THE ADVOCATE

...DEFENDING HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

...ENRICHING OUR DEMOCRACY

A publication of CURE-Nigeria since 2011

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FREE

BOOKS BEHIND BARS PROJECT

The Books Behind Bars Project, embarked on by CURE-Nigeria in 2014, is aimed at promoting a reading culture among inmates and prison officials, particularly those in search of higher education through the National Open University (NOUN.). A visit to Makurdi Medium Security Prison and Borstal Institution in Kaduna libraries provided by CURE-Nigeria will give you a great smile. There are over 40 thousand books in our store to establish libraries in other prisons across the country. But we need the support of corporate bodies and individuals to go on.

For more inquiries and support write to us at e-mail: theadvocate@curenigeria.org or call 08034365657, +23492911314 or visit us at 31A Anon Plaza, Abudulsalam Abubakar Way, Gudu, Abuja, Nigeria.

THE UNITED NATIONS RULES ON THE TREATMENT OF WOMEN PRISONERS.

CONTD.FROM LAST EDITION

If ill- treated and torture, including sexual violence is diagnosed (Rule 7)

• Women who have been victims of ill-treatment and torture, including sexual abuse and rape should be provided with a full and clear explanation as to their legal rights to make an official complaint about their treatment to independent judicial authorities. If the woman does not speak the language most commonly used in the prison, the explanation should be provided with the assistance of a qualified interpreter.

• Any decision whether to complain or not should be based on a fully informed understanding of the procedures and possible outcomes of the complaints' procedure. Thus, the prison authorities must ensure that all women who have been subjected to abuse and ill-treatment are given full information about their rights and that they have access to legal counsel before they take any decision. They should never be coerced into not submitting complaints.

• Physicians responsible for assessing and documenting ill-treatment or torture have an ethical obligation to denounce acts of torture or cruel, inhuman or degrading treatment, however, as noted in the WMA Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or In human or Degrading Treatment, "doctors should use their discretion in this matter, bearing in mind paragraph 68 of the Istanbul Protocol", which states: "in some cases, two ethical obligations are in conflict. International codes and ethical principles require the reporting of information concerning torture or maltreatment to a responsible body. In some jurisdictions, this is also a legal requirement. In some cases, however, patients may refuse to give consent to being examined for such purposes or to having the information gained from examination disclosed to others. They may be fearful of the risks of reprisals for themselves or their families. In such situations, health professionals have dual responsibilities: to the patient and to society at large, which has an interest in ensuring that justice is done and perpetrators of abuse are brought to justice. The fundamental principle of avoiding harm must feature prominently in consideration of such dilemmas. Health professionals should seek solutions that promote justice without breaking the individual's right to

CURE-Nigeria calls on the Federal Government to establish an education fund or make budgetary provisions to support the education of people in prison, particularly those who have the qualifications to undertake degree programs with the NOUN. In this way, our prisons will be turned from crime-breeding grounds to rehabilitation centers, and this will help reduce the high rates of recidivism, crime, and insecurity, and raise education level among people in prison.

Contd. on page 4

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Contd. From last publication

Article 18

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

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre

UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE

Contd. From last publication

Commentary
Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries a juge d'execution des peines has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary
The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. Mobilization of volunteers and other community services

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary
This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively.

Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules l.l to l.6 and follows the relevant

Cont. on page 6

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Contd. from last publication

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

A HANDBOOK ON PRISON FILE MANAGEMENT

Contd. From last publication

Ongoing detention/imprisonment
Where a person is held in custody pursuant to a judicial decision, there are additional file requirements. All of the foregoing requirements "on admission" continue to apply, of course, in addition to the following:

- The file must contain a description of the "plan" that is to be followed by the person during the period of detention/imprisonment. The "plan" must describe the programme the person is required to follow to achieve a reduced classification, and to prepare for return to the community.

- The file must include periodic evaluations of the person's progress against the plan, including the modification of the plan where that is required.

- The file must include periodic re-evaluations of the person's security requirements to ensure that he is being held in a prison consistent with his classification.

- The file must include records of any ongoing physical or mental health concerns. Medical records detailing visits to physicians, dentists, or mental health professionals shall be included.

On release
Most prisoners serve determinate sentences, and return to their communities. Communities. Correctional systems have a responsibility to help to prepare such persons for that return, and to document their efforts to do so. Much of this document will be contained in the file already, describing the progress of the prisoner against the plan that was created for him. However, there are some important elements that must be recorded near or at the time of release, such as the following.

- The file must reflect a pre-release medical,

dental and optician examination. any ongoing concerns should be shared with the prisoner and a medical professional that they designate in community. The prisoner must be released with a supply of any medication that is required to manage chronic conditions, and a prescription that can be filled following release to acquire more medication as may be necessary.

- The file must record the presence of identification documents that will be required by the prisoner following release. Where these documents are not present, the correctional system has a responsibility to correspond and acquire them on behalf of the prisoner.

- The file must reflect the funds that are available to the prisoner upon release.

- The file must reflect the return to the prisoner of their effects, as recorded upon admission, and during the period of imprisonment.

- The file must record the precise date and time of release, and the planned destination of the former prisoner.
- The file must record the issue of clothing that is appropriate to the climate and season.

- Where required by law, the file must record that notifications of community authorities are completed.

Setting up a prisoner file management system
Whilst human rights standards stipulate what prisoner information should be recorded and when, they do not prescribe what operational systems should be in place to ensure these requirements are met. This can leave detaining authorities with many unanswered questions: how exactly should prisoner information be recorded and by whom? Where and how should it be organized and stored? And who should have access to this information?
National legislation, policies and protocols provide an essential framework to guide detaining authorities in establishing an effective prisoner file management system. However the precise procedures for creating, maintaining and using a file management system in any given place of detention will be largely determined by internal factors, notably, the resources at their disposal, the size of the institution and indeed the number of personnel.

