

Submission  
No 263

## INQUIRY INTO THE PRIVATISATION OF PRISONS AND PRISON-RELATED SERVICES

**Organisation:** Parliament of NSW  
**Name:** Mr Paul Pearce MP  
**Position:** Member for Coogee  
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# Paul Pearce MP

MEMBER FOR COOGEE

Shopfront Electorate Office: 80 Bronte Road, Bondi Junction NSW 2022  
Phone: 9389 6669 • Fax: 9387 8845 • Email: paul.pearce@parliament.nsw.gov.au

The Director  
General Purpose Standing Committee No. 3  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Director,

Please find attached my submission to the enquiry being conducted by the GPSC No. 3 into;

**The privatisation of prisons and prison-related services**

My submission falls into three broad areas:

1. the impact on the employees' wages and conditions;
2. the consequential impact on inmates of a privatised structure;
3. the human rights and international obligations implications.

In relation to part 3, I acknowledge the report prepared for the :

**Office of the United Nations High Commissioner for Human Rights**

COMMISSION ON HUMAN RIGHTS  
Sub-Commission on Prevention of  
Discrimination and Protection  
of Minorities  
Forty-fifth session  
Item 10 (a) of the provisional agenda

I also include for the reference of the Committee the following appendices:

**A. BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF  
DETENTION OR IMPRISONMENT, APPROVED BY THE  
GENERAL ASSEMBLY IN RESOLUTION 43/173 OF 9 DECEMBER 1988**

**B. THE EUROPEAN PRISON RULES 1987 : Revised European version of the Standard Minimum  
Rules for the Treatment of Prisoners**

Yours Sincerely,

Paul Pearce, MA, LLB, MP



## **Submission to the GPSC No. 3 into The Privatisation of Prisons and prison related services**

### **1. The potential impact of the proposed changes on the current employees' wages and conditions of employment**

Currently prison officers are employed in the public sector which entails both rights and obligations. Their conditions of employment are set by a series of industrial agreements resolved by negotiation between management and the Union representing the employees. These agreements were reached in good faith ( it is hoped) by both parties. However, it would seem, based upon the reported comments of the Commissioner of Corrective Services, there is a desire on the part of management to seek changes to the current arrangements, particularly in relation to overtime.

This is a legitimate objective of management, and a process exists for changes to be negotiated between the parties. However, it would appear from reports, that there is a lack of desire on the part of management to address these issues by way of a negotiated agreement with the employees or the Union representing the employees. Given that there is an existing and current agreement, this is arguably indicative of bad faith on the part of management.

Management, in the person of the Commissioner, have alleged that there are a number of abuses by employees that are having a detrimental impact on the functioning of the facilities. In particular there have been claims that there is a "manipulation" of the overtime rosters leading to- based upon the Auditor General's report 2007-08- a exceeding of budget by some \$19.4.

I would not dispute the findings of the Audit-General as to any budget excess. However, it does not automatically follow that this is indicative of a "manipulation" by the employees. There is in fact another, equally valid explanation that relates to the need for employment of additional full time staff.

It should be kept in mind by the Committee that a series of Government decisions of the last twenty years have resulted in a significant increase in the prison population in NSW. This increase is disproportionate to the population movement over that period.

The decisions I refer to are such things as "truth in sentencing", greater prescription of "minimum terms" and a consequent reduction in judicial discretion, an expanded range of offences carrying custodial sentences, and presumptions against bail for particular classifications of charged persons leading to an increase in the number of persons being held on remand for extended periods.

I acknowledge that a number of these decisions were taken by Governments in response to perceived public demands. My point however, is that there are an increased number of prisoners and persons being held in remand within the system. This would lead to the obvious conclusion that there is a need for additional full time employees, or, as would seem to be the case, an increase in full time employee hour equivalents -otherwise known as overtime.

Therefore I seriously question the validity of the supposed motivation for seeking privatisation of these facilities. The impact on the employees of the proposed changes will be multiple and varied. As I understand the essence of the proposals relating to current employees, they are as follows:

- a) current employees can choose to remain within the public sector and be transferred to another facility;
- b) current employees can choose to be employed by the new private employer and their wages and conditions will remain intact for a period of twelve months;
- c) they can accept a redundancy package;

I would submit that the above proposals are significantly unfair to the current employees.

The first option would be detrimental to all but a minority of mobile single persons. Employees who own homes would have to sell up or move to rental accommodation near the facilities that they may be relocated. This would have disruptive impact on their family and social life, as well as have a disruptive impact on their children's schooling. It may also impact on their partners or spouses employment. It is, I would submit, demonstrably unfair and unbecoming of a public sector employer.

