

**PRISONERS' RIGHTS: THE ROLE OF NATIONAL HUMAN RIGHTS
INSTITUTIONS IN AFRICA**

A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE
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BY

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DECLARATION

I, Waruguru Kaguongo, hereby declare that this dissertation is my own original work and that it has not been submitted for examination for the award of a degree at any other university.

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Date:

DEDICATION

To God because He made all things possible.

To my parents, brother and sisters because your love and support means so much to me.

To RAA because you understand and that will not be forgotten.

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LIST OF UNIVERSAL AND AFRICAN INSTRUMENTS

Universal Declaration on Human Rights 1948

International Covenant on Civil and Political Rights 1966

International Covenant on Economic, Social and Cultural Rights 1966

Convention Against Torture Cruel Inhuman and Degrading Treatment of Punishment 1984

Convention on the Rights of the Child 1989

International Convention on the Protection of the Rights of Migrant Workers 1990

Geneva Convention Relative to the Treatment of Prisoners of War 1949

Standard Minimum Rules for the Treatment of Prisoners 1955

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988

Code of Conduct for Law Enforcement Officials 1979

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 1990

Basic Principles for the Treatment of Prisoners 1990

Rules for the Protection of Juveniles Deprived of their Liberty 1990

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 1982

African Charter on the Rights and Welfare of the Child 1990

African Charter on Human and Peoples' Rights 1981

LIST OF ABBREVIATIONS

CAT	Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
ECOSOC	Economic and Social Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICRC	International Committee of the Red Cross
IGO	Intergovernmental Organization
NHRI	National Human Rights Institution
NGO	Non Governmental Organization
SMR	Standard Minimum Rules for the Treatment of Prisoners
UN	United Nations

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CHAPTER ONE

THE STUDY

1.1 Introduction

Human rights are those rights that accrue to one because they are human beings. These rights are equal and inalienable to all human beings.¹ The United Nations Charter in its preamble sets out as one of the objectives of the community of nations 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small' the effect of which is to illustrate the weight attached to fundamental rights and dignity.² Since the coming into force of the Charter, states have been called upon to conclude international human rights instruments setting out these rights in detail, and by ratifying the conventions, states undertake to respect and ensure respect for these rights without discrimination. The Universal Declaration on Human Rights adopted in 1948 together with the 1966 International Covenant on Economic Social and Cultural Rights and International Covenant on Civil and Political Rights constitutes the international bill of rights.³ These instruments, the UN makes plain, 'continue to be a fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms'.⁴ The ultimate goal of international human rights standards is that they are translated into the day to day lives of individuals, thus creating an appreciation and valuing of a human rights culture.

The success or failure of any international human rights system should be evaluated in accordance with its impact on human rights practices on the domestic (country) level. ... The conceptual battle is over and the focus has shifted to the implementation of human rights.⁵

To achieve this goal there are various ingredients such as state adherence to human rights treaties; implementation of human rights obligations in domestic law; a domestic legal system that provides comprehensive substantive and procedural human rights laws; effective and accessible state institutions where individuals can obtain redress for human

¹ Donnelly J 'Human Rights Democracy and Development' (1999) 213 *Human Rights Quarterly* 608.

² United Nations Charter Preamble <<http://www.un.org/aboutun/charter/index.html>> accessed 20 September 2003.

³ Universal Declaration of Human Rights Adopted and proclaimed by the General Assembly Resolution 217 A (III) of 10 December 1948 <<http://www.un.org/Overview/rights.html>>, International Covenant on Economic Social and Cultural Rights and International Covenant on Civil and Political Rights adopted by General Assembly Resolution 2200(XXI) 16 December 1966 <<http://www.unhchr.ch/html/intlinst.htm>> accessed 20 September 2003.

⁴ United Nations Fact Sheet No.2 (Rev. 1) <<http://www.unhchr.ch/html/menu6/2/fs2.htm>> accessed 20 September 2003.

⁵ Heyns C & Viljoen F 'The Impact of the United Nations Human Rights Treaties on the Domestic Level' (2001) 23 *Human Rights Quarterly* 483-535 at 483.

rights breaches, such as independent courts and national human rights institutions; a lively NGO community; and a population that has developed a strong human rights culture.⁶ These elements are complementary and it is their concerted efforts that affect on the whole, the level of the state's respect for human rights.

National Human Rights Institutions (National Institutions, NHRIs) have evolved to bridge the gap between governmental and non-governmental action. The gap exists between the efforts a government makes to promote and protect human rights and the expectations of the non-governmental sector that is often limited in its ability to hold government accountable. In states where there are high levels of rights violations the existence of a national institution can at least 'create an official space for a human rights discourse' amongst all interested parties.⁷ These institutions are attractive because they are:

autonomous national bod[ies], such as a human rights commission, that [function] independently of other governmental agencies to work for laws and practices concerning human rights to be effectively applied by the government.⁸

National institutions are broadly mandated with the promotion and protection of human rights. These 'national human rights institutions' include human rights commissions, ombudsman offices and hybrid institutions that combine functions of the two. Human rights commissions are empowered to ensure the respect of human rights in a state. They may be vested with the power to receive individual complaints and therefore may be endowed with quasi-judicial powers for this purpose. The office of the ombudsman has the primary responsibility to oversee fairness and legality in public administration. The office is also empowered to receive complaints and investigate them. The hybrid institution's mandate caters for both human rights concerns as well as complaints against public administration.

Having said this however, these distinctions are not cast in stone as increasingly the jurisdictions of the two types of institutions broaden.⁹ When compared with traditional mechanisms for human rights protection such as courts, national institutions should ideally not be encumbered with strict procedures, nor should the cost of accessing these institutions be prohibitive to complainants. Their flexibility and accessibility supercedes that of courts although the latter are considered more effective in enforcing their decisions. Further, courts are remedial rather than preventive in nature; they provide a remedy after a right has been violated. National institutions are involved in preventive efforts within their promotional

⁶ Reif L C 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection' (2000) 13 *Harvard Human Rights Journal* 3.

⁷ Human Rights Watch *Protectors of Pretenders? Government Human Rights Commissions in Africa* (2001) at p3.

⁸ Human Rights Watch as above.

⁹ UN Centre for Human Rights *National Human Rights Institutions: A handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (hereinafter UN Handbook) (1995) para 62.

mandate. With respect to NGOs national institutions differ from the former for various reasons. The NHRI must be seen to represent the nation as a whole rather than specific interests, it must be endowed with statutory powers such as the power to subpoena evidence and must be able to pragmatically understand the constraints within which government works to be able to effectively assist the latter.¹⁰ In this way national institutions rather than NGOs are better placed to influence policy decisions while at the same time maintaining a distance from government influence. These advantages should not however be used in a vacuum, as stated before, they are most effective when they complement the other mechanisms already in place.

Persons in detention (This dissertation considers prisoners to include sentenced and untried prisoners as well as special categories of detained persons such as juveniles, insane and mentally abnormal prisoners without distinction, unless the context so demands) are a vulnerable category of people with respect to violation of their rights as they are isolated from society and have restricted access to the outside world. They are many times not in a position to avail themselves of conventional legal assistance. They suffer an additional disadvantage of being suspected or having wronged the community and are therefore shunned and bear the brunt of negative attitudes while incarcerated. Further within the African context, prisons are often times inadequately resourced and have to cope with insufficient infrastructure brought about by growing prison populations. For these reasons, detained persons find themselves in environments where their rights are prone to violation. It would appear that a body such as a national commission on human rights, because of its positioning *vis-a-vis* the government, its flexible mode of operation, specialization and accessibility is in a unique position to influence positive change regarding the respect of prisoners rights.

1.2 Problem Statement

At least four human rights commissions in Africa are expressly mandated to inspect prisons and places of detention with a view to improving conditions and ensuring that the rights of prisoners are respected and at least three others have interpreted their mandate to include prison inspections.¹¹

¹⁰ International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions* (2000) 58

There are also other bodies, domestic and international as well as within the prison services themselves, which regularly examine prison conditions with a view to improving them. However the condition of prisons in Africa especially remains deplorable, and there remains much to be done to improve them.

This dissertation seeks to investigate:

- (a) whether national human rights institutions are best suited to oversee the improvement of prison conditions;
- (b) why national institutions are in a better position than others working in this field to monitor the respect of prisoners' rights; and
- (c) some of the ways in which national institutions can achieve this objective.

This will entail an examination of the nature of prisoners' rights and prison conditions and, thereafter, the general character and elements that define national human rights commissions in terms of organization and establishment. These elements will be considered with a view to finding out whether they offer any advantages that can positively influence the conditions of prisons and prisoners and if so, how. It is recognized that national institutions are not the only ones involved in seeking to improve prison conditions. It will be argued however that even with the existence of the other bodies, there still exists the need for national institutions to be expressly mandated to inspect and monitor the adherence to standards on prisoners' rights. The argument will again be based on the examination of the unique characteristics that these institutions possess as distinguished from other bodies, and the potential these characteristics have to ameliorate the conditions in which prisoners find themselves.

1.3 Hypothesis

It is anticipated that the finding will be that NHRIs are indeed the best suited, in conjunction with other players to oversee implementation of prisoners' rights. The reason being that the ideal national institution has certain unique qualities which taken together can be utilized to impact respect for the human rights of prisoners. This hypothesis finds support from the activities of various national human rights commissions in this area. Drawing on the experience of some of these national human rights commissions, suggestions will then be made on how best these national institutions can utilize their features to the advantage of this vulnerable group of persons.

¹¹ Human Rights Watch (n7 above). The NHRIs in Cameroon, Malawi, Uganda and Kenya are expressly mandated to inspect prisons while those of South Africa, Nigeria and Ghana do so despite the absence of express mandate.

1.4 Relevance of Study

This study is relevant for two reasons. Prisoners are a vulnerable group of people whose rights are neglected routinely and whose plight is little known or understood. Attempts at intervention are often met with reluctance and much caution by prison authorities and sometimes hostility. Prisoners are identified more for the crimes they have committed or are alleged to have committed than with the fact that they are human beings and possessors of equal rights as other human beings. This dissertation seeks to bring this latter fact to light in the hope that attitudes can be changed to reflect this reality. Secondly, it is hoped that by specifically empowering NHRIs with the oversight functions these changes in both attitude and actual conditions of prisons will become manifest sooner rather than later.

1.5 Literature Survey

The study of prisons is naturally interconnected with the study of crime and punishment and the subject of prisons has been approached from these perspectives. Most of the literature available focuses on prisons in America and England. None of the authors deals with the history of prisons at length or directly on the purposes of prisons. The literature yielded only an overview of these topics; as such this survey will only briefly set out what the literature was about. Tonry and Petersilla contains essays that examine the use of imprisonment as a means of social control and the many issues that arise as a result, such as deterrence, incapacitation, the effects of imprisonment on children of offenders, communities and the prisoners themselves. Jones and Cornes discuss the 'prison without bars' in relation to the containment and rehabilitative functions of prisons. They argue that the preoccupation with security and containment of prisoners interferes with rehabilitation because the latter is often subordinated whenever there is perceived to be a security threat. Open prisons are under pressure because of their diminished focus on containment as compared with rehabilitation. The authors therefore undertake to compare open and closed prisons, their organization and their effect on inmates and staff.

With regard to prison reform, Wolfgang edits a publication that contains essays by individuals independent of the prison system but with experience with prisons and prisons research, who criticize and suggest reforms to the prison system. The essays reflect on prison management and theories of imprisonment and their impact on criminal justice. Prison management and reform are also discussed in Jayewardene and Jayasuriya, Freeman (ed), Bates & Sanford, and Shaw. Zimring & Hawking and Ten discuss the theories of punishment and thus the theories underlying imprisonment. From these publications it was

possible to glean the history of prisons and the purposes underlying their existence, and the reasons for the move to reform prison conditions albeit not from a human rights perspective.

Reports from the human rights commissions of Kenya, Malawi, Uganda and South Africa, as well as the Reports of the Special Rapporteur on Prisons and Conditions of Detention in Africa and research carried out by Penal Reform International were very informative on the conditions in African prisons.

Literature on national human rights institutions comprises publications of the UN on guidelines for the establishment of these institutions, from other organizations including Amnesty International and Commonwealth Secretariat on the best practices for NHRIs with regard to the guidelines. The UN publication is relied on heavily in the general discussion in chapter four on how national human rights institutions should be established. This is because it is an expansion of the Principles relating to the Status of National Institutions (Paris Principles). Amnesty International and the Commonwealth Secretariat offer practical suggestions as to how these guidelines can become reality within the operations of a national human rights institution. The difference between the UN publication and the latter two is this aspect of practical versus theory. Reif approaches the establishment of national institutions as a means to promote good governance in a state. She argues that these institutions increase government accountability and act as mechanisms that assist in the strengthening of human rights protection. Okafor and Agbakwa provide an interesting criticism of the reliance on national institutions on the protection mandate rather than the promotional one. They argue that while it is desirable for national institutions to have functions similar to courts, the policy, advisory and educational role of national institutions should not be undervalued. Sarkin also examines the appointment procedure of the South African Human Rights Commission as the basis of his contention that appointments should be the result of a broad-based consultative process, rather than a political one. Chapter five makes use of articles written on the performance of particular NHRIs that illustrate how these institutions have been established and how they have interpreted their mandates. These include Human Rights Watch, Gomez, Azzam, Gwei, Short, Singini, Tabiu, Nkalubo, McQuoid-Mason and Pityana who all with the exception of Human Rights Watch, discuss the national human rights institutions they are associated with. Human Rights Watch has assessed national institutions in Africa from an outsider's perspective and concluded that the performance of most of these institutions leaves a lot to be desired for various reasons. These include the reasons for which they are established, the powers and mandates they are accorded and their constitution in terms of membership and staff as well as lack of financial resources.

This dissertation seeks to take these guidelines and illustrate how they can be applied to protect the human rights of prisoners and in the process make a case for this kind of protection and promotion to become an express mandate of all NHRIs.

1.6 Methodology

The study is mainly a research based on publications on and by various national institutions and relevant domestic and international legal instruments and official journals. Research tools used were the library and the Internet.

Chapter two looks prisons generally from a historical perspective, as well as the current situation obtaining in Africa. Chapter three is a discussion setting out the legal basis on which prisoners' rights are founded. Chapter four gives an overview of national human rights institutions, particularly the guidelines by which they are ideally established. The final chapter analyses how national institutions in Africa might employ their characteristics to enhance the respect for prisoners' rights, and to this end existing practice by some African human rights commissions are singled out.

1.7 Limitations of Proposed Study

The publications relied on particularly with regard to the functions of prisons are not current. The same situation applies to sources of information consulted on national human rights institutions, though these are not as aged, given that NHRIs are dynamic in their operations and activities the information obtained is in most cases not as current as desirable. Further, there is a dearth of information from most African NHRIs and so much of the information is drawn from the experiences of only a few of the existing institutions.

1.8 Overview of Chapters

Chapter One introduces the study and the questions that have prompted the study. Chapter Two looks at the nature of prisons, how they began to be and what purposes they serve. This chapter also examines the conditions of prisons in Africa. The scope of Chapter Three is prisoners' rights, what they are, their justification and the legal regime that regulates their observance. Chapter Four focuses on the implementation aspect by looking into what national human rights institutions are. The final chapter will examine how national institutions have utilized or might utilize their characteristics in favor of the protection of the human rights of prisoners. Conclusions and recommendations will then follow.

CHAPTER TWO

PRISONS IN THE AFRICAN CONTEXT

As elaborated in the previous chapter, this dissertation seeks to establish the role national human rights institutions can play with regard to the protection of prisoners' rights. It is therefore necessary to understand the nature of prisons generally and particularly in Africa. This chapter looks at the prison institution, its origin and functions. The purpose of this is to establish exactly what role prison conditions play, if any, in the objectives that prisons are supposed to achieve. Thereafter a detailed examination into the conditions of prisons in Africa will be carried out.