In spite of this, there are general principles that can be followed that provide important foundations for an efficient file management system. These are outlined below.

Creating a general prisoner file
The general prisoner file should be created when the prisoner is first received at the institution. A designated officer --- or team ---should hold responsibility for creating the file and collecting the relevant information from the prisoner directly, along with any supporting documentation from relevant agencies and professionals.

Interviews with prisoners should be undertaken in an area that respects the privacy of the prisoner and ensures confidentiality. Templates or specific forms should be used to enable all the relevant information to be collected.

The designated officer should check whether the prisoner has a previous record at the institution. If so, this information should be retrieved and attached to the new file.

File information may be classified and organized in different ways. However, a general file should contain the following supporting information and documentation:

- Committal information and court reports;
- Initial assessment reports;
- Classification reports;
- Incident reports;
- Misconduct reports;
- All correspondence relating to the prisoner;
- Inventory of prisoner's property;
- IDU information.

Medical files
Medical information relating to the prisoner should be kept separately from the general file and stored in a separate location, such as the health centre. Medical personnel should hold responsibility for the organization and maintenance of medical files and an appropriate register.
Medical assessments and interviews should be undertaken by trained medical professionals in an area that ensures that prisoner confidentiality and privacy are respected. In the case of HIV testing, informed consent must be obtained from the prisoner and recorded. If consent is not given, this should also be recorded.

Medical confidentiality
Medical files should not be made available to non-medical personnel. The World Health Organization Guidelines on HIV infection and AIDS in prisons (1999) for example make the following recommendations:

- Information on the health status and medical treatment of prisoners is confidential and should be recorded in files available only to health personnel. Health personnel may provide prison managers of judicial authorities with information that will assist in the treatment and care of the patient, if the prisoner consents.

- Information regarding the HIV status may only be disclosed to prison managers if the health personnel consider, with due regard to medical ethics, that this is warranted to ensure the safety and wellbeing of prisoners and staff, applying to disclosure the same principles as those generally applied in the community. Principles and procedures relating to voluntary partner notification in the community should be followed for prisoners.

- Routine communication of the HIV status of prisoners to the prison administration should never take place. No mark, label, stamp or other visible sign should be placed on prisoner's files, cells or papers to indicate their HIV status.

File register
A central file register should contain information indicating the current location of each general prisoner file. A designated member of staff-or team-should hold responsibility for maintaining the register and have clear procedures that outline how the register should be updated and used.

The central file register should record when individual prisoner files have been issued to staff members, detailing their name, the time/date of issue, and the reason for issue. It should also record when files have been returned.

Separate file registers may be additionally set up to record information about the following:
- Release prisoners;
- Deceased prisoners;
- Prisoners under disciplinary measures;
- Prisoners who have been transferred to another institution;
- Prisoners on remand.

The creation of separate registers such as those above can enable prison managers to quickly access specific information, which can provide a helpful snapshot at any given time. A separate file register for remand prisoners, for example, will enable detaining authorities to hold a central record of when prisoners are due to appear before court. This can enable them to plan transfers accordingly and prevent court appearances being missed.

In all cases, a file register system should record when a file has been transferred to another institution, or location, and when it is returned.

Prison registry
The central file register and general prisoner files need to be stored in a prison registry (or registry office). This should be a secure area with controlled access. The prisoner files themselves should be stored in lockable, fireproof, waterproof and vermin-proof cabinets. The general prisoner file should be systematically organized i.e. . Alphabetically, and clearly labeled for ease of access. Files should be left out where unauthorized persons could potentially access them. Additionally, no information contained within the files should be duplicated i.e. photocopied.

Access to files and information sharing
Access to prisoner files by personnel should be on a "need to know" basis; the central file register should record all access given to prisoner files.

Access to information contained in the general prisoner files by external parties should follow national legislation and protocols relating to data protection and should at all times respect the prisoner's right to privacy and confidentiality.

Under national legislation, prisoners themselves may have a right to access information contained within their prisoner file and amend any information that is factually incorrect. As such, detaining authorities should ensure that procedures for sharing information with prisoners are compliant with legislation.

Transferring files
The officer responsible for the prisoner's transfer should hold responsibility for the transfer of the prisoner file. The general prisoner file should be in a sealed package and all loose documentation tied securely. Medical files should be sealed in a separate package and attached to the general file. Access to file during transfer should be limited to a "needs to know" basis and all records made of such access.

Archiving and storage
The archiving and storage of "inactive files" (e.g. relating to prisoners who have been released or who have died in custody) should follow national legislation and protocols on archiving prisoner files. This may set time limits on how long files are kept and where they are kept before being destroyed. In the absence of national requirements, prison authorities should devise their own protocols and procedures for storing such files.

"Inactive "files should be stored separately from active files of those currently in detention.

THE UNITED NATIONS RULES ON THE TREATMENT OF WOMEN PRISONERS.

Contd .from page 2

confidentiality .Advice should be sought from reliable agencies; in some cases this may be the national medical association or non-governmental agencies. Alternatively, with supportive encouragement, some reluctant patients may agree to disclosure within agreed parameters".

• If the woman decides to take legal action she should be assisted to access a lawyer, which should be provided to her free-of-charge, if she cannot afford to pay for a lawyer.

• In cases of sexual abuse where the victim does not wish the event to be known due to the socio-cultural pressures or personal reasons, the physician who carries out the medical examination, investigative agencies and the courts have an obligation to cooperate in maintaining the victim's privacy.

• In all cases women should be provided with appropriate and professional psychological support, for as long as it is necessary, for them to overcome the trauma and for the psychological scars to be healed. Such treatment may be provided in cooperation with specialist services in the community and NGOs.

• In all cases, appropriate laboratory tests should be undertaken and treatment prescribed for any sexual and reproductive health complications resulting from the incident. In appropriate cases women who have been exposed to a risk should be provided with post-exposure prophylaxis (PEP).