The second option provides no real security of conditions of employment. Many employees working in the public sector, base much of their financial planning around issues of security of employment, wage rates, and superannuation expectations. The proposal for such conditions to be protected for a mere twelve months, gives no security to these employees. I would also question how superannuation rights, and participation in public sector plans, could be maintained by such employees moving into the private sector. Indeed some older employees may be significantly disadvantaged if they are currently covered by any of the, now closed, defined benefit schemes.

Finally, a redundancy package, whilst it may be attractive to some employees in 'good' economic times, is hardly likely to be attractive in a period of severe economic downturn. I would point out that the two correctional facilities in question, Cessnock and Parklea, are both situated in regions

with high and increasing levels of unemployment.

In conclusion therefore, I submit that the proposals are significantly detrimental to the current employees and, given that there is no suggestion that the current employees are in fact in breach of any current industrial agreement, could be viewed as management behaving in bad faith. The option, that I believe should be properly pursued if management does in fact have significant issues with the operation of the current industrial agreements, is such agreements should be renegotiated. As I understand it, the Union has indicated a willingness to participate in such a discussion.

## **2. The potential impact on the well being of inmates.**

I would bring to the Committee's attention what should be a self evident fact. The administration of prisons by their very nature, raises the potential of severe impact on prisoners, both on their physical well being and their basic human rights. There is no incentive for the private sector to actively and effectively pursue policies which may have the effect of lessening sentences due to good behaviour. Indeed, depending on the nature of any contractual agreements and obligations arising therefrom, it may in fact be in the financial interest of the private operators to purposefully, or by neglect, allow a situation to arise whereby prisoners commit further offences whilst in custody and hence extend their period of incarceration. These may be as simple as prolonging imprisonment through negative reports leading to disciplinary decisions; or reclassification of prisoners leading to detriment in conditions which in turn leads to an adverse impact on their capacity to obtain remission of sentences. In addition, the question must be asked as to the appropriateness of leaving to private, profit making concerns the safety of prisoners who may be at risk of harm from other prisoners. This latter issue goes to the heart of staffing levels. There is a desirable ratio of staff to prisoners based upon the physical nature of the facility and the classification of the inmates.

It should be noted that at least one of the facilities under consideration, Cessnock, is an older style facility that by its physical nature requires a higher staff to prisoner ratio than would arguably be required by a more modern design. This of course would be dependent upon the classification of the inmates housed within such a facility.

Staff to prisoner ratios reduced to maximise profit, put at risk both the prisoner officers and the inmates. Similarly long shifts will lessen the capacity of the prison warders to react in emergency situations. Overseas experience shows that the staff to prisoner ratio of private gaols is reduced. North American reports indicate, based on a brief internet search, would tend to indicate that there is a higher level of inter prisoner violence in private facilities as compared to appropriately staffed

public facilities holding same or similar classification of inmates. The Committee would be well advised to pursue in detail this issue and obtain firm comparative information.

Further, it should be kept in mind that prisoners have rights notwithstanding their current status. Prisoners have (admittedly limited) tortious rights for trespass to person. Under a privatised system there is a question as to whether these rights could be exercised and, if so, against whom. Prisoners also obtain certain rights as a consequence of Australia having ratified a range of international conventions. These rights, should they exist, are enforceable against public authorities. Depending on the nature, post privatisation, of the relationship between the private operators and the State, such rights may be negated. Again this whole area needs to be fully addressed by the Committee.

It is also acknowledged by practitioners in the field, is that in all prisons there is a social taboo against "dobbing" - even if that means silence in the face of a serious assault. To overcome this, there needs to be adequate levels of staffing to ensure scrutiny of prisoner behaviour. There is little incentive for the private sector to do this. This compounds the possible reduction in tortious rights of prisoners that I suggest may result from privatisation.

I would also suggest that the possibilities for rehabilitation, and hence reduction in the rate of recidivism, may also be compromised once a 'profit motive' is introduced into the administration of penal institutions. Rehabilitation or other measures to reduce the rate of recidivism (and hence reduce the rate of criminal activity experienced by the community) are essentially a policy responsibility of government.

### **3. Human rights and international obligations and the role of the State.**

This section is necessarily broad and thus is not dealt with in detail in recognition of the time constraints of individual committee members.