2.1 Prisons Their Origins and Functions

Historically, prisons have always been places in which criminals could be securely confined and this 'containment' function has continued to predominate in spite of the gradual emergence of other aims for imprisonment, such as deterrence or rehabilitation. Containment here means not only that prisoners must be kept out of circulation, but also that their deviations, even within prison, must not be on such a scale as to disturb the peace of mind of the man-in-the-street.¹²

Prisons as we know them today - state run institutions used to isolate individuals suspected or convicted of wrongdoing - are a recent phenomenon. Towards the end of the 17th century in England, suspects were detained awaiting trial or execution but not as punishment.¹³ The law simply required of the law enforcement officer to produce a suspect on the day of trial or execution. No provision was made by the state as to where, or the manner in which such a suspect would be detained while awaiting arraignment or execution.¹⁴ Subsequent development of prisons is attributed to private commercial speculation and also to a breakdown in criminal justice. In the former case, lockups began to be provided, by private persons, as a substitute for chaining and manacling individuals. The prisoner was expected to pay for his food in such a lockup and sometimes even after

¹² Howard J & Cornes P *Open Prisons* (1977) 1. Footnotes in the text have been omitted.

¹³ Rubin E L 'The Inevitability of Rehabilitation' (2001) 19 *Law and Inequality Journal* 345. The author is a professor of law at the University of Pennsylvania Law School.

acquittal the prisoner was taken back to prison as security until he paid his bill.¹⁵ The state took over responsibility for the prisoner after agitation by reformers such as John Howard, who wanted the state to begin paying salaries to prison staff to avoid extortion of prisoners.¹⁶ Criminal justice broke down when Britain could no longer transport criminals to its colonies abroad. Prisons then became a viable option.¹⁷ Criminal offenders before the development of prisons were generally tortured or put to death. These penalties began to offend people's sensibilities and to prick their consciences and society had to find 'some form of torment which can give no sensual satisfaction to the tormentor, and which is hidden from public view'.¹⁸

The origin of prisons in America is attributed to the Quakers, a Protestant religious sect, who were appalled by the cruelty of torture and execution, and the fact that death meant finality for the criminals.¹⁹ They were concerned about the redemption of the souls of the criminals and therefore came up with the idea of the penitentiary, a place of separation where criminals could think upon their evil deeds and repent.²⁰

The purposes or functions of the prison can be surmised as confinement (incapacitation), punishment (retribution and deterrence), rehabilitation, reformation and reintegration.²¹ Prisons achieve incapacitation of the offender by isolating the individual from the free society and preventing the commission of more crimes. The prisoner might still be able to commit crimes against other prisoners within the prison but with adequate facilities the incapacitation objective can be achieved more easily than the others.²² Ideally the deprivation of liberty serves as punishment for a prisoner. However the adverse conditions such as lack of adequate space, ventilation, light, food, health facilities, that accompany a prison sentence even when unintentional, constitute a more severe punishment to the offender.

The retributive function is met at a minimum because imprisonment constitutes punishment. Whether the retribution is commensurate to the crime will depend on variables such as the length of imprisonment.

¹⁴ Shaw G B *Imprisonment* (1924) 67. The author wrote this book after having served as a member of a committee formed to investigate conditions of English prisons in 1924. The essay served as a preface to a book 'Prisons Under Local Government' by Sidney and Beatrice Webb.

¹⁵ Shaw as above 68.

¹⁶ Radzinowicz L 'John Howard' in Freeman John C (ed) *Prisons past and future* (1978) 7.

¹⁷ Rubin n13 above.

¹⁸ Shaw N14 above at 4. Shaw is of the opinion that punishments such as torture and death are not any more cruel than imprisonment, they are less cruel and less permanently injurious. The only attraction imprisonment has is to relieve the consciences of the public from enjoying the spectacle that torture afforded. The thesis of the book is that imprisonment does not serve the purposes it is intended, particularly because of the prison conditions during that time.

¹⁹ Murton T O 'Prison Management: The Past, the Present and the Possible Future' in Wolfgang M E *Prisons: Present and Possible* (1979) 5-53.

²⁰ Murton as above at 5.

²¹ Murton as above 11-12.

²² Murton as above.

The prisoner and any like-minded free person should be deterred from committing crimes, otherwise one of the aims of imprisonment would fail. It is, however, the subject of much debate whether deterrence is actually achieved by prisons except by virtue of incapacitation.²³

Rehabilitation and reform characterized the penitentiary system initiated by the Quakers in the 18th Century. Attempts at the rehabilitation of the offender were born out of the realization that imprisonment is, with a few exceptions, only for a period of time and the offender will eventually be released into the society with the expectation that s/he will not commit another offence.²⁴ It was anticipated that by reforming offender, he would see the error of his ways and choose to live in accordance to societies accepted norms. Reintegration sought to help the offender cope with the stigma attached to prison and nevertheless return to the society that he had wronged. The perspective of the offender by society changed to view the wrongdoer as a citizen of the state who would take back his/her place in society once punishment was completed. Further, that the individual had rights and responsibilities and rehabilitation would enable them to live a productive life after incarceration.²⁵

These functions of the prison can be broadly categorized into two theories of punishment, the utilitarian and the retributive theories. The utilitarian theory purports to punish offenders for the general welfare of society, thus incapacitation for society's safety, deterrence to minimize the rate of crime and rehabilitation for the offender's own good. The retributivist theory, on the other hand, regards the offender's wrongdoing as deserving of punishment, and the amount of punishment should be proportionate to the extent of wrongdoing.²⁶ These theories are taken into consideration in sentencing. They determine when imprisonment as a punishment is utilized and for how long.²⁷

These purposes and functions of prisons are the concern in Africa today. Prison conditions have played a major role in the achievement or failure of penal systems in African societies. Where prisoners were isolated in individual cells in penitentiaries with no social interaction, not even with other prisoners, there was a tendency towards insanity.²⁸ In other cases prisoners suffered lack of adequate space, meager rations of food, grossly inadequate healthcare, poor sanitary conditions so that imprisonment was considered worse than, if not

²³ Wolf P 'The Effect of Prison on Criminality' in Freeman John C (ed) *Prisons past and future* (1978) 99. The author discusses various studies that have been carried out that show that institutional treatment (imprisonment) yields more detrimental (recidivism) than favorable effects.

²⁴ Jayewardene CHS and Jayasuriya DJN *The Management of Correctional Institutions* (1981) 21.

²⁵ Rubin n13 above.

²⁶ Ten C L *Crime Guilt and Punishment A Philosophical Introduction* (1987) 4-5.

²⁷ Ten C L as above at 162.

²⁸ Rubin n13 above 347.

equivalent to death.²⁹ Rehabilitation in particular is difficult to achieve where the prisoner's self-respect is eroded by the humiliation endured in prison. The lack of effective rehabilitation is no doubt one of the causes of the high rates of recidivism.³⁰ In this dissertation, that particular argument will not be explored, but it is recognized that the conditions in which prisoners are held impact on their human dignity which, in turn, affects effective rehabilitation.

In Africa for example in East Africa and Ghana, prisons were introduced by colonialists.³¹ Traditional modes of dealing with crime varied from community to community. However crimes were seen as upsetting the communion between the gods, ancestors and the community. The communion was restored by means of sacrifice, of the offender or an animal depending on the gravity of the wrong. Deterrence or reformation of the offender was at most a by-product rather than a stated objective.³²

Prison conditions in East Africa during this time were said to be 'reasonably comfortable' and in terms of

'water to hand, food in quantity and at regular times, healthy conditions and availability of medical help, and even in material possessions, the majority of the convicts were undoubtedly better off in prison than they would have been in their own homes'.³³

The same cannot be said of African prisons today.

2.2 Prison Conditions in Africa

There exist certain similarities that characterize conditions of prisons in Africa. The degree of difference in these conditions is the result of the unique political, economic, historical and social factors that affect each state. From reports of independent prison inspections as well as information from prisons departments of various countries, the main problems that afflict prisons can be identified.

Penal Reform International an international NGO involved in the exchange of information and good practice in penal reform together with the African Commission on Human and Peoples' Rights carried out a survey whose objective was *inter alia* to ascertain precisely what prison conditions are like in Africa, to find out what reforms were being undertaken as well as the successes and failures of these efforts.³⁴ Responses were

²⁹ See Shaw n14 above. The author makes the point severally that imprisonment does not serve the deterrence purpose or the rehabilitation purpose, because of the conditions in which prisoners are held.

³⁰ See Wolf n23 above.

³¹ Read J S 'Kenya Uganda and Tanzania' and Seidman R B 'The Ghana Prison System: An Historical Perspective' in Milner A *African Penal Systems* (1969) 91 –164 at 91& 431-472 at 433.

³² Seidman R B as above at 432.

³³ Tanner R E S 'The East African Experience of Imprisonment' in Milner A (n 31 above) 295 –315 at 296.

³⁴ Penal Reform International ' Analysis of Responses to Questionnaires Directed to Prison Services, Representatives of the Judiciary and Non-Governmental Organizations'
<http://www.penalreform.org/english/frset_theme_en.htm> accessed on 11 October 2003.

received from 27 prisons authorities, from 15 NGOs and from 9 members of judiciaries and constituted part of the documentation for the Second Pan African Conference on Prison and Penal Reform held in Ouagadougou in 2002.

With regard to the placement of prison departments within government it was found that in the majority of countries the Ministry of Justice or the Ministry of Home Affairs or the Interior were responsible for prisons. In one country both ministries were responsible while in two countries a special Ministry for Prisons and Correctional Services had this responsibility. The relevance of this is the implications it has on the protection of prisoners' rights. It is thought that these rights are better protected under the Ministry of Justice.³⁵ It was also found that while some of the countries had updated some of the legislation dealing with prisons, 11 countries are still using legislation that dates back to the 1970s as far back as the 1950s.³⁶ This means that these countries are operating without the benefit of modern penal practice requirements, and may not have included in their legislation guidelines such as the Standard Minimum Rules for the Treatment of Prisoners and other legal instruments, both universal and regional. Other areas covered included number of staff proportional to number of prisoners and this was found to be 1:3 or less in six countries, and 1: 15 or more in two countries, with most countries averaging 1: 4-6 members of staff to prisoners. The imprisonment levels vary from country to country but the prison population rate tends to be higher in southern African countries and lowest in Central African and West Africa.³⁷ The average population rate was found to be 119 prisoners per 100,000 inhabitants.³⁸ From the survey, Penal Reform International estimate that there are nearly one million prisoners in African prisons, with the number of prisoners varying between 177,000 in South Africa to 500 in Gambia. These prisoners will eventually be released to rejoin the societies they left and the effect of the prison conditions will begin to be felt in those societies in terms of health, increased financial burden in cases of unemployment among other things. Before that, however, higher imprisonment rates have implications on the cost of maintaining the prisoners as well as the logistical obstacles accompanying such rises in prison population.

Overcrowding is one of the persistent problems that plague prisons in Africa. The African Commissions Special Rapporteur on Prisons and Conditions of Detention in Africa consistently found this on their visits to various countries in Africa.³⁹ The situation is confirmed by data received from prison authorities in African countries compiled by Penal

³⁵ Penal Reform International as above 5.

³⁶ Penal Reform International as above.

³⁷ Penal Reform International as above 6.

³⁸ This figure rises to 147 per 100,000 inhabitants when Rwanda is included in the survey because of the unique circumstances faced by Rwandan prisons after the genocide of 1994.

³⁹ See Reports of the Special Rapporteur on Prisons and Conditions of Detention in Africa at <http://www.penalreform.org/english/frset_pub_en.htm> accessed 11 October 2003. The countries visited by the Special Rapporteur and whose reports are available are Benin, Central African Republic, Gambia, Malawi, Mali and Mozambique.

Reform International though in some countries only individual prisons were congested and not all the prisons in the country as a whole.⁴⁰ Overcrowding ranged from 69% to 296% in the countries surveyed.⁴¹ Overcrowding has numerous consequences including the spread of communicable diseases, such as skin diseases, tuberculosis. Other prevalent conditions suffered by prisoners are scabies, gastritis, malaria, and respiratory illnesses, lung infections, as well as STDs, HIV/AIDS, psychiatric illnesses and in some cases such as South Africa cholera, measles and chicken pox.⁴² Overcrowding also means that proper segregation of inmates cannot be effected, thus juveniles are held together with adult inmates, petty offenders with those convicted of more serious offences, and remand inmates with convicted inmates.⁴³ Activities such as sleeping, answering to calls of nature particularly where this is done in the cell are especially uncomfortable and retracting from dignity in these congested circumstances.

Congestion arises for various reasons, for example in Kenya the number of remand prisoners constitutes at least 40% of the prison populations in most prisons.⁴⁴ Most of these remand prisoners are held because they are unable to meet the conditions set for bail. Due to delays in finalizing of their cases remand inmates spend as many as six years awaiting court hearings. This kind of congestion would be avoided if reasonable bail terms were set and the court process expedited. In Egypt the situation is different. Emergency laws in operation allow for the indiscriminate arrests of persons who are then placed under preventive detention ostensibly for investigations to take place. Further prison conditions are deliberately manipulated to coerce detainees into 'confessing'. Detainees are denied food, health care, and communication with their families so that they sign remorse statements.⁴⁵

Prisoners interviewed by the Special Rapporteur complained of inadequate food, clothing, and bedding both in terms of quality and quantity. Toilet facilities were deplorable with inmates sometimes having to use the same bucket as a toilet and to carry water for bathing.⁴⁶ Hygiene and health care was also cited as wanting and in many cases inmates were not attended to by doctors at the prison and they were not taken to hospital due to lack of transport or prohibitive costs and sometimes for lack of enough staff to accompany

⁴⁰ Penal Reform International Directory of Prisons in Africa
<www.penalreform.org/english/frset_theme_en.htm> accessed 11 October 2003.

⁴¹ Penal Reform International (n 34 above) 6.

⁴² Penal Reform International as above.

⁴³ Report of the Special Rapporteur on visit to prisons in Malawi Series IV no.9 at 16, Mozambique (2001) Series IV no.8 at 10, (n39 above).

⁴⁴ Standing Committee on Human Rights, *Special Report on Inspection of Kenyan Prisons* (2002) 41.

⁴⁵ Human Rights Centre for the Assistance of Prisoners *Detention and Detainees in Egypt* (2002) 6.

⁴⁶ Report of the Special Rapporteur on visit to prisons in Malawi (n 43 above) 13.

inmates to hospital.⁴⁷ Incidences of torture, cruel and inhuman treatment were observed such as the use of leg irons in Benin, Gambia and Mali to name a few.⁴⁸

In terms of infrastructure, most prisons were old and poorly maintained such that they flooded and leaked in the rainy season, they afforded insufficient light and ventilation for inmates such that in hot countries the cells became uncomfortably hot, made worse by congestion.⁴⁹ Other physical facilities such as workshops and equipment were also poorly maintained and inadequate. This has implications on the rehabilitation of inmates in preparation for their release.⁵⁰ Visits by family were allowed in prisons but obstacles were placed by guards who demanded money from visiting family before they were allowed to see their relatives held in the prison.⁵¹ Recreational facilities varied with the amount of space available to the prison and security concerns. Pre-trial inmates raised concerns about the length of time it took for their cases to be heard in court resulting in long stays in prison. Special categories of prisoners such as the mothers with children, juvenile offenders and the mentally ill were not accorded treatment suitable to their conditions.⁵²

These are only, in summary, the general problems that plague prisons and prisoners in particular. Prison staff face their own unique difficulties which should not justify their treatment of inmates but partially explain conduct such as extortion of bribes, theft of food supplies meant for inmates and frustration leading to cruel treatment of inmates. Even the most well-meaning prison administrations find their hands tied by the significant deficits between the prison needs and the actual funds received from the governments.