• Measures should be put in place to protect women who have complained of ill-treatment and torture from retaliation by prison staff. These measures should include:

* Adherence to the principle of confidentiality during the whole process
* Proper supervision of women at risk
* Women prisoners' access to an independent and effective complaints mechanism
* A clear policy against retaliation by staff and disciplinary procedures to hold those who threaten to retaliate or do retaliate to account

Medical confidentiality (Rule 8)

• The Ministry responsible for prisons and the Ministry of Health, in coordination with national medical associations, should develop clear guidelines on medical confidentiality, refusal to provide information on reproductive health history and the prohibition of vaginal examinations without the consent of the prisoner. Virginity test should be prohibited, as a form of custodial violence.

• Prison authorities should make sure that prison rules and regulations relating to health care in prisons include the principle of medical confidentiality and the measures to ensure medical confidentiality as outlined below.

• Prison health care services should ensure that all medical records of prisoners, including those which relate to the findings of the initial medical examination on entry are kept confidential. The information should be recorded in separate medical files and be accessible only to health personnel. Health personnel may provide prison managers or

• Judicial authorities with information that will assist in the treatment and care of the patient, if the prisoner consents.

• This means that:

* If disclosure of information is sought by a third party , then the patient must be made aware of it, and her consent to disclosure given in writing.

* Information should not be disclosed without the patient's knowledge.

* Personal information should be effectively protected: this would mean that if the information is held on a computerized database system, access to the database should be restricted to medical staff, with safeguards in place to ensure that others are unable to access the information; if the information is kept manually, the files should be locked up in a secure location, accessible only to medical staff.

* Patients should be made aware that information will, of necessity be shared within the medical team and where necessary with health care services in the community (eg. If a prisoner has to be transferred to treatment in the community)

* The principle of medical confidentiality applies to all medical staff, including nurses, psychologist, psychiatrists, pharmacists, therapist etc. All members of the medical team must work within the same ethical guidelines on confidentiality.

* Where interpreters are used, they should also be bound by the principle of medical confidentiality.

• No staff within a prison, with the exception of the health care staff, should have access to a prisoner's medical records or medical information. Even within the medical team only the doctor(s) and nurse(s) should have full access to all medical information.

• In cases where withholding information about the prisoner's health may damage the prisoner's or others' health, the physician may take the decision to disclose only the minimum information required to protect the patient and/or others from imminent harm. The decision to disclose limited information to other parties should be made by the doctor responsible for the treatment of the prisoner and have the sole aim of preventing harm to the prisoner's or others' health (eg.when a woman has a painful infection of her reproductive organs and requires rest and care, the doctor needs only to tell the prison director that she has an infection and cannot participate in the usual prison regime, rather than disclosing the diagnosis).similarly information can be disclosed to other health care providers only on a strictly "need –to –know 'basis unless the patient has given explicit consent for fuller information to be shared.

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INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Contd .from page 1

public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

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

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of

Cont. on page 5

Contd .from page 4

protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

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.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Contd .from page 2

provisions of the International Covenant on Civil and Political Rights.

Part five. Institutional treatment

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress.

In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody.

Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, l0.1, 15.2 and l8.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.l) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelates to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. Frequent and early recourse to conditional release

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible.

Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. Semi-institutional arrangements

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of Semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

Part six. Research, planning, policy formulation and evaluation

30. Research as a basis for planning, policy formulation and evaluation

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The

TORN PEDESTRIAN SHIELDS AT FEDERAL SECRETARIAT, ALONG AHMED BELLO WAY, ABUJA.

Photo by Promise Izugbara

As the rainy season is around the corner, will the rain continue to beat the poor masses who take shelter in these torn shields?

31 INMATES GET WAEC CERTIFICATES IN PRISON

Contrary to mostly held views by the average member of the public, the Nigerian Prisons Service is not only about hounding law breakers behind bars. The Service of the NPS goes far beyond holding suspects and convicts in custody. The custodial function of the Nigerian Prisons Service is only a means to an end rather than an end in itself. The Prisons is more concerned with the condition in which an inmate leaves the four walls of the prison than in keeping him captive.

If a criminal or felon spends time in custody and comes out unchanged, the time spent in custody would have been wasted and the Nigerian prisons would have no positive story to tell concerning the individual. On the other hand, if he leaves changed positively, then the job of the Prisons would have been done. That is only when he (the former inmate) can contribute positively to his family and the society at large. This is the ultimate aim of imprisonment. This is what the Nigerian prisons Service stands for.

This task is no mean one. One of the ways the NPS tries to improve on the quality of life of those in its bowels is through education. The Nigerian Prisons gives the inmates the opportunity to take another slot at life by offering them opportunity to improve on their academic qualification.

To this effect, the Prisons is partnering with NUGA BEST, a non-governmental Organisation to attend to the O' level needs of the inmates who are interested and willing to take the opportunity.

During an occasion to present certificates to some of the inmates who performed exceptionally well in the 2014 November/December West African Examinations, the MD/CEO, NUGE BEST Medicals, Mr Hilary Chukwuma Akpu said he was so delighted that their effort was yielding the desired fruit in the lives of the inmates. He explained that he was driven by his desire to see to the improvement of the lives of those in custody. He promised to look into some of the challenges that the students faced in the course of their preparation. He called on volunteer teachers to help in the preparation of the inmates for future West African Examinations.

The Controller General of Prisons was represented at the event by the Deputy Controller of Prisons, in charge of Kuje Prisons, Mr Musa Tanko who said he was elated to have such happen under his watch. He admonished the inmates to take the opportunity being offered and improve on themselves. He thanked NUGA BEST for their contribution, while calling on all well meaning individuals and agencies to take a cue from them.

The statistics of the result showed that 38 inmates sat for the examination. Out of this 7 were ceased. Of the 31 that were released a total 67 distinctions, 94 credits, 73 passes and 41 failures were recorded. The inmates with the best three results were appreciated with awards.