As advised in my covering letter I have attached as appendices two particularly relevant international documents. One being a General Assembly of the United Nations resolution, the other being European based. Whilst neither would be legally binding in Australia, both give indication as to general principles of law recognised by the community of nations. Resolutions of the General Assembly are generally viewed as evidencing international customary law.

Whilst I would encourage the Committee to consider both documents in totality, I would draw attention to The European Prison Rules, 1987, part III headed Personnel, In particular I would draw

the Committee's attention to clause 54 (2) , and I quote:

*“Personnel shall normally be appointed on a permanent basis as professional prison staff and have civil service status with security of tenure subject only to good conduct, efficiency, good physical and mental health and an adequate level of education. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of services shall be favourable in view of the exacting nature of the work.”*

I would ask that it be noted at this point that much of the following is based upon the UNHCHR document cited. This document is also referenced in the publication recently made available to all Members prepared by the Inter-Parliamentary Union entitled *“Human Rights- handbook for Parliamentarians”*. I would refer the Committee to p94 (box 57) of that publication.

In essence there are five principled policy arguments cited against contracted out management or full private ownership and control of correctional facilities. In summary these are as follows:

*a) Disciplinary powers and functions should only be exercised by the State, because discipline inside institutions depriving persons of their liberty can result in diminution of their residual liberty or prolongation of their confinement and is a quasi-judicial power which, both procedurally and substantively, is only appropriate for State exercise;*

*(b) Force to restrain prisoners should only be exercised by the State;*

*(c) Liability for violations of human rights (potentially frequent during periods of imprisonment) must be a State responsibility, whereas the interposition of third party private contractors and their employees, combined with municipal systems of delictual liability, will too often result in denial in practice of effective remedies;*

*(d) The State must maintain accountability and public visibility of the criminal justice system with access by the public to information, so that the system can be perceived as functioning justly and the people, as sovereign, are provided with information to govern responsibly, whereas, with private sector interposition, operations will be obscured by commercial confidentiality and only State officials will be able to monitor, a function which experience in many fields of government has proven officialdom incapable of adequately executing;*

*(e) symbolically speaking, only the State should have powers of administration of justice and of executing by coercion, because the legitimacy of such inherently governmental powers entrusted to the State by the people depends upon their exclusive exercise by the State.*

I would particularly draw the Committee's attention to (d) above. In particular, given the history of public distrust of commercial contracts entered into between the State and the private sector throughout Australia, due to issues of commercial confidentiality and the general exclusion of the

Freedom of Information provisions, the need for absolute transparency in such a significant area over rides any commercial considerations. There is (the) *“need for the public to see and therefore to ensure that the States duties of providing conditions of imprisonment in accordance with human rights are properly performed.”*

Human rights are by their nature are universal and are inalienable. Thus humans beings cannot be deprived of the substance of the rights. However, it is also recognised in international human rights law that exercise of these rights may be suspended in certain circumstances. Clearly this principle is significant when the State chooses to incarcerate a person in accordance with law. Notwithstanding the commission of a crime which results in a custodial sentence, the state still has a responsibility to protect that person's fundamental human rights. I would submit that the state cannot 'sub-contract' that obligation to a private profit making corporation.

To summarise this argument, *‘ultimate public control and responsibility must be retained and thence a power by the Government either through a Minister or through a regulatory agency directly under a Minister. Likewise the Courts must retain control. The necessity for powers of control gives rise to difficulties in relation to prison privatisation when it takes the form of contracted out management. Because the relationship is contractual, unless specific exceptions have been written into the contract or are implied by law, the State is limited by the contractual terms. Thus, apart from subsequent contractual modifications, or overriding statutory powers, the State cannot bind the contractor to new penal arrangements or standards.’* (UNHCHR report as previously cited)

To sum up, there is a legitimate policy argument, that there is a fundamental inability of the state to delegate the criminal justice function. The maxim delegata postestas non potest delegare ( a person to whom something has been delegated cannot delegate further) is recognised in Common Law.

In the judgement of Lord Greene M.R. in Carltona Ltd. v. Commissioners of Works and Others [1943] 2 All E.R. 560:

*“In the administration of Government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are*



*functions so multifarious that no minister could ever personally attend to them. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organization and administration is based on the view that ministers, being responsible to Parliament, will see that important duties are committed to experienced officials. If they do not do that, Parliament is the place where complaint must be made against them."*

(Whilst this is an English case, the constitutional principle clearly applies to Australia jurisdictions.)