2.3 Conclusion

The origin of prisons examined above serves to illustrate the reasons why prisons came into existence and the current purposes which they serve. The conditions of prisons have been intertwined with the evolving purposes for which prisons are maintained to the present day. A detailed examination of the conditions in African prisons provides an idea as to what issues exactly are of concern to prisoners generally, in addition to giving the African perspective. The interconnection between prison conditions and purposes has led to the move towards a stronger recognition of the human rights of prisoners, which will be examined in the next chapter.

⁴⁷ See Reports of the Special Rapporteur on visit to prisons in Benin (1999) Series IV n6 at 39 and Mozambique (n43 above) 26.

⁴⁸ See Reports on Benin (as above), Gambia (June 1999) Series IV n9 at 24 & 25 and Mali (Nov – Dec 1998) series IV n4 at 22 & 38.

⁴⁹ See Reports on Mozambique (n 43 above) at 9 & 10 and Gambia (as above) at 32

⁵⁰ See Report on Mozambique as above p 42

⁵¹ See for example Reports on Central African Republic (June 2000) Series IV n7 at p32

⁵² See for example Reports on Central African Republic as above and Mozambique (n43 above).

CHAPTER THREE

PRISONERS' RIGHTS

The link between prisons conditions and the dignity of the prisoner and further rehabilitative functions of prisons is the subject of the preceding chapter. This chapter explores the justification and legal basis for the protection of the human rights of prisoners. In examining these aspects it is established what standards states are expected to meet.

3.1 What are prisoners' rights?

Given the closed nature of prisons, sometimes physically, but often in terms of the strict regulation of categories of persons who can obtain access, it is easy for prisoners to become neglected and abused.

As has been observed, prisoners suffer a wide range of violations; some are directly inflicted while others are the result of logistical deficiencies. Prisons in many countries in the world are overcrowded and congested, have decaying infrastructure, lack hygiene and adequate health facilities, and, as a result, prisoners' health and their very lives are in danger. Some of the problems of prisons stem from the reliance on antiquated buildings that serve as prisons but do not take into consideration the increase in the prison population. Budgetary constraints often result in an inadequate allocation to prisons. However, even when budgetary constraints are not at issue, new prisons have been built in such a way as to deprive inmates of human contact, opportunities to exercise, recreation or education.⁵³ This indicates the need to consciously take cognizance of the rights of prisoners.

Some of the greatest threats to prisoners' lives are communicable diseases such as Tuberculosis, the treatment of which is difficult due to the prevalence of multi-drug resistant strains. HIV/AIDS is an epidemic that has spread fast through prisons and detention centers. Most countries report a disproportionately high prevalence of HIV/AIDS in prisons as compared to the general population.⁵⁴

A further threat to prisoners is in regard to physical abuse, which has been documented by different organizations where prisoners are subjected to corporal punishment and torture. Other types of ill-treatment include deprivation or reduction of diet,

⁵³ An example of this is the 'supermax' model of prison in USA, which is being adopted by other countries. In Peru prisons built in remote high altitude areas were declared 'unfit to serve as detention centers by the Inter-American Commission on Human Rights. Human Rights Watch *Human Rights Abuses Against Prisoners* <<http://hrw.org/prisons/abuses.html>> accessed 29 August 2003.

⁵⁴ Human Rights Watch as above.

isolation for extended periods of time, use of leg irons, shackles and chains.⁵⁵ In some countries prisoner-on-prisoner violence has occurred and sexual abuse of prisoners is committed by prison staff or by fellow inmates.⁵⁶

Closer to home, it is evident that some of the most pervasive problems in Africa's prisons are overcrowding, disease, long pre-trial periods, inadequate diet, torture and ill-treatment and neglect of the rights of vulnerable groups such as women and juveniles.⁵⁷ Everyone has the right to *inter alia* life, dignity, freedom from torture, cruel, inhuman and degrading treatment or punishment and the right to the highest attainable state of physical and mental health. Detained persons are not exempted from these requirements.

Prisoner's rights or the human rights of prisoners are, it should be stated, not special rights that accrue to prisoners as such. This is a terminology used to describe:

a penal policy or regime...which respects the prisoner's inherent dignity as a person, recognizes that he does not surrender the law's protection on being imprisoned, and accords procedures and facilities for ensuring that his treatment is at all times just, fair and humane.⁵⁸

The concern is to afford prisoners their dignity as human beings and to treat them as such. Prisoners' rights are the same rights that inhere in every human being. However, due to the special circumstances that prisoners find themselves in and the greater propensity for these rights to be violated, a special effort is made to identify and highlight these rights with a view to ensuring respect rather than neglect or violation.

3.2 Why prisoners' rights?

Imprisonment is considered both utilitarian and retributive and whether and for how long an offender will be imprisoned is a result of weighing of these two factors. It is however understood that the punishment of imprisonment lies primarily in the deprivation of liberty, and that offenders are sent to prison as punishment not for punishment.⁵⁹ This is a severe form of deprivation that needs to be strictly regulated.

⁵⁵ See Human Rights Watch as above, Amnesty International <www.amnesty.org>, Penal Reform International <www.penalreform.org>. These organizations are involved in the continuous monitoring of prison conditions in many countries and various reports include accounts of rampant physical abuse.

⁵⁶ Human Rights Watch (n 53 above).

⁵⁷ See Reports of the African Commissions Special Rapporteur on Prisons and Conditions of Detention in Africa accessed from Penal Reform International <www.penalreform.org> on 31 August 2003.

⁵⁸ Zellick G 'The case for prisoner's rights' in Freeman John C (ed) *Prisons past and future* (1978) 105-121 at 105.

⁵⁹ Sir Alexander Paterson, quoted in Howard & Cornes (n12 above) 5.

Other rights that are limited by virtue of imprisonment, in addition to the right to liberty, are the right to privacy, the freedom of movement, freedom of expression, association and assembly. The limitation of these rights is necessary due to the incapacitation of the offender and for security purposes within the prison, thus they are a necessary and justifiable consequence of deprivation of liberty.⁶⁰ The point to be made is that whereas prisoners' rights were neglected and justified as being typical to prison life, it is now realized that prisoners' rights are an important agenda for prison reforms. Some reformers were originally concerned with prisoners' rights because of the humanitarian element. They saw

the appalling physical conditions directly accelerating the natural corruption of the body through disease and death – while the contamination of young offenders by the old, of the inexperienced by the experienced, accelerated the processes of moral corruption.⁶¹

Arguments for reform from a human rights perspective recognize these deleterious effects of poor prison conditions but lend more weight to the effects because they take away from human dignity and fundamental rights accruing to one by virtue of being human. These arguments emphasize that prisoners are humans and citizens and they do not cease to be this by virtue of being in prison, and therefore should be accorded the same dignity and rights as others, as far as is compatible with the loss of liberty.

In arguing that prison conditions need not be deplorable for the prison to achieve its objective, Nils Christie states that the fact of being in prison is enough shame and pain to constitute punishment without adding the burden of inhumane conditions.⁶² Shaw, in response to opponents of the improvement of prison conditions, states succinctly that no one would live in the best of hotels with all the facilities available if they were deprived the freedom to leave.⁶³ In effect, the deprivation of liberty is enough punishment and sufficient retribution and deterrence.

⁶⁰ Penal Reform International *Making Standards work an international handbook on good prison practice* (2001) 6.

⁶¹ Morris T 'The parlous state of prisons' in Freeman John C (ed) *Prisons past and future* (1978) 81-91 at 81.

⁶² Christie N 'Prisons in Society or Society as a Prison – A conceptual Analysis' in Freeman John C (ed) *Prisons past and future* (1978) 179-187 at 183 The author is a professor of criminology at the University of Oslo, Norway.

⁶³ Shaw (n14 above) 7.

3.3 The legal regime

3.3.1 Universal Instruments

The principle international legal instruments that protect the rights of individuals including prisoners are the International Covenant on Civil and Political Rights (ICCPR) the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).⁶⁴ The conventions that contain explicit reference to detained persons include the ICCPR which in Article 9 guarantees *inter alia* the right to liberty and security of person, and that arrested or detained persons on a criminal charge shall be arraigned promptly and tried within a reasonable time or released with or without conditions. The Human Rights Committee considers 'promptly' to mean that 'delays must not exceed a few days' and 'within reasonable time or release' to mean that '[p]re-trial detention should be an exception and as short as possible'.⁶⁵ This article is particularly important in view of the large numbers of pre-trial detainees held in prisons. Article 10 states that 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. The Human Rights Committee in its General Comment No. 21 has interpreted this provision in the light of detained persons to mean that they may not be subjected to hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be regarded under the same conditions as that for free persons.⁶⁶ The only restrictions that should be imposed are those unavoidable in a closed environment.

The Convention on the Rights of the Child prohibits cruel, inhuman and degrading treatment against children and provides that children should not be detained unless it is a measure of last resort and for the shortest period necessary.⁶⁷ Further, that the detained child shall be treated with humanity and with respect for their inherent human dignity.

The International Convention on the Protection of the Rights of Migrant Workers makes specific reference to the conditions of arrest and detention of migrant workers and their families.⁶⁸ The Geneva Convention relative to the treatment of prisoners of war is also of direct relevance to prisoners though its application is confined to persons detained in connection with situations of armed conflict.⁶⁹

⁶⁴ Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. See Annexure A for selected provisions of universal instruments.

⁶⁵ General Comment 8 Human Rights Committee, Sixteenth session 1982 paras 2 and 3.

⁶⁶ General Comment 21 Human Rights Committee, Forty-fourth sessions, 1992 para3.

⁶⁷ Article 37 of the Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

⁶⁸ Articles 16 & 17 of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Adopted by General Assembly resolution 45/158 of 18 December 1990.

⁶⁹ Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of

Other general provisions in international instruments impact on the human rights of prisoners. Article 7, of the ICCPR prohibits torture or other cruel, inhuman and degrading treatment or punishment. The Human Rights Committee has noted with regard to this provision that it allows no limitation to the right and no derogations.⁷⁰ The prohibition imposed by Article 7 relates to acts that cause either physical pain and mental suffering or both. These acts include corporal punishment and prolonged solitary confinement. The Committee considers the abolition of the death penalty a most desirable objective, but where it is applied it should be for the most serious crimes and carried out in a way that causes the least possible physical and mental suffering.⁷¹ The Committee suggests with regard to the protection of detainees against torture, cruel and inhuman treatment, that rules, methods and practices of interrogation be kept under systematic review and that proper records be kept of detained persons and the places where they are detained and further that the detainees have access to doctors, lawyers and family members.⁷² Victims of torture, cruel inhuman or degrading treatment or punishment are guaranteed an effective remedy and such full rehabilitation as may be possible.⁷³ Other relevant provisions are those on the right to life, and the right to equal protection of the law.⁷⁴

The right to health is an important right with regard to prisons.⁷⁵ The United Nations Committee on Economic Social and Cultural Rights considers it a legal obligation for states not to deny or limit equal access to all persons including prisoners or detainees to preventive, curative and palliative health services.⁷⁶

The CAT seeks to prohibit torture generally. This includes torture of detained persons. Article 11 binds governments to keep under review

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

Other relevant United Nations standards include the Standard Minimum Rules for the

International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949. The Convention sets standards relating to accommodation, food and clothing (Arts 25 – 28), hygiene and medical attention (Arts 29 – 32), religious, intellectual and physical activities (Arts 34 – 38). The Convention also deals with other matters such as the transmission of prisoners' complaints to the authorities (Arts 78 – 81) and discipline including sanctions (Arts 39 – 42 & 82 – 108). The Geneva Protocols I and II relate to the protection of victims in international and non-international armed conflict. Both these Protocols guarantee the humane treatment of persons detained and those who have ceased to take part in hostilities. (Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989).

⁷⁰ General Comment 20 Human Rights Committee para 3

⁷¹ General Comment 20 as above paras 5 & 6.

⁷² General Comment 20 as above para 11.

⁷³ General Comment 20 as above para 15

⁷⁴ Articles 6 & 26 of the ICCPR.

⁷⁵ Article 12 of the ICESCR

⁷⁶ General Comment 14 of the Committee on Economic, Social and Cultural Rights para 36

Treatment of Prisoners (SMR),⁷⁷ the Body of Principals for the Protection of All Persons under Any Form of Detention or Imprisonment⁷⁸, Basic Principles for the Treatment of Prisoners⁷⁹ and the Code of Conduct for Law Enforcement Officials.⁸⁰ These standards are not treaties but they expound on the provisions that are contained in the international covenants.

The best known of these standards are the Standard Minimum Rules (SMR). They are one of the oldest international principles concerning the treatment of people in custody and have gained very wide recognition for their value and influence in the development of penal policy and practice.⁸¹ The standards elaborated on are minimum standards. Indeed in the preambular paragraphs of the SMRs titled preliminary observations it is emphasized that while prison conditions may vary because of geographical, legal, social and economic conditions of the world, effort should however be made to adhere to the minimum conditions accepted by the United Nations and since the field is constantly developing, advancements beyond the minimum are not precluded.⁸² The SMR cover both sentenced prisoners and untried as well as special categories of detained persons such as juveniles, insane and mentally abnormal prisoners amongst others. The guidelines include standards on *inter alia* registration of prisoners, accommodation including space, lighting, heat and ventilation, as well as hygiene, clothing and bedding, food and exercise facilities and medical care.

The other relevant standards are similar to the SMR and they merely reinforce what is contained in the SMR.⁸³ Some differ in that they relate to the specification of the category of prisoners such as juveniles,⁸⁴ or area of concern such as administration of justice⁸⁵ or targeted towards the role of the medical profession in dealing with torture.⁸⁶ The Body of Principles for the Protection of All persons Under Any Form of Detention or Imprisonment

⁷⁷ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva 1955 and approved by the Economic and Social Council by resolution 663 C (XXIV) 31 July 1957 and 2076 (LXII) 13 May 1977. See Appendix B for full text.

⁷⁸ Adopted by General Assembly resolution 43/173 of 9 December 1988.

⁷⁹ Adopted by General Assembly Resolution 45/111 of 14 December 1990.

⁸⁰ Adopted by the General Assembly resolution 34/169 of 17 December 1979. Other relevant standards are contained in the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Code of Conduct for Law Enforcement Officials, United Nations Rules for the Protection of Juveniles deprived of their liberty.

⁸¹ Penal Reform International (n60 above) 7.

⁸² SMR Preliminary Observations para 2 and 3.

⁸³ Basic Principles for the Treatment of Prisoners (n79 above).

⁸⁴ United Nations Rules for the Protection of Juveniles Deprived of their Liberty adopted by General Assembly resolution 45/113 of 14 December 1990.

⁸⁵ Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the prevention of crime and treatment of offenders 27 August –7 September 1990.