Source: http://www.prisons.gov.ng/news/news_detail.php?id=15

HUMAN RIGHTS AND PRISONS:
Manual on Human Rights Training for Prison Officials.

Chapter 1: Human Rights and Prisons
A Purposes of Imprisonment

1 Prisons have existed in most societies for many centuries. Usually they have been places where individuals were detained until they underwent some legal process. They might be waiting to go on trial, or for execution or exile, or until a ransom, a fine or a debt is paid. Occasionally, individuals who posed a particular threat to the local ruler or state might be deprived of their liberty for a long period. The use of imprisonment as a direct punishment of the court was introduced to Western Europe and North America in the 18th century. It has spread gradually to most countries, often as a result of colonial oppression. In some countries, the concept of imprisoning human beings does not fit easily with the local culture.

2. Over the years there has been a lively debate, which is still going on, about the purposes of imprisonment. Some commentators argue that it should be used only to punish criminals. Others insist that its main purpose is to deter individuals who are in prison from committing further crimes after they are released, as well as to deter those who might be inclined to commit crime. Another perspective is that people are sent to prison to be reformed or rehabilitated. That is to say, during the time they are in prison they will come to realize that committing crime is wrong and will learn skills which will help them to lead a law-abiding life when they are released. Sometimes it is argued that personal rehabilitation comes about through work. In some instances, people may be sent to prison because the crime they have committed shows that they present a grave threat to public safety.
3. In practical terms, the purposes of imprisonment will be interpreted as a combination of some or all of these reasons. The relative importance of each one will vary according to the circumstances of individual prisoners. However, a more and more widely held opinion is that prison is an expensive last resort, which should be used only when it is clear to the court that a non-custodial sentence would not be appropriate.

4. The detention of individuals who are awaiting trial is a matter of special concern. Their situation is quite distinct from that of people who have been convicted of an offence. They have yet to be found guilty of any offence and are therefore innocent in the eyes of the law. The reality is that they are often held in the most restricted conditions, conditions that in some cases are an affront to human dignity. In a number of countries, the majority of people who are in prison are awaiting trial. The proportion sometimes is as high as 60 per cent. There are particular problems with the way pre-trial prisoners are treated and when the access that they have to lawyers and to their families is determined not by the prison authorities, but by another authority, such as the prosecutor.

B. HUMAN RIGHTS
5. “Human rights” is a modern term but the principle that it invokes is as old as humanity. It is that certain rights and freedoms are fundamental to human existence. They are inherent entitlements that come to every person as a consequence of being human, and are founded on respect for the dignity and worth of each person. They are not privileges, nor gifts given at the whim of a ruler or a Government. Nor can they be taken away by any arbitrary power. They cannot be denied, nor can they be forfeited because an individual has committed any offence or broken any law.
6. Initially these rights had no legal basis. Instead they were considered to be moral claims. In due course these rights were formally recognized and protected by law. Often they came to be safeguarded in a country's constitution, frequently in the form of a Bill of Rights, which no Government could deny. In addition, independent courts were set up in which individuals whose rights had been taken away could seek redress.

7. The widespread abuses of human rights and freedoms in the 1930s, which culminated in the atrocities of the World War between 1939 and 1945, put an end to the notion that individual States should have the sole say in the treatment of their citizens. The signing of the Charter of the United Nations in June 1945 brought human rights within the sphere of international law. All Member States of the United Nations agreed to take measures to safeguard human rights. Three years later, the adoption of the Universal Declaration of Human Rights provided the world with a "common standard of achievement for all peoples and all nations", based on the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family" (preamble).

8. Human rights issues and obligations are now an important feature of the day-today conduct of government. Over the years, since the proclamation of the Universal Declaration in 1948, States have developed a considerable number of human rights instruments at the national, regional and international levels (see chapter 2), and have undertaken obligations under international and domestic law both to promote and to protect a wide variety of human rights.

C. THE ROLE OF PRISON OFFICIALS
9. Prison staff receive individuals who are lawfully deprived of their liberty. They have the responsibility to hold them safely and then, in most cases, release them back to the community. This function involves carrying out extremely demanding and stressful tasks on behalf of society; yet, in many countries, prison officials are badly trained, poorly paid and do not always enjoy public respect. While facing situations of lawful limitations of freedoms and rights, prison officials are at the forefront of human rights protection on a daily basis, experiencing them and putting them into practice; respecting them and enforcing their respect.

10. In this framework, human rights instruments ranging from the Universal Declaration of Human Rights to specific texts such as the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provide a set of rules to help prison staff perform their duties through policies and practices that are lawful, humane and disciplined. Incorporating such principles into daily conduct strengthens the dignity of this profession. Human rights standards, which constitute the content of this Manual, have often been embodied in national laws and regulations; they provide invaluable guidance for the performance of a function that is vital to the good functioning of a democratic society and to the maintenance of the rule of law.

11. Human rights are not a matter under the exclusive jurisdiction of the State or its agents. Rather, they are a legitimate concern of the international community, which has been engaged for half a century in the setting of standards, the establishment of implementation mechanisms and the monitoring of compliance with the standards. Prison officials carrying out their functions in a manner that respects and protects human rights bring honour not just to themselves, but also to the Government which employs them and the nation which they serve. Those who violate human rights will, ultimately, draw the spotlight of international scrutiny and the condemnation of the international community.

CHAPTER2. SOURCES, SYSTEMS AND STANDARDS FOR HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE

OBJECTIVES
The objectives of this chapter are:
- To introduce course presenters and, through them, course participants to the overall existing United Nations framework for the protection of human rights in the administration of justice.
- To provide an overview of the principal instruments, monitoring mechanisms and authoritative United Nations bodies relevant to the work of prison officials.
- To highlight selected categories of potential human rights violations which prison officials should be careful to avoid.