The conclusion reached by the UNHCHR report on this issue is as follows:

*(The) principle against sub-delegation of jurisdiction is a constitutional principle which has operated in States since the 13th century and has its origin in Roman constitutional law; it is not in accordance with this principle conceptually to separate the responsibility and duty of the State from the actual performance of the function and to assert that, so long as the responsibility remains with the State, it is in order to sub-delegate the function of exercising jurisdiction, particularly when the function concerned is that of administering justice in contrast with functions of drafting supplementary decrees or of exercising administrative action not affecting personal liberty, in which case sub-delegation in accordance with procedural due process may be proper; the responsibility of the State does not permit it to sub-delegate the power of giving effect to restrictions on personal liberty, including having custody of prisoners. **In short, privatization of prisons by way of contracting out management (control) and custody is not in accordance with international human rights law.** (my emphasis added)*

## **Conclusion**

I submit to the Committee, that the proposed privatisation of the Cessnock and Parklea correctional facilities is inappropriate.

I have indicated above where I believe there is a real risk of detriment to the current employees The State, as an employer has obligations to those employees. These obligations are both statutory and contained with the relevant industrial agreements. Those agreements are binding on both parties. The proper way to resolve matters of contention is to renegotiate the terms of those agreements.

In addition, I consider that privatisation of the correctional facilities will have a detrimental impact on the inmates. Both potentially on their physical and mental wellbeing and on their basic inalienable human rights. As I have sought to demonstrate above, the state both by virtue of the powers vested in it by the people (*Art 21(3) Universal Declaration of Human Rights*), and by virtue of the principles of international law arising out of the various conventions that Australia (and hence the State of NSW) is a signatory to, has a fundamental obligation to protect the substance of the human rights of the inmates, notwithstanding that the exercise of those rights are suspended by virtue of their incarceration according to law. And that this obligation cannot be delegated or contracted out to the private sector.

**Paul Pearce,**

**Member for Coogee**

Appendix B  
THE EUROPEAN PRISON RULES 1987

Revised European version of the Standard Minimum Rules for the  
Treatment of Prisoners (extracts)

Preamble

The purposes of these rules are:

- (a) To establish a range of minimum standards for all those aspects of prison administration that are essential to human conditions and *positive treatment in modern and progressive systems*;
- (b) To serve as a stimulus to prison administrations to develop policies and management style and practice based on good contemporary principles of purpose and equity;
- (c) To encourage in prison staffs professional attitudes that reflect the important social and moral qualities of their work and to create conditions in which they can optimize their own performance to the benefit of society in general, the prisoners in their care and their own vocational satisfaction;
- (d) To provide realistic basic criteria against which prison administrations and those responsible for inspecting the conditions and management of prisons can make valid judgements of performance and measure progress towards higher standards.

It is emphasized that the rules do not constitute a model system and that, in practice, many European prison services are already operating well above many of the standards set out in the rules and that others are striving, and will continue to strive, to do so. Wherever there are difficulties or practical problems to be overcome in the application of the rules, the Council of Europe has the machinery and the expertise available to assist with advice and the fruits of the experience of the various prison administrations within its sphere.

In these rules, renewed emphasis has been placed on the precepts of human dignity, the commitment of prison administrations to humane and positive treatment, the importance of staff roles and effective modern management approaches. They are set out to provide ready reference, encouragement and guidance to those who are working at all levels of prison administration. The explanatory memorandum that accompanies the rules is intended to ensure the understanding, acceptance and flexibility that are necessary to achieve the highest realistic level of implementation beyond the basic standards.

Part I

The Basic Principles

1. The deprivation of liberty shall be effected in material and moral conditions which ensure respect for human dignity and are in conformity with these rules.
2. The 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, birth, economic or other status. The religious beliefs and moral precepts of the group to which a prisoner belongs shall be respected.
3. The purposes of the treatment of persons in custody shall be such as to sustain their health and self-respect and, so far as the length of sentence permits, to develop their sense of responsibility and encourage those attitudes and skills that will assist them to return to society with the best chance of leading law-abiding and self-supporting lives after their release.

4. There shall be regular inspections of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be, in particular, to monitor whether and to what extent these institutions are administered in accordance with existing laws and regulations, the objectives of the prison services and the requirements of these rules.

5. The protection of the individual rights of prisoners with special regard to the legality of the execution of detention measures shall be secured by means of a control carried out, according to national rules, by a judicial authority or other duly constituted body authorized to visit the prisoners and not belonging to the prison administration.

6. (1) These rules shall be made readily available to staff in the national languages;

(2) They shall also be available to prisoners in the same languages and in other languages so far as is reasonable and practicable.