⁸⁶ Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by General Assembly Resolution 37/194 of 18 December 1982.

mainly protects imprisoned and detained persons against violation of their physical integrity.⁸⁷

They provide rules on such safeguards as, *inter alia*, the absolute prohibition of torture without discrimination, how arrest should be carried out, and access to legal assistance, availability of a complaints mechanism for prisoners and detainees, and the independent inspections of prisons. Principles specifically addressed to the medical profession seek to prohibit the engagement or complicity of members of the medical profession in acts that would constitute torture, inhuman and degrading punishment or treatment.⁸⁸ The protection of juveniles as a vulnerable category of offenders is catered for by the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.⁸⁹ Juveniles are to be imprisoned as a last resort and the Rules provide the minimum standards that should be employed in this eventuality. As with all other rights, those sought to be protected by these Rules apply without discrimination. These Rules provide for conditions of detention that ensure respect for the human rights of juveniles and emphasis is placed on activities that will ensure successful reintegration into society upon release. It is recommended that pre-trial juveniles should not be incarcerated, but where they are, trials should be expedited and the attendant rights duly respected. General conditions such as food, accommodation, sanitation are also provided for.⁹⁰

Prisoners' concerns are catered for mainly by use of general provisions in legal instruments. There does not exist an international convention that imposes binding obligations on states specifically regarding prisoners. The SMR and other standards are only guidelines, though they have the backing of states as most have been adopted by the United Nations General Assembly.

3.3.2 African Instruments

At the regional level, the African Charter on the Rights and Welfare of the Child seeks *inter alia*, to protect the child against torture and ill treatment. It is the only instrument that makes explicit reference to the rights of persons in detention. States are to ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment and that the child is separated from adults in the place of detention.⁹¹ The right to a speedy trial is also enshrined in the treaty.⁹²

The 1981 African Charter on Human and Peoples' Rights (The Charter) like the universal instruments sets out fundamental rights and freedoms that apply to individuals in

⁸⁷ See n78 above.

⁸⁸ See n61 above.

⁸⁹ See n86 above.

⁹⁰ Articles 31 – 37 of the UN Rules for the Protection of Juveniles Deprived of their Liberty.

⁹¹ Article 17 (2) (a) and (b) of the African Charter on the Rights and Welfare of the Child.

general regardless of their status. The Charter declares that 'every individual shall have the right to the respect of their human dignity and all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'.⁹³ The Charter also protects the right to life and integrity of person, the right to liberty and security of person whereby deprivation of liberty should be according to previously laid down laws; and the right to enjoy the best attainable state of physical and mental health.⁹⁴ All persons are guaranteed equality before the law and the right to fair trial including the right to be heard in ones cause.⁹⁵ It is said to comprise *inter alia* the right to an appeal to competent national organs against acts of violating fundamental rights as recognized and guaranteed by conventions, laws regulations and customs in force.⁹⁶ This provision is particularly relevant for pre-trial detainees who may have spent a long time in prison without having their trials being conducted.

The Kampala Declaration on Prison Conditions in Africa arose out of an international seminar on prison conditions in Africa held in September 1996 in Kampala.⁹⁷ The seminar was attended by members of the African Commission on Human and Peoples' Rights, Ministers of State, prison commissioners, judges, international, regional and national NGOs and Inter-Governmental Organizations (IGOs). The Declaration was subsequently annexed to a resolution by the United Nations Economic and Social Council, which called for the co-operation of states, the United Nations and intergovernmental organizations in the improvement of prison conditions in Africa.⁹⁸ By doing so, the UN recognized and lent its weight to the efforts to improve penal conditions in Africa. The Kampala Declaration recommends action be taken by states and non governmental organizations on four fronts, prison conditions, remand prisoners, prison staff and alternative sentencing. The Declaration recommends:

That the human rights of prisoners should be safeguarded at all times...; that prisoners should retain all rights which are not expressly taken away by the fact of their detention; that conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by the loss of liberty; that the

⁹² Article 17(2)(c)(iv) of the African Charter on the Rights and Welfare of the Child.

⁹³ Article 5 of the African Charter on Human and Peoples' Rights. Comparable provisions are to be found in other regional instruments such as the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, Inter- American Convention to Prevent and Punish Torture, European Convention for the Protection of Human Rights and Fundamental Freedoms Art 3, and the American Convention on Human Rights Art 5 <www.cpt.coe.int/en/docsref.htm> accessed 18 October 2003.

⁹⁴ Articles 4, 6 & 16 of the African Charter on Human and Peoples' Rights.

⁹⁵ Articles 3 & 7 of the African Charter on Human and Peoples' Rights.

⁹⁶ Article 7 (1)(a) of the African Charter on Human and Peoples' Rights.

⁹⁷ Kampala Declaration on Prison Conditions in Africa accessed at <www.un.org/documents/ecosoc/res/1997/eres1997-36.htm> on 15 September 2003 See Annexure C for full text.

⁹⁸ International Cooperation for the Improvement of Prison Conditions United Nations Resolution 1997/36 adopted on 21 July 1997 at <www.un.org/documents/ecosoc/res/1997/eres1997-36.htm> accessed on 15 September 2003.

detrimental effects of imprisonment should be minimized so that prisoners do not lose their self-respect and sense of personal responsibility...⁹⁹

Remand prisoners are recognized as a category with a great proportion of inmates in African prisons. The police, prosecuting authorities and judiciary are encouraged to recognize their contribution to conditions such as overcrowding in prisons and therefore work in concert with prison officials to alleviate these problems. Prison staff are key to any action intended to be taken in prisons. Their working conditions are an important area of consideration. Imprisonment is recognized as a less than effective method of rehabilitating offenders particularly those sentenced to short terms. States are encouraged to adopt other sentencing policies, particularly non-custodial sentences like community service.

The second Pan African Conference on Prison and Penal Reform held in Burkina Faso in 2002 produced the Ouagadougou Declaration.¹⁰⁰ This Declaration recognized that progress had been made on the recommendations of the Kampala Declaration and reiterated the need to reduce prison populations. The conference encouraged prisons to be self-sufficient without absolving the state from its responsibility to ensure that minimum standards are maintained. Further, that the rule of law should prevail within the prison administration and efforts should be made to implement the best practices in penal reform. The Conference proposed the drafting of an African charter on prisoners' rights as well as a United Nations charter on the basic rights of prisoners as an important step towards improving the respect for prisoners' rights.

3.3.3 Domestic Instruments

At the domestic level, constitutions or bills of rights found in constitutions are often times where fundamental rights and freedoms are enshrined. In most constitutions provisions prohibiting torture inhuman and degrading treatment or punishment and fair trial guarantees to some extent have provided relief to prisoners in deplorable conditions. Some constitutions such as those of Egypt, Ethiopia, Gabon and Togo provide for an omnibus provision requiring the preservation of the human dignity of detained persons.¹⁰¹ Article 16 of the Constitution of Togo recognizes the significance of dignity and the rehabilitative purposes of imprisonment.

Every person who is imprisoned or confined shall nonetheless be treated in a manner that preserves his dignity and physical and mental well-being, and which shall help with his re-admittance to society.

⁹⁹ Kampala Declaration (n97 above) at Prison Conditions paras 1-2 & 4-5.

¹⁰⁰ The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa, September 2002 <www.peanlreform.org/english/pana_declaration.htm> accessed 15 September 2003. See Appendix D for full text.

¹⁰¹ Article 42 of the Constitution of Egypt, Article 21 of the Ethiopian Constitution, Article 1of the Constitution of Gabon and Article16 of the Constitution of Gabon.

The Constitution of the Republic of Seychelles provides for the separation of different categories of prisoners, non-convicted from convicted, men from women and juveniles from adults.¹⁰² The South African Constitution makes specific reference to the aspects of the rights of prisoners that require protection.¹⁰³ In addition to the usual fair trial guarantees, prisoners are guaranteed the conditions of detention are consistent with human dignity, including adequate accommodation, nutrition, reading material and medical treatment among other things.

3.4 Conclusion

The human rights of prisoners are no different from those of other individuals. They however, require special attention because of the nature of general inaccessibility of prisons. As such prisoners have the right to life and integrity of person; the right to be free from torture or other ill-treatment; the right to health; the right to respect for human dignity; the right to due process of law; the right to freedom from discrimination of any kind; the right to freedom from slavery; the right to freedom of conscience and of thought; the right to freedom of religion; the right to respect for family life and the right to self-development.¹⁰⁴ The only restrictions that can be placed on these rights are those directly and necessarily resulting from incarceration. These rights have a direct impact on the conditions in which prisoners are held and how prisons are run. Prisoners' rights are recognized at the international and regional level by treaties and soft law standards that elaborate the treaty guarantees in the context of detained persons. At the domestic level, a few constitutions make specific mention of prisoners and their constitutions, but the ones that do emphasize on the respect for the human dignity of persons in detention. The challenge is to make real and practical these rights in the lives of detained persons. The next chapter examines a category of institutions that can be instrumental in the monitoring the implementation of the human rights of prisoners.

CHAPTER FOUR NATIONAL HUMAN RIGHTS INSTITUTIONS

The legal standards relating to the rights of prisoners can be found at the universal, regional and domestic level to varying degrees. Yet these standards are relevant to all

¹⁰² Article 17 of the Constitution of Seychelles.

¹⁰³ Article 35 South African Constitution.

¹⁰⁴ Penal Reform International (n60 above) at 5.

prisoners at the domestic level. The challenge faced is to translate the legal provisions into tangible benefits on the ground. National human rights institutions are becoming a common feature on the human rights landscape, as more and more of them are established by states. There are various reasons for their establishment and each one identifies its competencies from the founding document or legislation. There are, however, common objectives sought by the institutions regardless of the state in which they are established, the promotion and protection of human rights, and certain basic features that should ideally characterize these institutions in order for them to be effective. This chapter examines in detail what these institutions are, why they are established and these ideal characteristics that make for better domestic implementation of human rights.

4.1 What are National Human Rights Institutions?

There is no universally agreed on definition for a 'national human rights institution' (NHRI).¹⁰⁵ The UN describes these institutions as 'bod[ies] whose functions are specifically defined in terms of the promotion and protection of human rights'.¹⁰⁶ Such entities are established by a government under the constitution or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights.¹⁰⁷ To further distinguish these specialized institutions from other institutions that promote and protect human rights, other characteristics can be identified.¹⁰⁸ NHRIs are administrative in nature, in the sense that they are not judicial or law making and have advisory authority in respect to human rights at the national and/or international level.¹⁰⁹ Despite the fact that they are attached to the executive branch of government, these institutions are ideally meant to maintain a level of independence that will enable them discharge their functions impartially.

National institutions differ depending on the needs and circumstances in each state. However, these institutions may be categorized as either national human rights commissions or ombudsman institutions.¹¹⁰ Human rights commissions are expressly mandated to protect and promote human rights as opposed to the ombudsman office which is not directly concerned with human rights except in so far as there exists a nexus with their function of

¹⁰⁵ UN Centre for Human Rights *National Human Rights Institutions: A handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights* (hereinafter UN Handbook) (1995) para 36.

¹⁰⁶ UN Fact Sheet No 19 National Institutions for the Promotion and Protection of Human Rights <<http://www.unhchr.ch/html/menu6/2/fs19.htm#what>> accessed 26 September 2003.

¹⁰⁷ UN Handbook (n105 above) para 39.

¹⁰⁸ UN Fact Sheet (n106 above).

¹⁰⁹ UN Fact Sheet as above.

¹¹⁰ The UN recognizes these two categories (see n106 above). However there exist hybrid institutions such as the human rights ombudsman and ombudsman offices with an anti-corruption element. See Reif L C 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection' (2000) 13 *Harvard Human Rights Journal* 6.

overseeing fairness and legality of administrative action. The ombudsman's task is to protect the rights of those who see themselves as aggrieved by government administrative action. The powers and functions of the two institutions are different, for example, human rights commissions unlike ombudsman's offices have a promotional mandate, which involves raising the level of awareness on human rights and inculcating a culture that upholds and defends human rights.¹¹¹ The ombudsman's office principally focuses on complaints against public entities and officials while commissions would typically focus on violations of rights regardless of whether the alleged perpetrators are private or public. Their jurisdictions will sometimes overlap where issues of fairness and legality are intertwined with fundamental rights. In such instances one institution may find itself playing the role of the other. As a result of this eventuality, hybrid institutions have arisen, mandated to perform both the roles of the ombudsman and the human rights commission.¹¹²

In practice therefore it is difficult to use hard and fast rules to define and categorize national institutions because of the wide disparity that exists among these institutions. This dissertation will display a bias towards human rights commissions simply because their mandate is to protect and promote human rights, which function is incidental to the ombudsman's office, and which also, lacks a promotional function.

4.2 Why National Human Rights Institutions?

The idea of national human rights institutions goes back to 1946, when the Economic and Social Council ECOSOC began to discuss the matter.¹¹³ At the time, Member States were to consider forming 'information groups or local human rights committees [...] to collaborate [...] in furthering the work of the Commission on Human Rights'¹¹⁴ In 1960 ECOSOC adopted a resolution which encouraged the establishment of these institutions.¹¹⁵ A seminar held in 1978 organized by the Commission on Human Rights formulated guidelines as to the functions and structure of such national institutions.

The Commission guidelines were subsequently improved upon at a workshop convened in 1991 resulting in The Principles Relating to the Status of National Institutions otherwise known as the 'Paris Principles'.¹¹⁶ The 1993 Vienna Declaration and Program of

¹¹¹ UN Handbook (n105 above) para 140.

¹¹² The International Council on Human Rights Policy (n10 above) in addition recognizes as a type of national institution national anti-discrimination commissions and *Defensor del Pueblo* adopted in Latin America, which are a variant of the ombudsman. See page 4.

¹¹³ UN Handbook (n105 above) at para 20. This does not include the classical ombudsman's office, which has its origins in Sweden in the 18th Century.

¹¹⁴ ECOSOC Resolution 2/9 of June 1946 section 5.

¹¹⁵ ECOSOC Resolution 772B (XXX) of 25 July 1960.

¹¹⁶ First International Workshop on National Institutions for the Promotion and Protection of Human Rights. The Principles Relating to the Status of National Institutions General Assembly Resolution 48/134 of 20 December 1993. See Annexure E for full text.

Action resulting from the World Conference on Human Rights further recommended the establishment and strengthening, by states of national institutions, encouraged cooperation between national institutions as well as with regional bodies and the UN.¹¹⁷

During the 1980s, national institutions began to be established in Africa, for instance the Togolese *Commission Nationale des Droits de l'Homme* (1987) and the *Commission Beninoise des Droits de l'Homme* in Benin (1989). By the beginning of 2000 twenty-four states had provisions of law to establish national institutions. In addition to the two above, Algeria, Benin, Cameroon, Central African Republic, Chad, Ethiopia, Ghana, Kenya, Liberia, Malawi, Mali, Mauritania, Morocco, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Togo, Tunisia, Uganda, and Zambia had established their institutions. Ethiopia and Mali were at the time yet to establish theirs.¹¹⁸ Since then Tanzania has established a human rights commission, and Egypt and Congo have in 2003 enacted legislation that will lead to the establishment of these institutions.¹¹⁹ The Kenya National Human Rights Commission Act was passed in 2003 establishing the commission that took over from the Standing Committee on Human Rights, which had been established by presidential decree. From the increase, since the 1980s, of national institutions and the recognition accorded to these institutions by states, it can be surmised that NHRIs are perceived to have a great role to play in the enjoyment of human rights at the domestic level. These institutions are seen as a 'critical safeguard to ensure that people obtain recourse and redress in the face of injustice'.¹²⁰

There are various means by which rights can be protected, but the primary method for the enforcement of rights is the judicial system. The strength of a judicial system is that courts will often elaborate on the content of rights, and lay down standards for future conduct, as well as deliberate on individuals' cases when they are seized of the matter. It is not within the mandate of courts however, to carry out educational and promotional activities; neither can courts, particularly in common law jurisdictions, investigate and resolve complaints of violations of rights on their own initiative. Courts cannot involve themselves in cases that they are not seized of and, rights are not adequately provided for in domestic legislation, there might be no redress to be obtained from courts. Courts might not be able to use international law where treaties have not been incorporated into national law. Where NHRIs possess a broad mandate that encompasses human rights in the international arena, they have the flexibility and potential to look to international norms for inspiration when

¹¹⁷ Vienna Declaration and Programme of Action Part E paras 83 –86
<[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)> accessed on 26 September 2003.