ESSENTIAL PRINCIPLES
International human rights law is binding on all States and their agents, including prison officials. Human rights are a legitimate subject for international law, and for international scrutiny. Prison officials are obliged to know, and to apply, international standards on human rights.

A. RELEVANCE OF INTERNATIONAL STANDARDS
12. International norms and standards have various legal effects depending on their source. Thus various levels of States' legal obligations depend on whether the international standards are derived from treaty

law, from customary international law or from various bodies of principles, minimum rules and declarations.

International norms and standards relating to human rights in the administration of justice have been promulgated by a number of bodies within the United Nations system. Foremost among these have been the Commission on Human Rights, its Subcommission on the Promotion and Protection of Human Rights, and the periodic United Nations Congresses on the Prevention of Crime and the Treatment of Offenders. These standards have been finally adopted by the General Assembly or the Economic and Social Council, two principal organs of the United Nations.

13. Additionally, the normative content of some of these standards, and details on their proper implementation at the national level, are to be found in the evolving practice of the United Nations treaty bodies, among others the Human Rights Committee, a treaty monitoring body established under the International Covenant on Civil and Political Rights.

14. Before looking at the various sources, systems and standards existing at the international level, a word about the legal force of these standards is in order. The collective body of standards discussed in this Manual spans the full range of international legal authority, from binding obligations set out in covenants and conventions to morally persuasive universal guidance offered through various declarations, minimum rules, and bodies of principles. Together, these instruments offer a comprehensive and detailed international legal framework for ensuring respect for human rights, freedom and dignity in the context of criminal justice.

15. In strict legal terms, formal treaties which have been ratified or acceded to by States, as well as customary international law, have the character of binding law. Such treaties include the following:

- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Rights of the Child;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women;
- Convention on the Prevention and Punishment of the Crime of Genocide.

Mention should also be made of the Charter of the United Nations, itself a legally binding treaty to which all Member States are parties.

16. In addition, customary international law is the term used to describe general and consistent practice followed by States deriving from a sense of legal obligation. In other words, if over a period of time States perform in a certain way because they believe that they are required to do so, that behaviour comes to be recognized as a principle of international law, binding on States, even if not written in a particular agreement.

17. Human rights standards are also enshrined in other types of instruments: declarations, recommendations, bodies of principles, codes of conduct and guidelines (such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Code of Conduct for Law Enforcement Officials; and the Guidelines on the Role of Prosecutors). These instruments are not legally binding on States in and of themselves. Nevertheless, the various declarations, guidelines and minimum rules, which are discussed in this Manual hand in hand with the relevant conventions, have moral force and provide practical guidance to States in their conduct. The value of these instruments rests on their recognition and acceptance by a large number of States and, even without binding legal effect, they may be seen as declaratory of principles that are broadly accepted within the international community. What is more, some of their provisions, particularly relevant to the purpose of this Manual, are declaratory of elements of customary international law and are thus binding.

B. THE BASIC SOURCES

1. Charter of the United Nations

18. The primary source of authority for the promulgation of human rights standards by United Nations bodies may be found in the Charter itself. The second paragraph of the Preamble states that one of the principal aims of the United Nations is: 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 ... Article 1, paragraph 3, of the Charter states that one of the purposes of the United Nations is to achieve international cooperation in: promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex,language or religion ...

19. These should not be seen merely as empty statements of principle. Rather, as already stated, the Charter is a legally binding treaty to which all Member States are parties. These provisions had the legal effect of, once and for all, putting to rest all arguments as to whether human rights and their enjoyment by individuals were subjects for international law, or merely matters of State sovereignty. Consequently,the fact that prison officials are bound by such rules is now beyond dispute.

20. The quasi-legislative activity of the United Nations has since produced dozens of instruments, each building on and adding more detail to its predecessors. Most important, for present purposes, are the Universal Declaration of Human Rights of 1948 and its two implementing and legally binding covenants of 1966, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its first Optional Protocol. Together, these instruments are commonly referred to as the International Bill of Human Rights.

2. Universal Declaration of Human Rights

21. The Universal Declaration of Human Rights represents a great step forward taken by the international community in 1948. Its persuasive moral character and political authority derive from the fact that it is agreed to be a statement of generally accepted international principles. This outline of human rights objectives is drafted in broad and general terms, and its principles have inspired more than 140 human rights instruments which, taken together, constitute international human rights standards.

Moreover, the Universal Declaration has spelled out the fundamental rights proclaimed in the Charter of the United Nations, recognizing that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world. While the Universal Declaration is not, in itself, a binding instrument, certain provisions of the Declaration are considered to have the character of customary international law. This applies to articles 3, 5, 9, 10 and 11 of the Universal Declaration, which address, respectively, the right to life, liberty and security of person; the prohibition of torture and of cruel, inhuman and degrading treatment or punishment; the prohibition of arbitrary arrest; the right to a fair trial; the right to be presumed innocent until proved guilty; and the prohibition of retroactive penal measures. While these articles are most directly relevant to the administration of justice, the entire text of the Universal Declaration offers guidance for the work of prison officials.

3. Treaties: covenants and conventions

International Covenant on Economic, Social and Cultural Rights The International Covenant on Economic, Social and Cultural Rights entered into force in January 1976 and currently has 147 States parties. [1]Article 11, stating the right of everyone to an adequate standard of living, is particularly important to the rights of prisoners. This right, as stated in article 11, paragraph 1, includes the right to adequate food, clothing and housing and to the continuous improvement of living conditions. Moreover, article 11, paragraph 2, recognizes the fundamental right of everyone to be free from hunger. In addition, in articles 6, 7, 8, 9, 10, 12, 13 and 15 the Covenant details the rights to work; to reasonable conditions of employment; to organize trade unions; to social security and social insurance; to protection of families and children; to health; to education; and to take part in cultural life. The implementation of the Covenant is monitored by the Committee on Economic, Social and Cultural Rights. In May 1999, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 12 (1999) on the right to adequate food (art. 11 of the Covenant). In November 2002, it adopted General Comment No. 15 (2002) on the right to water (arts. 11 and 12 of the Covenant). Both the right to adequate food and the right to drinking water are relevant to this Manual in relation to conditions of imprisonment and detention. The General Comments have firmly placed the rights to adequate food and drinking water into a rights-based approach to development, where countries have obligations to fulfil, respect and protect human rights.