### Part III

#### Personnel

51. In view of the fundamental importance of the prison staff to the proper management of the institutions and the pursuit of their organizational and treatment objectives, prison administrations shall give high priority to the fulfilment of the rules concerning personnel.

52. Prison staff shall be continually encouraged through training, consultative procedures and a positive management style to aspire to humane standards, higher efficiency and a committed approach to their duties.

53. The prison administration shall regard it as an important task continually to inform public opinion of the roles of the prison system and the work of the staff, so as to encourage public understanding of the importance of their contribution to society.

54. (1) The prison administration shall provide for the careful selection on recruitment or in subsequent appointments of all personnel. Special emphasis shall be given to their integrity, humanity, professional capacity and personal suitability for the work.

(2) Personnel shall normally be appointed on a permanent basis as professional prison staff and have civil service status with security of tenure subject only to good conduct, efficiency, good physical and mental health and an adequate standard of education. 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.

(3) Whenever it is necessary to employ part-time staff, these criteria should apply to them as far as that it is appropriate.

55. (1) On recruitment or after an appropriate period of practical experience, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests unless their professional qualifications make that unnecessary.

(2) During their career, all personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized by the administration at suitable intervals.

(3) Arrangements should be made for wider experience and training for personnel whose professional capacity would be improved by this.

(4) The training of all personnel should include instruction in the requirements and application of the European Prison Rules and the European Convention on Human Rights.

56. All members of the personnel shall be expected at all times so to conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

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

(2) These and other specialist staff shall normally be employed on a permanent basis. This shall not preclude part-time or voluntary workers when that is appropriate and beneficial to the level of support and training they can provide.

58. (1) The prison administration shall ensure that every institution is at all times in the full charge of the director, the deputy director or other authorized official.

(2) The director of an institution should be adequately qualified for that post by character, administrative ability, suitable professional training and experience.

(3) The director shall be appointed on a full-time basis and be available or accessible as required by the prison administration in its management instructions.

(4) When two or more institutions are under the authority of one director, each shall be visited at frequent intervals. A responsible official shall be in charge of each of these institutions.

59. The administration shall introduce forms of organization and management systems to facilitate communication between the different categories of staff in an institution with a view to ensuring cooperation between the various services, in particular, with respect to the treatment and resocialization of prisoners.

60. (1) The director, 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 and practicable the services of an interpreter shall be used.

61. (1) Arrangements shall be made to ensure at all times that a qualified and approved medical practitioner is able to attend without delay in cases of urgency.

(2) In institutions not staffed by one or more full-time medical officers, a part-time medical officer or authorized staff of a health service shall visit regularly.

62. The appointment of staff in institutions or parts of institutions housing prisoners of the opposite sex is to be encouraged.

63. (1) Staff of the institutions shall not use force against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to an order based on law or regulations. Staff 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) Staff shall as appropriate be given special technical 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 fully trained in their use.

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BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF  
DETENTION OR IMPRISONMENT, APPROVED BY THE  
GENERAL ASSEMBLY IN RESOLUTION 43/173 OF 9 DECEMBER 1988

SCOPE OF THE BODY OF PRINCIPLES

These principles apply for the protection of all persons under any form of detention or imprisonment.

USE OF TERMS

For the purposes of the Body of Principles:

- (a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;
- (b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;
- (c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;
- (d) "Detention" means the condition of detained persons as defined above;
- (e) "Imprisonment" means the condition of imprisoned persons as defined above;
- (f) The words "a judicial or other authority" mean a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective

control of, a judicial or other authority.

#### Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.
2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

#### Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment\*. No circumstance whatever may be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

#### Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.
2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.
3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

\* The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person on conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

#### Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

#### Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

### Principle 10

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

### Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

### Principle 12

1. There shall be duly recorded:
  - (a) The reasons for the arrest;
  - (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
  - (c) The identity of the law enforcement officials concerned;
  - (d) Precise information concerning the place of custody.
2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

### Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

### Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

### Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his



family or counsel, shall not be denied for more than a matter of days.

#### Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.
2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.
3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.
4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

#### Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.
2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

#### Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.
5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with continuing or contemplated crime.

### Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

### Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

### Principle 21

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.
2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

### Principle 22

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

### Principle 23

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.
2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

### Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

### Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

#### Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

#### Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

#### Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

#### Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.
2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

#### Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.
2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

#### Principle 31

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

### Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

### Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.
2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.
4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

### Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

### Principle 35

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules on liability provided by domestic law.
2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

### Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved *guilty according to law* in a public trial at which he has had all the guarantees necessary for his defence.
2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

### Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrests. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

### Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

### Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

### General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the *International Covenant on Civil and Political Rights*.