¹¹⁸ Human Rights Watch (n7 above)2. Offices of the Ombudsman have been established in Mauritius, Zambia, Nigeria, Zimbabwe, Uganda, Namibia, The Seychelles, Malawi, South Africa.

¹¹⁹ See News items on the National Human Rights Forum website <http://www.nhri.net/news.htm> accessed on 25 October 2003.

resolving complaints that might otherwise not be addressed by courts.¹²¹ Other means of protecting human rights are through administrative tribunals, public inquiries and by members of parliament.¹²² These however have disadvantages such as *inter alia* the delays in establishment and lack of political will in the case of public inquiries, lack of time and/or willingness to investigate and fear of adverse publicity on the part of the members of parliament. Non-governmental organizations also have a role to play, as they are able to achieve some amount of compliance from the government through activism, lobbying and highlighting issues. They, however, do not possess statutory powers to obtain cooperation from the government in order to carry out investigations, or to advise the government on law and policy on human rights.

The role of national Governments in the realization of human rights is particularly important. Human rights involve relationships among individuals, and between individuals and the State. Therefore, the practical task of protecting and promoting human rights is primarily a national one, for which each State must be responsible. At the national level, rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions. In addition, the most effective education and information campaigns are likely to be those which are designed and carried out at the national or local level and which take the local cultural and traditional context into account.¹²³

There exists, therefore, a niche that national institutions do fill. The tasks they carry out and the way in which they are established makes this evident. These institutions are complementary to existing mechanisms; they do not seek to replace them. It is envisioned that these institutions will facilitate better enjoyment of human rights at the local level, precisely because they should be a central element in the overall institutional framework for the protection and promotion of human rights. Their role is, in part, to pressure other governmental bodies to uphold their responsibilities with regard to promotion and protection of human rights.

The African Charter on Human and Peoples' Rights makes provision for national institutions in the following words:

State parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.¹²⁴

NHRIs in the African context have been established as a genuine attempt to improve the human rights situation, but also, in some cases, simply to give the impression that states are committed to respecting the rights of their citizens without actually protecting those

¹²⁰ Human Rights Watch (n 7 above) 80.

¹²¹ See Burdekin B Human Rights Commissions in K Hossain et al (eds) *Human Rights Commissions and Ombudsman Offices*, 801 – 834 at 807. The author discusses the advantages of endowing a national institution with a jurisdiction that covers international human rights standards.

¹²² Human Rights Unit Commonwealth Secretariat *National Human Rights Institutions Manual* (1993) 8.

¹²³ Un Fact Sheet (n106 above).

rights. For example, human rights institutions have been established in societies in transition to protect against the return to past abuses and injustices, such as in South Africa and Malawi. In countries with a poor human rights record, they are established due to pressure and to appear to be doing something about the human rights abuses for example in Nigeria, Cameroon, Togo and Zambia.¹²⁵ In some cases, national institutions have been an integral part of maintaining peace in war-torn societies, such that the establishment of the institutions is included in peace agreements. The Lome Peace Accords agreed between the warring factions in Sierra Leone provided for the establishment of a human rights commission among other institutions for the peaceful governance of the country.¹²⁶ The *Commission Nationale des Droits de l'Homme* in Rwanda owes its origins to the Arusha Accords of 1993 though the commission was not established until 1999.¹²⁷

In addition to playing a role in peace, it has been argued that national institutions have a role to play in the democratic governance of countries.¹²⁸ Effective protection of human rights is one among the practices that together constitute good governance, whose core principles are participation, accountability, and fairness.¹²⁹ These principles can be achieved with the help of national institutions. The effective protection and promotion of human rights is an end in itself, but it is also a part of the larger process of effective management of a state. As such, national institutions though often viewed from the perspective of inculcating a human rights culture, should also be seen as part of the bigger picture as making a significant contribution to the good governance of a state.

4.3 Structure and competencies of national institutions

The Paris Principles set out broad guidelines on how national institutions should be organized and function. The Principles are not binding on states wishing to establish national institutions as, ultimately, the institution should be able to address the specific needs of situations of the individual country.¹³⁰ The UN Center for Human Rights has subsequently expanded upon these Principles. They have emerged as the focal point from which inspiration is drawn when establishing new NHRIs and studies have been conducted to

¹²⁴ Article 26 of the African Charter on Human and Peoples' Rights.
¹²⁵ See International Council on Human Rights Policy (n 6 above) 58-59.
¹²⁶ See Reif L C (n110 above) at 13-14.
¹²⁷ Human Rights Watch (n7 above) 249.
¹²⁸ Reif L C (n110 above) 18.
¹²⁹ United Nations Development Programme (UNDP). See Reif L C above.
¹³⁰ Vienna Declaration (n117 above) at Part 1 para 30.

examine how existing institutions have interpreted and applied (or not applied) these guidelines.¹³¹ The key elements identified by the UN National Human Rights Institutions Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights (UN Handbook), that affect the efficiency and delivery of national institutions will be briefly examined below.

4.3.1 Independence

National institutions are judged to be independent depending on how they are established, financed, and their membership.¹³² It is recommended that national institutions be established by law, indeed this is one of the distinguishing factors between these institutions and others that protect and promote human rights such as civil society organizations.¹³³ It is preferable that national institutions are entrenched in the constitution of a country or that they are established by law rather than by decree. The value of this is that the institution will not be easily disbanded. The law should provide the national institution 'separate and distinct legal personality of a nature which will permit it to exercise independent decision-making power'.¹³⁴ Independence of a national institution does not necessarily mean total lack of connection with the state; rather it means independence from interference, obstruction or control by the government, or any public or private entity. Funding and financial autonomy goes to the heart of the independence of an institution, as such the source and disbursement of funds should be free of conflict or potential conflict of interest.

Of the human rights commissions studied by Human Rights Watch,¹³⁵ those of Ethiopia, Ghana, Malawi, Niger, South Africa, Togo, Uganda and Zambia are established by their respective state constitutions as well as enabling subsidiary legislation. Benin, Chad, Liberia, Rwanda, Senegal Sierra Leone and Kenya and Tanzania are established by legislature while Algeria, Cameroon, Central African Republic, Mali, Mauritania, Sudan and

¹³¹ National Human Rights Institutions: A handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights (UN Handbook) n105 above. The Commonwealth Secretariat Human Rights Unit's Manual on human rights institutions provides practical information on the establishment and functioning of these institutions. Human Rights Watch Protectors or Pretenders (n7 above) reports on a survey of national human rights commissions in Africa and how effective they are in the protection and promotion of human rights in their countries. Other assessments relate to individual commissions, see for example Okafor O C and Agbakwa S C 'On Legalism, Popular Agency and "Voices of Suffering": The Nigerian National Human Rights Commission in Context' (2002) 24 *Human Rights Quarterly* 662-720, Gomez M 'Sri Lanka's New Human Rights Commission' (1998) 20 *Human Rights Quarterly* 281-302, Azzam F S 'Update: The Palestinian Independent Commission for Citizens' Rights' (1998) 20 *Human Rights Quarterly* 338-347. All these publications use the Paris Principles as a reference point to evaluate the characteristics of the national institutions.

¹³² See the Paris Principles (n116 above) and UN Handbook (n 105 above) para 68 – 85.

¹³³ UN Handbook as above para 38 & 68.

¹³⁴ UN Handbook as above at para 70.

¹³⁵ Human Rights Watch (n7 above) 395.

Tunisia are established by Presidential, Prime Ministerial or Council of Ministers Decree. Morocco and Nigeria are established by royal and military decree respectively.

'Any institution can only ever be as independent as the individuals of which it is composed'.¹³⁶ The membership of a national institution determines how the independence guaranteed on paper is translated into practice. It is therefore important who is appointed, how they are appointed, for how long and how and why they leave the position. The answers to these questions ensures that qualified, capable people who represent diverse interests in society are chosen, and that they are sufficiently secure in their positions to take all necessary steps to achieve the institutions objectives, regardless of the popularity of such action with the authorities. The appointment process is important especially with regard to how inclusive this process is. Appointments controlled by parliament can lead to the domination of the process by one political party in exercise of political power.¹³⁷ To get around this problem, an independent panel may be established to receive nominations from candidates, perform interviews and recommend for appointment.¹³⁸ The Commission in Benin has been singled out as the most diverse and independent of all the commissions in Africa because of its members who represent diverse interests in society and because appointments are made without direct government involvement.¹³⁹ The Ghanaian Commission on the other hand, has a single commissioner and two deputies who are appointed by the President on advice of the Council of State, a non-partisan body of elder stateswomen and men.¹⁴⁰ The Kenyan National Commission on Human Rights Act provides that a list of potential appointees be made by the National Assembly after receiving applications and/or nominations from the general public and interviewing the applicants/nominees.¹⁴¹

4.3.2 Functions

The founding legislation needs to set out the functions and mandate to be possessed by the national institution. A definite mandate presupposes detailed consideration of priorities and how these priorities could be constructively met; the mandate will also determine what the focus of the institutions will be, government and public bodies or private

¹³⁶ UN Handbook (n105 above) at para 77.

¹³⁷ Sarkin J 'Reviewing and Reformulating Appointment Processes to Constitutional (Chapter Nine) Structures' (1999) 15 *South African Journal of Human Rights* 610. The author examines the process that characterized appointments to national institutions in South Africa and whether the institutions were perceived as independent thereafter.

¹³⁸ Sarkin J as above 611.

¹³⁹ Human Rights Watch (n7 above) 100.

¹⁴⁰ Article 216 and 217 of the Ghanaian Constitution.

¹⁴¹ Article 6 of the Kenya National Commission on Human Rights Act 2003.

entities as well. The result should be an institution structured to adequately meet the demands of its clients.¹⁴²

The Paris Principles recommend that national institutions should *inter alia* advise the government, parliament or any competent body on legislative and administrative provisions and their conformity to international standards, on any situation of violation of human rights which it decides to take up, they should prepare reports on the national human rights situation, and draw the attention of the government on situations of violations while making recommendations as to how to resolve the situation. National institutions should also ensure harmonization of legislation and practice with international human rights, encourage ratification of these international instruments, contribute to country reports to UN and regional bodies and committees, to network and cooperate with other relevant organizations at the local, regional and international level and participate in research and education of human rights.¹⁴³

In addition institutions may also have powers to investigate, which are arguably the most important powers afforded them.¹⁴⁴ In Africa, there are institutions with only promotional and advisory mandate such as the Mauritanian *Association Mauritanienne des Droits de l'Homme* and at the other end of the spectrum the Ugandan Human Rights Commission with quasi-judicial powers to enforce its decisions.¹⁴⁵ In the latter case it is necessary for the powers to be so clearly set out as to avoid duplication and/or conflict of jurisdiction with judicial organs of government. To obviate this eventuality the Uganda Commission is prohibited from dealing with cases pending before the courts or judicial tribunal.¹⁴⁶ Where there is more than one national institution in a country dealing with human rights, such as a human rights commission, ombudsman's office or a specialized commission dealing with a single issue such as a gender commission the potential for conflict of interest increases. Increased cooperation amongst these institutions will reduce the incidence of conflict and duplication of efforts while increasing the efficient handling of issues. It cannot be overstated that a national institution should be endowed with adequate powers to carry out its mandate, otherwise it will be unable to achieve its aims.

¹⁴² UN Handbook (n105 above) paras 86 –90.

¹⁴³ Paris Principles (n 116 above) Competence and Responsibilities para 3.

¹⁴⁴ See Reif L C (n 110 above) at p 24. The fact that the investigation of individual complaints is an optional requirement according to the Paris Principles raises criticism from this author. Compare however with Okafor O C and Agbakwa S C (n131 above), who argue that there is too much emphasis on 'court-like' functions such as hearing complaints and ordering enforcement, as opposed to the promotional functions such as education, investigations and policy advice.

¹⁴⁵ Human Rights Watch (n7 above).

¹⁴⁶ Constitution of the Republic of Uganda (1995) Article 53.

4.3.3 Accessibility

Accessibility implies that the national institutions clients are able to contact it. Factors that affect accessibility include visibility of the organization, perceived legitimacy, awareness of its existence and its functions, physical accessibility and the perceived representative capacity of the organization. Accessibility is also crucial to the achievements of the national institution. Accessibility means that special groups of people who might still not access the institution when all factors are held constant are considered and their needs taken into consideration. Prisoners are such a group. They may be aware of the institution and the work it does but may be unable to get their complaints through to the institution.

The Commission on Human Rights and Administrative Justice in Ghana has interpreted accessibility to mean opening regional offices in all ten regions of the country and in 39 out of 110 districts.¹⁴⁷ Other endeavors that are targeted towards accessibility to the services of NHRIs by the people who need them are public awareness programs. These are part of the promotional mandate of all national institutions and serve as a starting point from which the general public is made aware of the existence of the institution and its functions and capabilities. The Commission in Cameroon soon after establishment toured the country making its existence and mandate known to the public.¹⁴⁸ The Nigerian Commission's efforts to achieve accessibility include use of publications, radio and television, public lectures and human rights training.¹⁴⁹

4.3.4 Cooperation

This element of national institutions arises from the fact that national institutions are only one unit in a larger framework whose ultimate goal is to improve the human rights situation within the state. The institution has its strengths and weaknesses that compliment or are complemented by the strength and weaknesses of other institutions, all of which efforts form a strong mesh of initiatives targeted at creating a strong culture for the respect of human rights. National institutions should therefore work together with governmental agencies, bearing in mind the formers independence, and with non-governmental organizations (NGOs), other national institutions and intergovernmental organizations.¹⁵⁰

The cooperation with governmental agencies entails working for example with the judiciary, police, prisons and other government departments whose functions have an impact on human rights, in the nature of training, enforcement of national institutions decisions,

¹⁴⁷ Short E F 'The Development and Growth of Human Rights Commissions in Africa – The Ghanaian Experience' in Hossain K et al (eds) *Human Rights Commissions and Ombudsman Offices*, (2001) 187-210 at 190.

¹⁴⁸ Gwei S N 'The Cameroon Experience in Creating and Running a National Commission for the Promotion and Protection of Human Rights' in Hossain K et al. (eds) (n 147 above) 169 – 185 at 174.

¹⁴⁹ Tabiu M 'National Human Rights Commission of Nigeria' in Hossain K et al. (eds) (n 147 above) 553-559 at 559

monitoring the implementation of recommendations, advise on policy to name a few. NGOs can increase the visibility of the national institution, bring to the institutions attention situations of violations of human rights as well as referring individual complainants to the institution and provide specialized skills and knowledge acquired from operating in a particular field or geographical area of the country.

Interaction amongst national institutions from different countries and regions enhances the spread of best practices. National institutions share the same broad objectives. Though the political, social, cultural and economic realities may differ in different countries, it is through sharing experiences that institutions can draw inspiration from practices that have worked elsewhere, can improve the flow of information and ultimately influence the level of human rights awareness and observance in the region.¹⁵¹

Collaboration with intergovernmental organizations helps national institutions tap into the expertise available as well as resources, both technical and financial. The UN has been instrumental in its formulation of the parameters within which national institutions might be established; indeed so far these guidelines are heavily relied upon in assessing the effectiveness of the already established institutions.¹⁵² The UN has gone further and provided technical and financial support to countries wishing to establish national institutions, by providing information, expert advice, and funding seminars and workshops in diverse countries including Burundi, Kenya, Nigeria, Rwanda, Sierra Leone, South Africa and Uganda in Africa.¹⁵³

The Act establishing the Malawi Human Rights Commission makes it a responsibility of the commission to co-operate with agencies of the United Nations, African Union, Commonwealth and other countries in the area of promotion and protection of human rights. Further, that the commission should develop working relationships with NGOs devoted to protecting and promoting human rights.¹⁵⁴ Similar provisions are made in the founding documents of Nigeria and Kenya.¹⁵⁵

¹⁵⁰ UN Handbook (n105 above) paras 106 – 118.