International Covenant on Civil and Political Rights The International Covenant on Civil and Political Rights entered into force in March 1976. It currently has 149 States parties. In articles 6, 7, 8, 9, 10, 11, 14 and 15, the Covenant details the right to life; the prohibition of torture; the prohibition of slavery, servitude and forced labour; the prohibition of arbitrary arrest or detention; the rights of all persons deprived of their liberty; the prohibition of imprisonment for failure to fulfil a contractual obligation; the right to a fair trial; and the prohibition of retroactive

penal measures. The Covenant is a legally binding instrument which must be respected by Governments and their institutions, including prison authorities.

The implementation of the Covenant is monitored by the Human Rights Committee, which was established under the terms of the Covenant itself.

Optional Protocol to the International Covenant on Civil and Political Rights

The first Optional Protocol to the International Covenant on Civil and Political Rights entered into force simultaneously with the Covenant and currently has 104 States parties. This additional instrument enables the Human Rights Committee to receive and consider communications from individuals under the jurisdiction of a State party claiming to be victims of a violation of any of the rights set forth in the Covenant. In considering such complaints, the Committee has developed a considerable body of practice, which provides useful guidance in interpreting the implications of the Covenant for the work of prison officials.

Second Optional Protocol to the International Covenant on Civil and Political Rights

While the International Covenant on Civil and Political Rights does not prohibit capital punishment, it does impose strict limitations on its use. In the face of steadily growing world public opinion in favour of full abolition of capital punishment, the General Assembly, in 1989, adopted the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, which does, for States parties, prohibit use of the death penalty. It currently has 49 States parties.

Convention on the Prevention and Punishment of the Crime of Genocide

The Convention on the Prevention and Punishment of the Crime of Genocide entered into force in January 1951. It was, like the United Nations itself, a product of the universal horror and outrage felt by the international community at the gross violations of human rights which characterized the Second World War. The Convention confirms that genocide is a crime under international law, and aims to advance international cooperation towards the abolition of this atrocity. In particular, it addresses acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group through killing, causing serious bodily or mental harm, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, imposing measures intended to prevent births within the group, or forcibly transferring children of the group to another group.

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

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in June 1987 and currently has 136 States parties. The Convention goes considerably further than the International Covenant on Civil and Political Rights in protecting against the international crime of torture.

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

Article 16, paragraph 1, defines "other cruel, inhuman or degrading treatment" as: other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. …

Of particular relevance to this Manual are articles 10, 11, 12 and 13 of the Convention, which apply to the acts defined in both articles 1 and 16. Article 10 details the necessity to include education and information regarding the prohibition of torture in the training of any persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Article 11 emphasizes that States parties shall keep under systematic review all procedures pertaining to the arrest, detention or imprisonment of individuals with a view to preventing torture. Articles 12 and 13 ensure that States parties conduct an impartial investigation whenever there are reasonable grounds to believe that an act of torture has been committed, and guarantee victims of torture a right to complain and to have their case promptly and impartially examined by competent authorities, protecting all witnesses and complainants from ill-treatment or intimidation. Additionally, under articles 2, 3, 14 and 15 of the Convention, States parties are obliged to take effective legislative, administrative, judicial or other measures to prevent acts of torture; to commit to the principle of non-refoulement when there are grounds to suspect that a returned person would be tortured; to compensate victims and their dependants; and to exclude evidence or statements obtained through torture.

Optional Protocol to the Convention against Torture

On 18 December 2002, by its resolution 57/199, the General Assembly adopted the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1 states the Protocol's objective, namely to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. Article 2 establishes a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to carry out the functions of the Protocol. In addition, article 3 requires each State party to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.

Rome Statute of the International Criminal Court

On 1 July 2002, the Rome Statute establishing a permanent International Criminal Court entered into force. The Statute has to date been ratified by 89 States. The Court has a mandate to try individuals and to hold them accountable for the most serious crimes, such as war crimes, crimes against humanity and genocide. Article 7, dealing with crimes against humanity, is particularly relevant to this Manual. It defines torture as a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population.

International Convention on the Elimination of All Forms of Racial Discrimination.

The International Convention on the Elimination of All Forms of Racial Discrimination entered into force in January 1969, prohibiting all forms of racial discrimination in the political, economic, social and cultural spheres. It currently has 168 States parties.

Among other provisions, it requires equal treatment before all tribunals, agencies and bodies involved in the administration of justice, without distinction as to race, colour, or national or ethnic origin.

Convention on the Elimination of All Forms of Discrimination against Women Upon entry into force in September 1981, the Convention on the Elimination of All Forms of Discrimination against Women became the principal international instrument addressing discrimination against women in the political, economic, social, cultural and civil fields. The Convention currently has 173 States parties, which are required to undertake specific action in each of those fields to end discrimination against women and to allow them to exercise and enjoy human rights and fundamental freedoms on a basis of equality with men.

In addition, General Recommendation No. 19 on violence against women, adopted by the Committee on the Elimination of Discrimination against Women at its eleventh session, in 1992, is relevant to this Manual. It addresses gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, as discrimination within the meaning of article 1 of the Convention.

Furthermore, General Recommendation No. 19 provides that gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

To be continued....

Source : Office of the United Nations High Commissioner for Human Rights. Web site: www.ohchr.org

Death Penalty: Religious Views.

