales No.E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.
from 16 to 19 November 1987, the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic V, "United Nations norms and guidelines in crime prevention and criminal justice; implementation and priorities for further standard setting"^{4/} and the regional preparatory meetings for the Eight Congress,

[17] 45/119. **Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released**

The General Assembly,

Bearing in mind the Milan Plan of Action,^{1/} adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order,^{2/} principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 13 of the Seventh Congress,^{3/} on the transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released, in which the Committee on Crime Prevention and Control was requested to study this subject and to consider the possibility of formulating a model treaty in this area,

Acknowledging the valuable contributions made by Governments, non-governmental organizations and individual experts to the drafting of a model treaty on the transfer of supervision of offenders conditionally sentenced or conditionally released, in particular the International Expert Meeting on the United Nations and Law Enforcement, held under the auspices of the United

Convinced that the establishment of bilateral and multilateral arrangements for transfer of supervision of offenders conditionally sentenced or conditionally released will greatly contribute to the development of more effective international co-operation in penal matters,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights^{5/} and the International Covenant on Civil and Political Rights,^{6/}

1. Adopts the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, contained in the annex to the present resolution as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in the area of the transfer of supervision of offenders conditionally sentenced or conditionally released, or if they wish to revise existing treaty relations, to take into account the Model Treaty whenever doing so;

3. Urges all Member States to strengthen international co-operation in criminal justice;

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- 4/ A/CONF.144/IPM.5 and Corr.1.
 - 5/ Resolution 217 A (III).
 - 6/ See resolution 2200 A (XXI). annex.

4. Also urges Member States to inform the Secretary-General periodically of efforts undertaken to establish arrangements on the transfer of supervision of offenders conditionally sentenced or conditionally released;

5. Requests the Committee on Crime Prevention and Control to conduct periodic reviews of the progress attained in this field;

6. Requests the Secretary-General to assist Member States, at their request, in the development of treaties on the transfer of supervision of offenders conditionally sentenced or conditionally released and to report regularly thereon to the Committee.

**68th plenary meeting
14 December 1990**

ANNEX

Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released

The _____ and the

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

Believing that such co-operation should further the ends of justice, the social resettlement of sentenced persons and the interests of the victims of crime,

Bearing in mind that the transfer of supervision of offenders conditionally sentenced or conditionally released can contribute to an increase

in the use of alternatives to imprisonment,

Aware that supervision in the home country of the offender rather than enforcement of the sentence in a country where the offender has no roots also contributes to an earlier and more effective reintegration into society,

Convinced, therefore, that the social rehabilitation of offenders and the increased application of alternatives to imprisonment would be promoted by facilitating the supervision of conditionally sentenced or conditionally released offenders in their State of ordinary residence,

Have agreed as follows:

Article 1

Scope of application

1. The present Treaty shall be applicable, if, according to a final court decision, a person has been found guilty of an offence and has been:

- (a) Placed on probation without sentence having been pronounced;
- (b) Given a suspended sentence involving deprivation of liberty;
- (c) Given a sentence, the enforcement of which has been modified (parole) or conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

2. The State where the decision was taken (sentencing State) may request another State (administering State) to take responsibility for applying the terms of the decision (transfer of supervision).

Article 2

Channels of communications

A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

Article 3

Required documents

1. A request for the transfer of supervision shall contain all necessary information on the identity, nationality and residence of the sentenced person. The request shall be accompanied by the original or a copy of any court decision referred to in article 1 of the present Treaty and a certificate that this decision is final.

2. The documents submitted in support of a request for transfer of supervision shall be accompanied by a translation into the language of the requested State or into another language acceptable to the State.

Article 4

Certification and authentication

Subject to national law and unless the Parties decide otherwise, a request for transfer of supervision and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.^{7/}

Article 5

Decision on the request

The competent authorities of the administering State shall examine what action to take on the request for supervision in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the sentencing State.

Article 6

Dual criminality 8/

A request for transfer of supervision can

^{7/} The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and , therefore, would require a clause setting out the authentication required.

^{8/} When negotiating on the basis of the

present Model Treaty, States may wish to waive the requirement of dual criminality. be complied with only if the act on which the request is based would constitute an offence if committed in the territory of the administering State.

Article 7

Grounds for refusal^{9/}

If the administering State refuses acceptance of a request for transfer of supervision, it shall communicate the reasons for refusal to the sentencing State, Acceptance may be refused where:

- (a) The sentenced person is not an ordinary resident in the administering State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;
- (d) The offence is regarded by the administering State as being of a political nature;
- (e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction in the event of revocation because of lapse of time.

Article 8

The position of the sentenced person

Whether sentenced or standing trial, a person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be

^{9/} When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

imposed. Similarly, such interest may be expressed

by his or her legal representative or close relatives. Where appropriate, the Contracting States shall inform the offender or his or her close relatives of the possibilities under the present Treaty.

Article 9

The rights of the victim

The sentencing State and the administering State shall ensure in the transfer of supervision that the rights of the victims of the offence, in particular his or her rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

Article 10

The effects of the transfer of supervision on the sentencing State

The acceptance by the administering State of the responsibility for applying the terms of the decision rendered in the sentencing State shall extinguish the competence of the latter State to enforce the sentence.

Article 11

The effects of the transfer of supervision on the administering State

1. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accordance with the law of the administering state. That State alone shall have the right of revocation. That State may, to the extent necessary, adapt to its own law the conditions or measures prescribed, provided that such conditions or measures are, in terms of their nature or duration, not more severe than those pronounced in the sentencing State.

2. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accordance with its own law without, however, going beyond the limits imposed by the sentencing State.

Article 12

Review, pardon and amnesty

1. The sentencing State alone shall have the right to decide on any application to reopen the case.

2. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with the provisions of its Constitution or other laws.

Article 13

Information

1. The Contracting Parties shall keep each other informed, in so far as it is necessary, of all circumstances likely to affect measures of supervision or enforcement in the administering State. To this end they shall transmit to each other copies of any relevant decisions in this respect.

2. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report concerning the supervised person's conduct and compliance with the measures imposed.

Article 14

Costs

Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

Article 15

Final provisions

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the

other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

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DONE at _____ on _____ in
the _____ and _____
languages [both/all] texts being equally authentic.