¹⁵¹ An International Coordinating Committee for national human rights institutions for the promotion and protection of human rights was established at the Second International Workshop on National Institutions held in Tunis in 1993. There exist at the regional level initiatives that bring together national human rights institutions such as the various conferences held for African national human rights institutions, the most recent one having been convened in Kampala Uganda in August 2002 See < <http://www.nhri.net/Africa.htm> > accessed on 27 September 2003.

¹⁵² In Okafor O C and Agbakwa S C (n131 above) the authors conclude after surveying literature on the subject of national institutions, that the Paris Principles inform most writers conceptualization of national institutions. The authors themselves affirm the efficacy of the guidelines, though they fault the practice of emphasizing 'court-like' features of institutions rather than the 'non-court-like' functions.

¹⁵³ UN Report of the Secretary-General National Institutions for the promotion and protection of human rights. August 2001 A/56/255.

¹⁵⁴ Sec 14(h) and 15(e) & (f) of the Malawi Human Rights Commission Act 1998.

¹⁵⁵ Sec 5(g) of the National Human Rights Commission Decree 1995, Sec 16(g) Kenya National Commission on Human Rights Act 2002.

4.3.5 Operational Efficiency

Operational efficiency touches on the working methods of an institution, the quality and quantity of staff, adequacy of resources and whether reviews and evaluations are undertaken to identify problem areas. If a national institution engages in excessive bureaucracy, or is not timely in its address of situations of violations arising because of its working methods, it will lose credibility as well as clients. Lack of suitably qualified staff or an inadequate number of personnel impacts on the quality and scope of work, timeliness and general efficiency. Closely linked to this is inadequacy of resources be they financial, structural or human resources. The end result is an institution that is or is perceived to be without impact on the human rights plane because it is not as effective as it could be. Most African human rights commissions suffer from lack of adequate funding, whether as a result of the economic conditions in their countries or the withholding of state funds by the government.¹⁵⁶

4.3.6 Accountability

This element is closely linked with the legitimacy an institution can acquire both with the government and with the public at large. Accountability is ensured by requirements to produce reports within a stipulated time, covering defined issues, though with the possibility of ad hoc special reports, and also the level of scrutiny accorded these reports. Reports should be published within a reasonable time and though directed to a body such as parliament, should be widely disseminated both for accountability and public awareness. There are different policies that govern how reports will be dealt with. Some commissions do not publicize their reports and instead present them confidentially to the president.¹⁵⁷ Legislation founding the Nigerian Commission empowers it to publish its reports, while those of the South Africa, Uganda Ghana and Malawi Commissions provide for the reports to be presented to Parliament.¹⁵⁸

4.4 Conclusion

National institutions are specially designed to be flexible in their operations in order to reach a larger constituency than the traditional institutions that protect human rights at the domestic level. Their autonomy enables them to objectively examine the human rights situation work towards improving it with little fear of reprisal. These two features together

¹⁵⁶ See Human Rights Watch (n7 above) 21.

¹⁵⁷ See Human Rights Watch (n7 above) 118 & 178 Cameroon's commission and Kenya's then Standing Committee on Human Rights initially did not make public its reports but decisions were subsequently taken to do so.

¹⁵⁸ Sec 5(e) of the Nigerian National Human Rights Commission Decree 1995, Sec 15(2) of the South African Human rights Commission Act, Sec 52(2) of the Ugandan Constitution, Sec 218(g) of the Constitution of Ghana, Sec 37 of the Human Rights Commission Act of Malawi.

with the others discussed above have the potential to be utilized in the defense of rights in the domestic context to great advantage.

The two previous chapters discussed prison conditions and the rights that prisoners are entitled to. The present chapter has briefly introduced the essential components that characterize an effective national institution. The final chapter will illustrate how these qualities can be applied to further the objective of appreciation and respect for prisoners' rights and give recommendations on the practical realization of this objective. In the course of this discussion the questions will be answered whether national institutions are suitable bodies to be entrusted with monitoring of the rights of prisoners and why. Further, if they are, how best can they utilize their characteristics to ameliorate the poor prison conditions that exist. An examination will be made into how some institutions in Africa have carried out their mandate with respect to prison inspections with a view to highlighting best practices.

CHAPTER FIVE

THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN ENHANCING RESPECT FOR PRISONERS' RIGHTS

This dissertation seeks to find out whether NHRIs are bodies suited to monitor the implementation of prisoners' rights. It has been established that such rights exist within a legal framework and that conditions on the ground indicate a serious neglect of these rights. It has further been established that certain organizations have a specific mandate and capacity to monitor the protection and promotion of human rights at the domestic level. This

chapter examines whether and what advantages the singular attributes of NHRIs can proffer to the enhancement of prison conditions. These advantages will be contrasted with the deficiencies of the existing monitoring efforts in order to bolster the argument that NHRIs are indeed best suited to monitor compliance with prisoners' rights and should be expressly mandated to do so.

5.1 Prison Monitoring Efforts

Prisons are closed institutions in the sense that access is restricted to the general public for security reasons. These restrictions are double-edged, while they are meant to serve a legitimate security purpose, the environment created is one where violations of rights can occur and continue without abatement. It is for this reason that monitoring mechanisms are put in place both within the prison administration and without in the form of other government departments or external organizations.

There is no shortage of existing or potential oversight bodies as is evident from the survey carried out by Penal Reform International.¹⁵⁹ The data collected with regard to monitoring activities is not detailed, however the following can be picked out. The majority of the prisons surveyed indicated that monitoring mechanisms exist, both internally and externally.

5.1.1 Internal Mechanisms

Internal mechanisms consist of specific inspectorate departments within the prison services that are responsible for the smooth running of the prisons; however, in some cases the prisons administration itself carries out the monitoring responsibility. The periods of time within which inspections are carried out vary from annually to monthly. Reports produced as a result of the inspections are in the majority of cases not made public, but at the same time are in some cases binding on the authorities to which they are submitted. In general, the reports are internal reports meant to improve the management of the prisons services.

While it is not possible to give accurate statistics on the practice of internal monitoring of prisons due to the paucity of information, it is obvious that there is no standardized practice in terms of who monitors, what is monitored, within what time, the status of the reports, how they are disseminated and acted upon. In effect, having an internal monitoring system is not a guarantee to prisoners that their rights will be respected. Issues of independence and accessibility of the monitors with regard to individual prisoners for purposes of complaints and grievances are also relevant. It is doubtful the extent to which

¹⁵⁹ Penal Reform International (n40 above).

such internal oversight bodies would be able to satisfactorily investigate and resolve allegations of abuse of rights, given that they would be acting as judges in their own cause.

5.1.2 External Mechanisms

Here again the dearth of information defies accurate statistics. However, external oversight bodies consist in the main of judicial functionaries such as judges and magistrates, public prosecutors, committees of the legislature, national human rights commissions and ombudsman offices, lawyers and NGOs both local and international. It is not obvious whether these monitors carry out regular inspections, what areas of the prison system they focus on, what weight their reports and recommendations carry and whether they are subsequently involved in any implementation strategies. In at least one country it was reported that monitoring responsibilities are given to magistrates who do not visit the prisons.¹⁶⁰ Further, some international organizations such as the International Committee of the Red Cross (ICRC) have a specific primary focus, to visit people taken prisoner or detained during, or as a result of a conflict as well as political prisoners. The concerns addressed are those of these categories of prisoners and the benefits accrued to other categories of prisoners are incidental. Reports written by the ICRC after each visit are given to the detaining authorities and are generally not publicized though ICRC reserves the right to do so. It is believed that problems can be solved by establishing an ongoing working relationship with authorities.¹⁶¹ The Special Rapporteur depends on the good will of states to be able to carry out the mandate to inspect prisons and like most mechanisms enforcement mechanisms are wanting. Issues of independence of the monitors, areas of expertise, limitations in terms of powers or mandate, accessibility of the monitoring body for example international NGOs, as well as their acquaintance with local circumstances arise to the fore. There is need to harmonize the diverse interventions for the overall good of the prisons services.

The areas of prisons that affect prisoners' rights and need to be addressed are the physical conditions, criminal justice process, and treatment of prisoners, health care, legislation and organizational structure, improvement of staff capacity and working conditions and enhancement of oversight capacity. While these areas can be addressed separately by different bodies, there appears to be no consistency and co-ordination of these activities and this results in less progress than is desirable in the improvement of conditions of detention in prisons.

¹⁶⁰ See Penal Reform International (n40 above) section on Benin.

5.2 Why National Human Rights Institutions?

It bears repeating that the case being made here is *inter alia* for national institutions to be expressly empowered to monitor the conditions of prisons and the respect of prisoners' rights by regularly inspecting detention facilities. Express provisions in legislation have the advantage of putting prisoners' rights squarely within the agenda of national institutions, rather than relying on the initiative of the commission which might be dulled by factors such as inadequate resources, restriction of access among others. As things currently stand, only a handful of institutions are explicitly mandated to inspect prisons and those that do so otherwise, have taken the initiative to expansively interpret their mandate to include this task. The human rights commissions of Cameroon, Malawi, Uganda, and Kenya are expressly enjoined to visit places of detention.¹⁶² The commissions in Nigeria, Ghana and South Africa have carried out prisons inspections even in the absence of specific statutory mandate.

Another reason for so empowering NHRIs is because the statutory powers accorded to national institutions make access to prisons easier, back up the recommendations made as a result of prison inspections, ensure the co-operation of relevant parties particularly government departments and provide for the resolution of individual complaints from prisoners.

In addition to being the right type of institution to discharge this responsibility another advantage is that there would be a single institution that can be referred to that is able to coordinate the various initiatives in the same field.¹⁶³ Thus, national institutions will not supplant the existing mechanisms such as the judiciary or internal inspectorate departments or even the work of NGOs rather it is foreseen that NHRIs will at a higher level oversee and coordinate the input of other organizations.

At a minimum the qualities discussed in Chapter Three that attempt to define NHRIs are beneficial in the monitoring of prisoners' rights. NHRIs may in addition have other specificities that are necessitated by the conditions in which they operate. The discussion

¹⁶¹ International Committee of the Red Cross ICRC Visits to persons deprived of their freedom: An internationally mandated task, implemented worldwide and Deprived of Freedom at <www.icrc.org/web/eng/siteeng0.nsf/iwpList265> accessed 16 October 2003.

¹⁶² Sec 2 Decree No. 90-1459 of 8 November 1990 setting up the National Commission on Human Rights and Freedoms, Sec 15(d) Malawi Human Rights Commission Act 1998, Sec 52(1)(b) Constitution of the Republic of Uganda 1995, Sec 16(1)(b) of the Kenya National Commission on Human Rights Act 2003.

¹⁶³ A recommendation that the national and state human rights commissions of India should take up the work of monitoring and ensuring the implementation of various recommendations made by different bodies was made at a workshop organized by the Commonwealth Human Rights Initiative. See (n36 above).

will focus only on these qualities since these taken together are the ones that distinguish NHRIs from other institutions.

5.2.1 Independence

An NHRI established by constitutional provision or legislation is relatively permanent and this enables the institution to discharge its responsibilities effectively. It means with regard to prisoners' rights that there is a permanent external monitoring body that is not impeded in its operations by the concerns of funding that afflict NGOs, logistical concerns in the case of international NGOs, or the requirements of obtaining consent from governments as happens with the African Commissions Special Rapporteur. NHRIs would be guaranteed by legislation access to prisons and prisoners at any time without prior consultation with prison authorities. The framing of the Malawi Human Rights Commission Act is illustrative of this point. The commission shall 'exercise unhindered authority to visit prisons or any place of detention including police cells, with or without notice'.¹⁶⁴ The provisions authorizing prison visits for the commission of Cameroon, Uganda and Kenya merely make inspections a function of the commission. The NHRI would be able to budget its finances bearing in mind the projects it wishes to undertake with regard to prisons, and would be able to compel cooperation of government agencies if necessary. Its reports and recommendations would be binding and not subject to review by any other body or authority. This departs from the case where most internal inspection mechanisms produce reports that are rarely published, and are for use within prisons services. At a minimum internal inspection mechanisms do not encourage the perception of independence since there are composed of members of the prison services. It does not improve the situation to produce reports that are not open to the scrutiny of the public, or at the very least other interested parties such as civil society.

5.2.2 Jurisdiction and Functions

NHRIs may be mandated to protect and promote human rights as enshrined in the national constitutions. Others might be mandated to protect and promote human rights as set out in international instruments. Examples of some NHRIs with a mandate that includes international instruments are Kenya, and Nigeria.¹⁶⁵ There are several advantages of having a mandate based on international instruments.¹⁶⁶ These include the fact that the NHRI can serve as a convenient point of reference by which domestic implementation of human rights can be assessed. Where domestically there is inadequate or no redress for certain rights an

¹⁶⁴ Sec 15(d) Malawi Human Rights Commission Act 1998.

¹⁶⁵ Sec of the Kenya National Human Rights Commission Act 2003, Sec 5 of the Nigeria National Human Rights Commission Decree 1995.

alternative is provided by resort to international standards. Experience and jurisprudence in application of international standards is developed, violations of rights are prevented and where they occur they are resolved before they get to the international level and in this way they take the strain of numerous individual complaints off international mechanisms. Finally these institutions can provide accurate and authoritative information to the government as well as international monitoring bodies. While the latter organizations have a distinct advantage, all NHRIs can draw inspiration from international standards when implementing human rights within the domestic situation. Thus, even where the constitution or national legislation on prisons do not specifically mention the standards to which prisons should adhere in their treatment of inmates, reference can be made to the international standards to inform penal policy.

Under advisory powers NHRIs are expected to give guidance on human rights aspects of legislation whether existing or that are in the process of drafting. Thus depending on the scope of powers granted to the institution, it might of its own motion recommend the amendment of legislation relating to prisoners so that it conforms to human rights standards, or the institution might do so when requested by the government. Institutions with power to initiate legislative recommendations are better placed to deal with situations such as those where the laws relating to prison administration date back to the 1950s.¹⁶⁷ Where such legislation is under review the institution should be called upon to advise on the human rights implications because of their experience and technical expertise in the field. It should be noted, however, that a national institution 'can only ever function as an additional safeguard in the lawmaking process.'¹⁶⁸

National institutions can also employ this advisory capacity to engage with governments when policy and administrative practices adversely affect prisoners' rights, as well as with regard to implementation of international standards. This will impact on internal monitoring by the prisons inspectorate departments as it will be clearer what standards the prisons services are held to. By drawing attention to these standards, the budget for the administration of prisons might increase in order that better standards of health are maintained as well as provision of adequate food, clothing, bedding and other necessities for prisoners. Similarly procedures for handling of disciplinary cases within prisons would be improved obviating the use of torture, cruel, inhuman and degrading treatment and punishment and ensuring that the principles of natural justice are adhered to. Policies that govern activities like recreation, visits by family, communication would also be scrutinized to ensure that they are limited only as prescribed by law and where necessary.

¹⁶⁶ Burdekin B Human Rights Commissions in Hossain K et al (eds) (n108 above)801-834 at 807.

¹⁶⁷ See (n36 above).

¹⁶⁸ UN Handbook (n75 above) para190.