General Reference (not clearly pro or con)

The Church of Jesus Christ of Latter-day Saints stated in the "Public Issues" section of the Church's official website (accessed July 25, 2008):

"The Church of Jesus Christ of Latter-day Saints regards the question of whether and in what circumstances the state should impose capital punishment as a matter to be decided solely by the prescribed processes of civil law. We neither promote nor oppose capital punishment."

The Assemblies of God (USA), one of the largest Pentecostal denominations in the United States, in an article on its website titled "Capital Punishment" (accessed July 28, 2008) and written by the church's General Council, stated:
"Opinion in the Assemblies of God on capital punishment is mixed. However, more people associated with the Assemblies of God probably favor capital punishment for certain types of crimes such as premeditated murder than those who would oppose capital punishment without reservation. This consensus grows out of a common interpretation that the Old Testament sanctions capital punishment, and nothing in the New Testament negates maximum punishment as society's means of dealing effectively with serious crimes...
There is room in the church for honest differences of opinion concerning the use of capital punishment. However, all believers should seek to apply biblical principles in reaching their conclusions..."

Billy Graham, Evangelist and Chairman of the Board of Billy Graham Evangelistic Association (BGEA), in an article titled "The Power of the Cross," published in the Apr. 2007 issue of *Decision* magazine wrote:
"To gain a clear understanding of God's attitude toward sin, we only have to consider the purpose of Christ's death. The Scripture says, 'Without shedding of blood there is no remission' (Hebrews 9:22). Here is a positive statement that there can be no forgiveness of sin unless our debt has been paid.

God will not tolerate sin. He condemns it and demands payment for it. God could not remain a righteous God and compromise with sin. His holiness and His justice demand the death penalty."

Editor's Note: A plain reading of the quote may suggest that Mr. Graham's quote above is pro death penalty; however, ProCon.org was advised by Mr. Stephen Scholle, General Counsel of the Billy Graham Evangelistic Organization and an authorized spokesperson for Mr. Graham, that such a reading would be inaccurate. To read Mr. Scholle's explanation for greater clarity on this topic, click on Billy Graham's biography below.]

Carl F. H. Henry, ThD, PhD, an American evangelical Christian theologian and the first editor-in-chief of the magazine *Christianity Today*, in his 1988 book *Twilight of a Great Civilization*, wrote:

"The rejection of capital punishment is not to be dignified as a 'higher Christian way' that enthrones the ethics of Jesus. The argument that Jesus as the incarnation of divine love cancels the appropriateness of capital punishment in the New Testament era has little to commend it. Nowhere does the Bible repudiate capital punishment for premeditated murder; not only is the death penalty for deliberate killing of a fellow human being permitted, but it is approved and encouraged, and for any government that attaches at least as much value to the life of an innocent victim as to a deliberate murderer, it is ethically imperative."

DOES CHRISTIANITY SUPPORT THE DEATH PENALTY?

Southern Baptist Convention, in a June 13-14, 2000 meeting in Orlando, Florida, approved a resolution that stated:

"Therefore, be it RESOLVED, That the messengers to the Southern Baptist Convention...support the fair and equitable use of capital punishment by civil magistrates as a legitimate form of punishment for those guilty of murder or treasonous acts that result in death."

The National Association of Evangelicals (NAE), a coordinating agency of evangelical denominations in the US, in a 1973 statement on capital punishment, stated:

"If no crime is considered serious enough to warrant capital punishment, then the gravity of the most atrocious crime is diminished accordingly...

We strongly reaffirm our resolution of 1972 concerning capital punishment, and we call upon congress and state legislatures to enact legislation which will direct the death penalty for such horrendous crimes as premeditated murder, the killing of a police officer or guard, murder in connection with any other crime, hijacking, skyjacking, or kidnapping where persons are physically harmed in the process.

We urge that legislation which re-establishes the death penalty also include safeguards to eliminate any inequities."

The Lutheran Church--Missouri Synod, the second largest Lutheran church body in North America, during a 1967 church convention, adopted a resolution that stated:

"Whereas, The Lutheran Confessions support capital punishment:
...God has delegated His authority of punishing evil-doers to civil magistrates in place of parents; in early times, as we read in Moses, parents had to bring their own children to judgment and sentence them to death. Therefore what is forbidden here applies to private individuals, not to governments. Therefore be it Resolved, That The Lutheran Church--Missouri Synod declare that capital punishment is in accord with the Holy Scriptures and the Lutheran Confessions."

The Catholic Church, in the June 21, 2001 "Declaration of the Holy See to the First World Congress on the Death Penalty," wrote:

"The Holy See has consistently sought the abolition of the death penalty...
Where the death penalty is a sign of desperation, civil society is invited to assert its belief in a justice that salvages hope from the ruin of the evils which stalk our world. The universal abolition of the death penalty would be a courageous reaffirmation of the belief that humankind can be successful in dealing with criminality and of our refusal to succumb to despair before such forces, and as such it would regenerate new hope in our very humanity."

The Presbyterian Church (USA), in a statement on its website titled "A General Guide to the Facts about the PCUSA" (accessed July 28, 2008), stated:

"Presbyterian General Assemblies have been concerned not only for the issue of capital punishment, but also for those imprisoned...

In 1959, the 171st General Assembly, 'believing that capital punishment cannot be condoned by an interpretation of the Bible based upon the revelation of God's love in Jesus Christ,' called on Christians to 'seek the redemption of evil doers and not their death,' and noted that 'the use of the death penalty tends to brutalize the society that condones it...'
The most recent statement was made in 1985 by the Presbyterian Church (U.S.A.), reaffirming these positions and declaring 'its continuing opposition to capital punishment.'"
The United Methodist Church, in its "Opposition to Capital Punishment," a resolution adopted in 2000, stated:

"The United Methodist Church declares its opposition to the retention and use of capital punishment and urges its abolition. In spite of a common assumption to the contrary, 'an eye for an eye and a tooth for a tooth,' does not give justification for the imposing of the penalty of death...