An important task of NHRIs is investigating allegations of human rights violations. This might be in response to a complaint or *suo moto*. In each case the powers of discovery are crucial in order that where necessary production of evidence can be compelled. The institution must also be enabled to inform the alleged perpetrator in the complaint in order that they can respond to the allegations; it should be possible to conduct on-site investigations, to conduct a hearing of the parties and all relevant persons with information concerning the matter; to summon witnesses and compel their attendance and to grant immunity from prosecution for witnesses.¹⁶⁹ Ideally after conducting investigations the institution should be able to make a determination and provide a remedy such as payment of compensation or the release of a wrongfully detained person where such powers are vested in the institution.¹⁷⁰ Enforcement of decisions can take different forms such as referral to court for enforcement or citation for contempt in default of compliance.¹⁷¹ When the South African Commission was established large numbers of complaints were received from prisoners. The commission could not respond at first because they did not have a policy on this matter or adequate staff. It was however subsequently realized that there existed systematic violations of rights within prisons and as such a pro-active approach was required. The commission therefore undertook an inquiry into the conditions of prisons.¹⁷² This example also illustrates the interaction of commission's powers, in that though the South African Commission is not mandated specifically to inspect prisons, as a result of the individual complaints it carried out an inquiry into prisons with the same outcome. The point to be made is that while it is preferable for NHRIs to have a specific prisons mandate, the lack of such a mandate should not serve to prevent action by the national institution.

The Ghanaian and Nigerian Commissions have been instrumental in urging the speedy disposal of cases on trial that have taken long to conclude. In cases where condemned prisoners in Nigeria complained that their appeals were not making progress the commission investigated and found out that the problem was the lack of financial resources by the complainants. As a result the commission intervened and managed to obtain waivers of the required fees ensuring that the cases would proceed.¹⁷³ In this way, the commission was able to address the issues of long delays in court matters without encroaching into the judicial sphere. Allegations of torture and ill treatment would be appropriately addressed by

¹⁶⁹ UN Handbook as above para 259.

¹⁷⁰ The Uganda Human Rights Commission and the Kenya National Commission on Human Rights are empowered to order the release of detained or restricted persons where they are satisfied that an infringement of a human right or freedom order has occurred. See art 53 (2) (a) of the Ugandan Constitution and sec 19 (2) (a) of the Kenya National Commission on Human Rights Act (2003).

¹⁷¹ See The Commission on Human Rights and Administrative Justice Act 1993 Ghana section 18 (2) and the Ugandan Constitution art 53 (1) (d).

¹⁷² Report of the National Prisons Project of the South African Human Rights Commission (1998) 3 accessed at www.sahrc.org.za on 21 August 2003.

¹⁷³ Tabiu M National Human Rights Commission of Nigeria in K Hossain (n108 above) 554.

NHRIs, as would allegations of discrimination in prison policy or administration and violation of the rights of vulnerable groups with the prison such as juveniles, women, and mentally ill.

Promotion activities aim to *inter alia* inform and educate about human rights, foster development of values and attitudes that uphold human rights and encourage action aimed at defending human rights from violation.¹⁷⁴ With regard to the promotional mandate, NHRIs can be useful in the training of prison staff, law enforcement officers, prosecutors and the judiciary all of who play a key role in the running of prisons. Other target groups would be parliamentarians for law-making purposes, social workers, the media, lawyers, NGO personnel as well as activities to inform the public in general. Such training would address for example, the treatment of prisoners by prison staff, use of alternative sentences for the judiciary, conduct of investigations and use of force by law enforcement officers. The South African Commission as well as the human rights commission in Cameroon have been actively involved in providing training to law enforcement officials including prisons services staff.

5.2.3 Accessibility

Under ordinary circumstances accessibility in the context of NHRIs might mean that they should be situated in areas where there is adequate transport to enable complainants reach the offices, it might also mean devolution of offices such that the institution has a presence at the local level. The location of the offices should promote the image of the institutions independence in order to inspire confidence in complainants.¹⁷⁵ However in the case of prisoners the burden of accessibility is wholly on the NHRI. The regularity of prison inspections and how they are conducted are indications of accessibility. Where an NHRI makes as frequently as possible, regular follow-up visits to prisons it will be able to monitor the implementation or lack thereof of recommendations to improve conditions within the prison. During these visits, contact should be made with the prisoners themselves to give them the opportunity to express their concerns. The frequency of the visits will determine how often prisoners have the opportunity to present their grievances. Logistical and resource constraints however may make it difficult to make these visits or even to listen to all the complaints. Alternative initiatives can prove to be useful. For example, the South African Human Rights Commission established a system of sealed complaint boxes within prisons that enabled the receipt of complaints from individuals.¹⁷⁶

¹⁷⁴ UN Handbook (n105 above) para 141.

¹⁷⁵ See discussion on accessibility in International Council (n10 above) 83 – 86.

¹⁷⁶ International Council as above at 89.

5.2.4 Cooperation

Even with all its competencies a NHRI will still be constrained from accomplishing all that requires to be done to improve the lot of prisoners. In any case, the NHRI is complementary to other mechanisms that already exist and are involved in this field. Cooperation between all these players is necessary. Cooperation must never compromise the independence of the institution nor distract it from its obligation to hold government accountable for its actions with regard to human rights. Linkages with the prison administration will facilitate among other things exchange of information, which will result in the NHRI better understanding the problems facing the prison. The prison on the other hand will benefit from having its concerns addressed. Cooperation with the judiciary, prosecutors and law enforcement officers will make education and training more effective and may involve collaboration during inspections of prisons where judicial officers constitute part of the visiting team. NGOs working with prisons as well as professional organizations such as medics, lawyers, the media would also provide valuable insights during such visits. Overall, cooperation would enable streamlining of efforts such that the prison administration communicates its priority areas of concern and these are addressed by those organizations capable of doing so. With regard to international actors interested in the field, NHRIs might be useful reference points for information, to provide contacts and facilitate activities sought to be organized.

The Malawi Human Rights Commission convened a stakeholders meeting in February 2003, which brought together representatives of the National Prison Headquarters, Prison Inspectorate and some NGOs involved in monitoring prison conditions. The Ministry of Home Affairs and the Treasury were also invited to send participants. The objectives of the meeting were to establish a working relationship among stakeholders and to discuss the possibility of developing a strategic plan for the prisons service.¹⁷⁷ The commission was prompted to convene this meeting by the lack of implementation of recommendations made after prison visits.¹⁷⁸ This activity serves as an example of the impact that an oversight body can have with regard to encouraging the implementation of rights.

5.2.5 Operational Efficiency

The working methods, level of funding, capacity of staff and the ability to review and evaluate work are the issues in question here. These issues determine how efficiently and effectively an NHRI carries out its mandate. The Ugandan Commission has organized itself into departments and committees to carry out its responsibilities. The Prisons Committee

¹⁷⁷ Malawi Human Rights Commission Report on Stakeholders Meeting on Prison Conditions Held on 19th February 2003 (March 2003) 4.

¹⁷⁸ Malawi Human Rights Commission as above 1.

-draws up the programme for regular visits and investigation of prisons, police cells, remand homes, barracks and approved schools for young people; alerts the UHRC on any matters related to the conditions of prisoners and suspects which demand immediate action; assists in designing educational programmes on human rights for police and prisons officers and suspects and prisoners and reports regularly to the UHRC on findings made and actions recommended.¹⁷⁹

It is believed that this assists the commission to focus better on its mandate affecting prisoners. Financial resources are insufficient in most national institutions and funding has often to be sought from donors. While this is beneficial to the national institution it should not diminish the responsibility of the state to provide funding for its national institution. Looking back over its performance, the National Commission on Human Rights and Freedoms in Cameroon considers one of the lessons learnt as the value of 'good and adequate' administrative and technical staff, as well as 'a good measure of understanding and unity of purpose among its members and teamwork involving staff'.¹⁸⁰ The impact of quality and quantity of staff as well as working methods thus, cannot be underestimated.

5.2.6 Accountability

An NHRI owes an obligation to the individuals whose complaints it handles, to the body to which it reports as well as to the general public to report on its activities. This means that reports of work done on prisoners' rights should be produced in a timely manner, made public and followed up to ensure implementation. The reports would serve the purpose of bringing to light the situation within prison walls as well as informing the public and causing change within the public's perception as to how prisoners should be treated. The legitimacy of the NHRI would in turn be enhanced by such accountability.

The Malawi Human Rights Commission has attempted to do this by exposing their observations on prison conditions through the media, both radio and television.¹⁸¹ Wide publicity by the media of a report on inspections of prisons by the Commission on Human Rights and Administrative Justice in Ghana is credited for the significant reforms undertaken by government subsequently.¹⁸² The commission carries out annual follow-up visits and publishes its reports in the media. By being accountable itself and NHRI is better able to hold other agencies accountable for their actions.

5.3 CONCLUSION AND RECOMMENDATIONS

¹⁷⁹ Nkalubo E R B 'The Uganda Human Rights Commission, Including The Office of the Inspectorate of Government (Ombudsman)' in K Hossain et al (eds) (n108 above) 579-611 at 583.

¹⁸⁰ Gwei S N (n148 above) at 182.

¹⁸¹ See Report on visit to Chichiri Prison by the Malawi Human Rights Commission 10.

¹⁸² Short E F (n147above) at 196.

The rights of prisoners are not a novel category of rights; they consist of the same rights that accrue to all human beings. However because of the nature of prisons and the functions they serve inmates are often denied even these basic rights that accrue to all. In recognizing that prisons can serve as institutions for the incapacitation, deterrence, retribution, reformation and rehabilitation of prisoners without stripping away the prisoner's human dignity, prison reform has emphasized the need to respect those rights of prisoners that are not necessarily limited by incarceration. Thus standards for the treatment of prisoners as well as standards of conduct for persons associated with prisoners have evolved and gained acceptance. Implementation of these standards as with all other human rights standards is the key to enjoyment of these rights. Implementation is most significant at the domestic level where the impact of violations is felt on a day to day basis. As a result of the need to ensure that respect of rights begins at the grassroots, various institutions have evolved, amongst them NHRIs. These institutions have unique characteristics that favor the implementation of human rights standards in general and prisoners' rights in particular.

NHRIs have the capacity to carry out human rights work both at policy level and also at the practical level of monitoring implementation. This capacity is beneficial when working on prisoners' rights because solutions lie both at the administrative level and at the interpersonal level. Matters such as the construction of additional prisons, provision of physical conditions that meet internationally recommended standards require decision making at the ministry level and also at the parliamentary level since budgetary allocations are at the center of the decisions to be made. On the other hand, questions of restricted access to family due to bribery, individual complaints of torture and ill-treatment, delay in court process and the like might be resolved at the individual prison level. In both situations NHRIs can be very effective, because it is not a single characteristic of NHRIs that gives them such potential, rather it is all the characteristics taken together and invested in one body that makes the difference. It bears repeating that though national institutions are in a unique position to affect the observance of prisoners' rights, they cannot do this alone. They cannot take the place of political good will, an effective efficient and independent judiciary, and legislature. They cannot assume the role of NGOs neither can they take for granted the assistance provided by international bodies in terms of technical and financial support, and where need be, pressure on unwilling governments. All these components must work together in order to achieve the best in the protection and promotion of prisoners' rights.

Having looked at these characteristics, recommendations can be made, which will serve to enhance the protection of prisoners' rights. It is recognized that NHRIs differ in terms of establishment, mandate, powers, operational capacity, and that no one institution meets fully the standards laid out by the Paris Principles. It is however important to note that

even without the meeting the ideal standards, there is still much that can be done towards ameliorating the condition of prisoners provided NHRIs are committed to doing this.

- (i) National human rights institutions should be expressly endowed with the responsibility to inspect prisons and other places of detention with a view to making binding recommendations to enhance the respect of prisoners' rights.
- (ii) Appropriate powers should be granted in this respect including the right to free access at any time, unannounced at such prisons and detention facilities. An example of this is practice of Cameroon's National Commission on Human Rights and Freedoms, where members are issued with identification cards that afford them unhindered access to detention centers and prisons.¹⁸³
- (iii) The scope of rights sought to be protected and promoted by NHRIs should be as wide as possible. This ensures that even where domestic law does not make provision for prisoners' rights, inspiration can be drawn from international standards. NHRIs should also utilize to the fullest extent their mandate, stopping only short of encroaching into the mandate of other bodies, as the Nigerian and Ghanaian commissions have done in investigating the delays in the trial process of prisoners' cases.¹⁸⁴
- (iv) With regard to accessibility, mechanisms should be designed to ensure that prisoners are able to express their grievances and make their complaints to the national institutions without hindrance. An example is the strategy employed by the South African Human Rights Commission of placing complaints boxes in prisons.¹⁸⁵ Having regional and local offices may also help in making access to prisons for inspection easier.
- (v) Coordination of intervention necessarily means cooperating with the authorities on the one hand and with the other monitoring agencies. This will enable the national institution obtain information, materials, resources, and expertise it needs to carry out its mandate. The Special Rapporteur's prison inspection team includes a doctor who is able to assist in analyzing the health conditions of prisoners.¹⁸⁶ In its advisory capacity, a national institution may wish to present *amicus* briefs in cases before courts. Where cooperation between the judiciary and the national institution this is made easier since

¹⁸³ Gwei S N (n148 above) 171.

¹⁸⁴ See n173 above.

¹⁸⁵ See n 176 above.

¹⁸⁶ See Special Rapporteur's Report on second visit to Mozambique (April 2001) and visit to Malawi (June 2001). See n39 above.

courts might accord NHRIs official status as a friend of the court, as well as rights to join as a party in relevant cases.¹⁸⁷

- (vi) Without operational efficiency all the other initiatives will at best have a severely limited effect. Commissions should organize themselves internally so that adequate focus is placed on activities around prisoners' rights. This includes financial resources, research, training, speedy and efficient complaint handling, frequent and regular inspections and wide dissemination of reports.

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¹⁸⁷ Commonwealth Secretariat National Human Rights Institutions, Best Practice (2001) 29.

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ANNEXTURE A:

SELECTED PROVISIONS OF UNIVERSAL INSTRUMENTS

I. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

Article 6

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

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

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

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

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

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

Article 7

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

Article 9

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

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

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

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

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

Article 10

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

2.

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

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

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

Article 26

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

II. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness

III. CONVENTION ON THE RIGHTS OF THE CHILD

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

IV. INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF MIGRANT WORKERS

Article 16

1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgement.

7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:

(a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;

(b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.

Article 17

1. Migrant workers and members of their families who are deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and for their cultural identity.

2. Accused migrant workers and members of their families shall, save in exceptional circumstances, be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. Any migrant worker or member of his or her family who is detained in a State of transit or in a State of employment for violation of provisions relating to migration shall be held, in so far as practicable, separately from convicted persons or persons detained pending trial.

4. During any period of imprisonment in pursuance of a sentence imposed by a court of law, the essential aim of the treatment of a migrant worker or a member of his or her family shall be his or her reformation and social rehabilitation. Juvenile offenders shall be separated from adults and be accorded treatment appropriate to their age and legal status.

5. During detention or imprisonment, migrant workers and members of their families shall enjoy the same rights as nationals to visits by members of their families.

6. Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children.

7. Migrant workers and members of their families who are subjected to any form of detention or imprisonment in accordance with the law in force in the State of employment or in the State of transit shall enjoy the same rights as nationals of those States who are in the same situation.

8. If a migrant worker or a member of his or her family is detained for the purpose of verifying any infraction of provisions related to migration, he or she shall not bear any costs arising therefrom.

V. GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR

Chapter II

QUARTERS, FOOD AND CLOTHING OF PRISONERS OF WAR

Article 25

Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

Article 26

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

Article 27

Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.

Article 28

Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices. The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Chapter III

HYGIENE AND MEDICAL ATTENTION

Article 29

The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

Article 30

Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.

Article 31

Medical inspections of prisoners of war shall be held at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose

shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.

Article 32

Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49.

Chapter IV

MEDICAL PERSONNEL AND CHAPLAINS RETAINED TO ASSIST PRISONERS OF WAR

Article 33

Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious instruction to, prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

(a) They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.

(b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.

(c) Although they shall be subject to the internal discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.

During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

Chapter V

RELIGIOUS, INTELLECTUAL AND PHYSICAL ACTIVITIES

Article 34

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held.

Article 35

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

Article 36

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

Article 37

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed, at the request of the prisoners concerned, to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

Article 38

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment. Prisoners shall have opportunities for taking physical exercise, including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

Chapter VI
DISCIPLINE

Article 39

Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the camp commander regardless of his rank.

Article 40

The wearing of badges of rank and nationality, as well as of decorations, shall be permitted.

Article 41

In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, at places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

Article 42

The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.

Chapter VII

RANK OF PRISONERS OF WAR

Article 43

Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognize promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.

Article 44

Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

Article 45

Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

Chapter VIII

TRANSFER OF PRISONERS OF WAR AFTER THEIR ARRIVAL IN CAMP

Article 46

The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

Article 47

Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or if they are exposed to greater risks by remaining on the spot than by being transferred.

Article 48

In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.

The costs of transfers shall be borne by the Detaining Power.

SECTION III

LABOUR OF PRISONERS OF WAR

Article 49

The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

Article 50

Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

(a) Agriculture;

(b) Industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose;

(c) Transport and handling of stores which are not military in character or purpose;

(d) Commercial business, and arts and crafts;

(e) Domestic service;

(f) Public utility services having no military character or purpose.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

Article 51

Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures.

Article 52

Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour.

Article 53

The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece-work are employed, the length of the working period shall not be rendered excessive thereby.

Article 54

The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123.

Article 55

The fitness of prisoners of war for work shall be periodically verified by medical examinations at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom.

Article 56

The organization and administration of labour detachments shall be similar to those of prisoner of war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

Article 57

The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

SECTION IV

FINANCIAL RESOURCES OF PRISONERS OF WAR

Article 58

Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or by the camp administration who will charge them to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

Article 59

Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

Article 60

The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

Category I: Prisoners ranking below sergeant: eight Swiss francs.

Category II: Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss francs.

Category III: Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: fifty Swiss francs.

Category IV: Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: sixty Swiss francs.

Category V: General officers or prisoners of equivalent rank: seventy-five Swiss francs.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

(a) Shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above;

(b) May temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitations will be given without delay to the Protecting Power.

Article 61

The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

Article 62

Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay.

Article 63

Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependants shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

Article 64

The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

1. The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.
2. The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 63, third paragraph.

Article 65

Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war.

Article 66

On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

Article 67

Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities.

Article 68

Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim by a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123.

SECTION V

RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

Article 69

Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures.

Article 70

Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

Article 71

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war

concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner of war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.

Article 72

Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels.

Article 73

In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations concerning collective shipments, which are annexed to the present Convention, shall be applied.

The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Article 74

All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them.

Article 75

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

(a) Correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaux referred to in Article 122;

(b) Correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby.

Article 76

The censoring of correspondence addressed to prisoners of war or despatched by them shall be done as quickly as possible. Mail shall be censored only by the despatching State and the receiving State, and once only by each.

The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Article 77

The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instruments, papers or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures.

SECTION VI

RELATIONS BETWEEN PRISONERS OF WAR AND THE AUTHORITIES

Chapter I

COMPLAINTS OF PRISONERS OF WAR RESPECTING THE CONDITIONS OF CAPTIVITY

Article 78

Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited nor considered to be a part of the correspondence quota referred to in Article 71. They must be transmitted immediately. Even if they are recognized to be unfounded, they may not give rise to any punishment.

Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers.

Chapter II

PRISONER OF WAR REPRESENTATIVES

Article 79

In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of

war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.

Article 80

Prisoners' representatives shall further the physical, spiritual and intellectual well-being of prisoners of war.

In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance, this organization will be within the province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention.

Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war.

Article 81

Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspection of labour detachments, receipt of supplies, etc.).

Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to consult freely his prisoners' representative.

All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and with the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 71.

Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

In case of dismissal, the reasons therefor shall be communicated to the Protecting Power.

Chapter III

PENAL AND DISCIPLINARY SANCTIONS

I. General provisions

Article 82

A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only.

Article 83

In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures.

Article 84

A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.

Article 85

Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

Article 86

No prisoner of war may be punished more than once for the same act, or on the same charge.

Article 87

Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

Collective punishment for individual acts, corporal punishments, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges.

Article 88

Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.

In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.

Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war.

II. Disciplinary sanctions

Article 89

The disciplinary punishments applicable to prisoners of war are the following:

1. A fine which shall not exceed 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days.
2. Discontinuance of privileges granted over and above the treatment provided for by the present Convention.
3. Fatigue duties not exceeding two hours daily.
4. Confinement.

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.

Article 90

The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

Article 91

The escape of a prisoner of war shall be deemed to have succeeded when:

1. He has joined the armed forces of the Power on which he depends, or those of an allied Power;
2. He has left the territory under the control of the Detaining Power, or of an ally of the said Power;
3. He has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last-named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

Article 92

A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

Article 93

Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, the wearing of civilian clothing, shall occasion disciplinary punishment only.

Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only.

Article 94

If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made.

Article 95

A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interests of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline.

Article 96

Acts which constitute offences against discipline shall be investigated immediately.

Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.

Article 97

Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women.

Article 98

A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 78 and 126.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand over to the infirmary the perishable goods contained in such parcels.

III. Judicial proceedings

Article 99

No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel.

Article 100

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power. Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

Article 101

If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.

Article 102

A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.

Article 103

Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty. The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial.

Article 104

In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This period of three weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

The said notification shall contain the following information:

1. Surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any;
2. Place of internment or confinement;
3. Specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable;
- 4 . Designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned.

Article 105

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held in camera in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

Article 106

Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

Article 107

Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced on a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

1. The precise wording of the finding and sentence;
2. A summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defence;
3. Notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing subparagraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

Article 108

Sentences pronounced on prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and despatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph

ANNEXTURE B

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 the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

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 therefor;

(c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register. 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 the necessities of their treatment. Thus,

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

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

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

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

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 pans 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 outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

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

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 suitable 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 special 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 thorough 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-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer; (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

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

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 connection 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 co-operation 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 their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

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

E. PERSONS ARRESTED OR DETAINED WITHOUT CHARGE

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.

ANNEXTURE C

KAMPALA DECLARATION ON PRISON CONDITIONS IN AFRICA

Prison conditions

Considering that in many countries in Africa the level of overcrowding in prisons is inhuman, that there is a lack of hygiene, insufficient or poor food, difficult access to medical care, a lack of physical activities or education, as well as an inability to maintain family ties,

Bearing in mind that any person who is denied freedom has a right to human dignity,

Bearing in mind that the universal norms on human rights place an absolute prohibition on torture of any description,

Bearing in mind that some groups of prisoners, including juveniles, women, the old and the mentally and physically ill, are especially vulnerable and require particular attention,

Bearing in mind that juveniles must be separated from adult prisoners and that they must be treated in a manner appropriate to their age,

Remembering the importance of proper treatment for female detainees and the need to recognize their special needs,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1. That the human rights of prisoners should be safeguarded at all times and that non-governmental agencies should have a special role in this respect,
2. That prisoners should retain all rights which are not expressly taken away by the fact of their detention,
3. That prisoners should have living conditions which are compatible with human dignity,
4. That conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by the loss of liberty,
5. That the detrimental effects of imprisonment should be minimized so that prisoners do not lose their self-respect and sense of personal responsibility,
6. That prisoners should be given the opportunity to maintain and develop links with their families and the outside world,
7. That prisoners should be given access to education and skills training in order to make it easier for them to reintegrate into society after their release,
8. That special attention should be paid to vulnerable prisoners and that non-governmental organizations should be supported in their work with these prisoners,
9. That all the norms of the United Nations and the African Charter on Human and Peoples' Rights on the treatment of prisoners should be incorporated into national legislation in order to protect the human rights of prisoners,
10. That the Organization of African Unity and its member States should take steps to ensure that prisoners are detained in the minimum conditions of security necessary for public safety.

Remand prisoners

Considering that in most prisons in Africa a great proportion of prisoners are awaiting trial, sometimes for several years,

Considering that for this reason the procedures and policies adopted by the police, the prosecuting authorities and the judiciary can significantly influence prison overcrowding,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1. That the police, the prosecuting authorities and the judiciary should be aware of the problems caused by prison overcrowding and should join the prison administration in seeking solutions to reduce this,
2. That judicial investigations and proceedings should ensure that prisoners are kept in remand detention for the shortest possible period, avoiding, for example, continual remands in custody by the court,
3. That there should be a system for regular review of the time detainees spend on remand.

Prison staff

Considering that any improvement in conditions for prisoners will be dependent on staff having pride in their work and a proper level of competence,

Bearing in mind that this will only happen if staff are properly trained,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1. That there should be a proper career structure for prison staff,
2. That all prison personnel should be linked to one government ministry and that there should be a clear line of command between central prison administration and the staff in prisons,
3. That the State should provide sufficient material and financial resources for staff to carry out their work properly,
4. That in each country there should be an appropriate training programme for prison staff to which the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI) should be invited to contribute,
5. That there should be a national or subregional institution to deliver this training programme,
6. That the penitentiary administration should be directly involved in the recruitment of prison staff.

Alternative sentencing

Noting that in an attempt to reduce prison overcrowding, some countries have been trying to find a solution through amnesties, pardons or by building new prisons,

Considering that overcrowding causes a variety of problems including difficulties for overworked staff,

Taking into account the limited effectiveness of imprisonment, especially for those serving short sentences, and the cost of imprisonment to the whole of society,

Considering the growing interest in African countries in measures which replace custodial sentences, especially in the light of human rights principles,

Considering that community service and other non-custodial measures are innovative alternatives to imprisonment and that there are promising developments in Africa in this regard,

Considering that compensation for damage done is an important element of non-custodial sentences,

Considering that legislation can be introduced to ensure that community service and other non-custodial measures will be imposed as an alternative to imprisonment,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend:

1. That petty offences should be dealt with according to customary practice, provided this meets human rights requirements and that those involved so agree,
2. That whenever possible petty offences should be dealt with by mediation and should be resolved between the parties involved without recourse to the criminal justice system,
3. That the principle of civil reparation or financial recompense should be applied, taking into account the financial capability of the offender or of his or her parents,
4. That the work done by the offender should if possible recompense the victim,
5. That the community service and other non-custodial measures should if possible be preferred to imprisonment,
6. That there should be a study of the feasibility of adapting successful African models of non-custodial measures and applying them in countries where they are not yet being used,
7. That the public should be educated about the objectives of these alternatives and how they work.

African Commission on Human and Peoples' Rights

Considering that the African Commission on Human and Peoples' Rights has the mandate to ensure the promotion and the protection of human and peoples' rights in Africa,

Considering that the Commission has shown on many occasions its special concern on the subject of poor prison conditions in Africa and that it has adopted special resolutions and decisions on this question previously,

The participants in the International Seminar on Prison Conditions in Africa, held at Kampala from 19 to 21 September 1996, recommend that the African Commission on Human and Peoples' Rights:

1. Should continue to attach priority to the improvement of prison conditions throughout Africa,
2. Should nominate a Special Rapporteur on Prisons in Africa as soon as possible,
3. Should make the Member States aware of the recommendations contained in this Declaration and publicize United Nations and African norms and standards on imprisonment,
4. Should cooperate with non-governmental organizations and other qualified institutions in order to ensure that the recommendations of this Declaration are implemented in all the Member States.

ANNEXTURE D
THE OUAGADOUGOU DECLARATION ON ACCELERATING PRISON AND PENAL
REFORM IN AFRICA

Recognising that there has been progress in raising general prison standards in Africa as recommended by the Kampala Declaration on Prison Conditions 1996

Recognising also the specific standards on alternatives to imprisonment contained in the Kadoma Declaration on Community Service Orders in Africa 1997; and on good prison administration set out in the Arusha Declaration on Good Prison Practice 1999

Noting the recognition given to these African standards by the United Nations as complementary to the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Declaration on the Basic Rights of Prisoners and the United Nations Standard Minimum Rules for non-custodial measures (the 'Tokyo Rules')

Mindful of the key role played by Africans in formulating an agenda for penal reform through the 1999 Egham Conference on 'A New Approach for Penal Reform in a New Century'

Noting with satisfaction the important practical steps that have been taken to implement these standards at an African level through the activities of the African Commission on Human and Peoples' Rights and its Special Rapporteur on Prisons and Conditions of Detention

Commending the practical measures that have been taken by prison authorities in African countries to apply these standards in their national jurisdictions

Recognising that notwithstanding these measures there are still considerable shortcomings in the treatment of prisoners, which are aggravated by shortages of facilities and resources

Welcoming the growing partnerships between Governments, non governmental organizations and civil society in the process of implementing these standards

Emphasising the importance of a criminal justice policy that controls the growth of the prison population and encourages the use of alternatives to imprisonment

The participants at the second pan-African Conference on Prison and Penal Reform in Africa, held in Ouagadougou, Burkina Faso between 18-20 September 2002, recommend

1. Reducing the prison population

Criminal justice agencies should work together more closely to make less use of imprisonment. The prison population can only be reduced by a concerted strategy. It should be based on accurate and widely publicized information on the numbers and kinds of people in prison and on the social and financial impact of imprisonment. Reduction strategies should be ongoing and target both sentenced and unsentenced prisoners

2. Making African prisons more self-sufficient

Further recognition should be given to the reality that resources for imprisonment are severely limited and that therefore African prisons have to be as self sufficient as possible. Governments should recognize, however, that they are ultimately responsible for ensuring that standards are maintained so that prisoners can live in dignity and health.

3. Promoting the reintegration of offenders into society

Greater effort should be made to make positive use of the period of imprisonment or other sanction to develop the potential of offenders and to empower them to lead a crime-free life in the future. This should include rehabilitative programmes focusing on the reintegration of offenders and contributing to their individual and social development.

4. Applying the rule of law to prison administration

There should be a comprehensive law governing prisons and the implementation of punishment. Such law should be clear and unambiguous about the rights and duties of prisoners and prison officials. Officials should be trained to follow proper administrative procedures and to apply this law fairly. Administrative decisions that impact on the rights of prisoners should be subject to review by an independent and impartial judicial body.

5. Encouraging best practice

Further exchange of examples of best penal practice is to be encouraged at national, regional and international levels. This can be enhanced by the establishment of an all-African association of those involved in penal matters. The rich experience available across the continent can best be utilized if proven and effective programmes are progressively implemented in more countries. The Plan of Action to be developed from the proceedings of the Ouagadougou Conference will serve to further such exchange.

6. Promoting an African Charter on Prisoners' Rights

Action should be taken to promote the draft African Charter on Prisoners' Rights as an instrument that is appropriate to the needs of developing countries of the continent and to refer it to the African Commission on Human and Peoples' Rights and the African Union.

7. Looking towards the United Nations Charter on the Basic Rights of Prisoners

The international criminal justice community should look towards developing a United Nations Charter of Basic Rights for Prisoners with a view to strengthening the rule of law in the treatment of offenders. African experience and concerns should be reflected in this Charter, which should be presented to the 11th United Nations Congress on the Prevention of Crime and Criminal Justice in Bangkok, Thailand, 2005.

ANNEXTURE E

PRINCIPLES RELATING TO THE STATUS OF NATIONAL INSTITUTIONS COMPETENCE AND RESPONSIBILITIES

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental

organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions
with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.