Studies conducted over more than sixty years have overwhelmingly failed to support the thesis that capital punishment deters homicide more effectively than does imprisonment...

The death penalty falls unfairly and unequally upon marginalized persons including the poor, the uneducated, ethnic and religious minorities, and persons with mental and emotional illnesses."

The United Church of Christ, in its July 1999 Twenty-Second General Synod resolution "Call for Abolition of the Death Penalty," stated:
"WHEREAS, Jesus challenged the death penalty of his culture, calling on those without sin to cast the first stone..."

The Evangelical Lutheran Church, in an Aug. 28-Sep. 4, 1991 Churchwide Assembly meeting in Orlando, Florida, voted by two-thirds majority to adopt a policy that stated:

"Executions harm society by mirroring and reinforcing existing injustice. The death penalty distracts us from our work toward a just society. It deforms our response to violence at the individual, familial, institutional, and systemic levels. It perpetuates cycles of violence...

Since human beings are fallible, the innocent have been executed in the past and will inevitably be executed in the future. Death is a different punishment from any other; the execution of an innocent person is a mistake we cannot correct.

It is because of this church's concern regarding the actual use of the death penalty that we oppose its imposition."

Source: http://deathpenalty.procon.org/view.answers.php?questionID=000986

KAGAME'S THIRD TERM BID AND THE AFRICAN UNION'S SILENCE.

By Sylvester Uhaa

I read with concern, - a report regarding a referendum to amend Article 101 of the Rwandan Constitution to allow President Paul Kagame another seven year term. A few days ago, the Rwandan Senate voted to allow him a third term.

Kagame ascended to power in 2003 and was re-elected in 2010. By 2017, he will have spent 14 years in power as President. With the referendum likely to be in his favour, his victory at the polls will allow him to be president for 21 years.

It was with great discomfort that I first heard about this on CCTV News last April, at the peak of the political turmoil in Burundi, following President Pierre Nkurunziza's similar moves for a third term. Nkurunziza succeeded, but not without bloodshed of thousands of people, with thousands more continuing flee the country for safety. As the crises heightened, the EU and Brussels have also asked their citizens to leave.

I am not from that region, and I certainly do not happen to be an expert on Rwandan politics, but I am an African who is concerned about the spread of tenure elongation on the continent and its implications for peace, political stability, economic growth, the rule of law, and human rights.

Experience has shown that constitutional amendments for third term ambitions in Africa often trigger violence by opposition or other interest groups, either for the sake of protecting the constitution and the rule of law, or simply out of mistrust for the entire process. There is no guarantee that this will not happen in Rwanda, if not now, then later. The voices of the 10 individuals who opposed the referendum, out of the over 10 million who voted for the referendum, according to the AFP report, could multiply into thousands and even millions of opposing voices and throw the country into chaos. For a country that is just beginning to heal from the wounds of the 1994 genocide, this would be catastrophic.

Most fundamentally, tenure elongation undermines the rule of law and citizens' right to choose their leaders, which along with freedom of expression, religion and association, form the foundations of democracy.

Article 101 of the Rwandan Constitution sets the tenure of the president at two terms. Of course, constitutions are not written in stone, and a referendum is a legitimate and legal process by which to amend a constitution. However, the amendment of constitutions should not be solely in the interest of a single individual, as it would be in this instance. Africa needs leaders who uphold, defend and protect the rule of law and human rights, not those who bend, amend, manipulate, misinterpret, and violate human rights to suit their personal interests.

Another concern is the precedent this might set for the future. Are the Rwandan people really prepared, for the sake of one man they like, to risk coping with future presidents they may not like for 21 years or more? While this is too much of a risk in my opinion, the recent referendum seems to suggest that it is one Rwandans are willing to take.

How can anyone be sure that Kagame, unlike Oliver Twist, will not ask for a fourth term? Why did he not groom a successor, who would continue his policies and style of governance if he is doing this for the sake of the people, as he says? Even the idea of grooming a successor is not entirely democratic; the people must be allowed the right to choose freely those who will lead them. But it is a lesser evil compared to tenure elongation by the same individual.

I am also worried that Rwanda will add to the number of African nations who have yielded to the strong, autocratic and manipulative influence of rulers who will do anything to stay in power. This would increase the popularity of power elongation on the continent.

Kagame's third term bid might enkindle ethnic tensions in a country that has not forgotten the horrors of the 1994 genocide. Obama's words in Ethiopia in July may be instructive:- “When a leader tries to change the rules in the middle of the game just to stay in office, it [the country] risks instability and strife, as we've seen in Burundi. And this is often just a first step down a perilous path”

Under international law, the international community has the responsibility to protect (R2P) citizens of a State when that State fails to do so itself. This responsibility has three aspects – the responsibilities to prevent, to react, and to rebuild. The most important of these is the responsibility to prevent.

If world leaders are serious about the R2P doctrine, then this is the right time. A stitch in time saves nine!

I applaud the condemnation of the military coup by the African Union (AU) in Burkina Faso and the intervention to restore civilian rule in that country. But I fault the silence of the AU on the 'civilian coup' by President Pierre Nkurunziza in Burundi, and the coup currently being staged by President Kagame to over throw both the rule of law, and the constitution of Rwanda, and the right of the Rwandan people to freely choose who will govern them.

The international community must apply every diplomatic and other means to stop Kagame from overthrowing the will and right of the people to freely choose their leaders. The Constitution of Rwanda sets the president's tenure at two terms, and upholding this and the rule of law is the same as upholding the foundations of democracy.

Sylvester Uhaa is the Executive Director of CURE-Nigeria. He was a human rights advocate at the Institute for the Study of Human Rights at Columbia University in 2013 and is currently a Commonwealth Scholar in International Human Rights Law at the University Of Oxford, UK.

Source;

http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://redirect.state.sbu/?url=http://blogs.cuit.columbia.edu/rightsviews/2015/12/01/kagames-third-term-bid-and-the-african-unions-silence/