

TRAINING MANUAL ON HUMAN RIGHTS FOR PRISON OFFICIALS

FOR THE OFFICE OF THE OMBUDSMAN IN NAMIBIA

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AIMS AND OBJECTIVES OF THIS MANUAL

The purpose of this training manual is to assist the Office of the Ombudsman in Namibia in providing a ready-to-use resource for prison officials, enabling them to build human rights standards, principles and approaches directly into their daily professional practice. The manual is organised so that the human rights dimensions can be made directly, memorably and persuasively applicable to actual prison operations and management, rather than being perceived as abstract principles. It is vital that mere information about human rights is transformed into practical behaviour. The overall objective is that prison officials provide a professional service: understanding and accepting the principled and practical reasons for rights-based action, their own potential for affecting human rights in their own daily decisions and conduct, and the framework of internationally accepted human rights standards.

LIST OF ABBREVIATIONS

Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice
BPT	Basic Principles for the Treatment of Prisoners
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
Code of Conduct	Code of Conduct for Law Enforcement Officials
CRC	Convention on the Rights of the Child
Declaration on Enforced Disappearance	Declaration on the Protection of All Persons from Enforced Disappearance
Declaration on Violence against Women	Declaration on the Elimination of Violence against Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Principles on Detention or Imprisonment	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
Principles of Medical Ethics	Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Principles on Summary Executions	Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Robben Island Guidelines

Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa

Rules for Juveniles

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

SMR

Standard Minimum Rules for the Treatment of Prisoners

Tokyo Rules

United Nations Standard Minimum Rules for Non-custodial Measures

UDHR

Universal Declaration of Human Rights

PART I

INTRODUCTION TO HUMAN RIGHTS

I. HISTORY AND NATURE OF HUMAN RIGHTS

“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.

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.

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).

Human rights issues and obligations are now an important feature of the day-to-day 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, and have undertaken obligations under international and domestic law both to promote and to protect a wide variety of human rights.

1. INHERENT

Human beings are born free and equal in dignity and rights – this means that their rights are inherent, not given, bought, earned or inherited. By being born human, one is imbued with rights. These rights are indications of our inherent dignity and humanity. At the same time they protect our dignity and humanity.

2. UNIVERSAL

Human rights are generally accepted principles that apply equally to all human beings, wherever they may live. This is a function of what we share in common – that we are all human, our humanity.

'Universality' means that the core content of human rights are the same for all regardless of race, sex, religion, ethnicity, political or other opinion, social or national origin. They are universal because they are the same for everyone everywhere in the world. Rights can also be described as 'universal' because they have been settled by overwhelming international consensus, and are protected and proclaimed internationally, including in the United Nations Charter. Those who sometimes attempt to justify violations of rights use a number of explanations but very seldom deny that these rights exist.

3. INALIENABLE

Because they are inherent, human rights cannot be waived or taken away – they are inalienable. Human rights cannot be renounced, lost or forfeited. Of course, human rights can be limited – see 'absolute' below.

4. INDIVISIBLE

Human rights are based on the principle of respect for human dignity. In order to live in dignity, all human beings are entitled to freedom, security and decent standards of living all at the same time – human rights cannot be divided up, or made conditional upon each other – it soon becomes obvious that they are all interconnected, interdependent, and indivisible.

5. FUNDAMENTAL

Life, dignity and other human values, needs and aspirations depend on recognition and fulfilment of rights. Human rights form the basis of every human being.

6. APPLIED EQUALLY

All people have the same human rights, and it follows that all human beings have the right to equal protection of their rights. This entails equal treatment before the law, and equal access to the law itself. The principle of equality of application of the law entails that police officers may not unjustifiably discriminate against any person for example, treating someone differently only because of that persons' race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

7. ABSOLUTE

Certain core rights create obligations that are absolute and cannot be limited. Under international law they include the right to life (the absolute prohibition on taking life arbitrarily - without any process of law), the right to be free from torture (the absolute prohibition on torture, an international criminal act), the right to be free from slavery (the absolute prohibition on slavery), the right to recognition as a person before the law, and the prohibition on retrospective criminal punishment. However, the human rights system was not created in a vacuum and provides that most human rights protected in international law may be limited if competing social interests are important enough, in particular circumstances, for example, to take into account the legitimate claims and entitlements of other individuals and groups. Most rights can certainly be limited temporarily and for rational purposes, provided the limits are proportional to the justifiable purpose for which the limitation is imposed, and only limited to the extent strictly necessary to reach that other purpose. International law provides that rights can only validly be limited in accordance with the general, published laws in ways that are reasonable and justifiable in an open and democratic society and only to the extent necessary in order to protect the rights of others. The principles of proportionality, legality, accountability and necessity should guide police officers when limiting the rights of a person. Police officers should also be able to justify their actions and also be able to indicate that they were reasonable in their actions.

8. CREATING DUTIES ON OTHERS

It is a basic quality of a right that it has a 'co-relative' – a duty corresponding to the right. A right held by person 'X' makes sense only by virtue of the automatic duty it creates on person 'Y' not to disrespect, violate or interfere with that right, or to take some positive action to fulfil that right. With all fundamental human rights it is possible to identify a duty-bearer or bearers corresponding to the right holder. The right to life of any individuals creates a duty on the State (including its officers, such as police) not to deprive any individual of his/her life without cause. These duties are described in constitutions, national legislation – and in international law.

II. DIFFERENT HUMAN RIGHTS CATEGORIES OR GENERATIONS

1. CIVIL AND POLITICAL RIGHTS (FIRST GENERATION HUMAN RIGHTS)

The first group of rights – the so-called 'blue' rights – are civil and political rights. These rights are sometimes seen as constituting the core of human rights. They create mainly a 'negative' obligation on States not to infringe upon these rights. The State generally respects the right if it does not interfere with it. It may also need to act more positively to ensure the right is not interfered with by others. 'Civil rights' are those that allow one to enjoy the basic freedoms that belonging to a society give, such as freedom to practice one's religion. They also include the sacred rights that have defined 'civil liberties' struggles in many societies – to equality before the law, to a fair trial, to not be arbitrarily detained or tortured, to know the charges made against one, etc. 'Political' rights are the rights that people have that enable them to participate meaningfully and freely, politically, in framing the society in which they live and the way their country is run. Some examples of these rights are the right to vote and the right to form and join political parties.

The most important First Generation Human Rights

- Right to Life
- Right to Liberty
- Right to Security
- Right to Privacy
- Right to a Fair Trial
- Right to Equality
- Right to Dignity
- Freedom from Torture, Inhuman Treatment, Slavery and Forced Labour
- Freedom of Religion, Belief and Opinion
- Freedom of Expression
- Freedom of Movement Freedom of Association
- Right to Vote

2. SOCIAL AND ECONOMIC RIGHTS (SECOND GENERATION HUMAN RIGHTS)

The second group of rights or so-called 'red' rights are social and economic rights. These rights—which are less obviously the concern of police officers themselves - deal with survival and development. They govern how people are able to live and work together in dignity and with opportunity, and the right to basic necessities such as food and water. Examples include the right to access a basic education, the right to health care and the right to basic shelter. Social and economic rights place a duty on the State to provide at least a framework for the progressive realisation of these rights, insofar as resources allow. At the very least, people should not be discriminated against in accessing basic services. The indivisibility of rights makes it obvious that someone's enjoyment of their civil and political rights cannot be made to be dependent or contingent on the fulfilment of their social or economic rights. However, respect for one kind of rights enables better enjoyment of the other kind.

The most important Second Generation Human Rights

- Right to work
- Right to fair remuneration
- Right to property
- Right to housing
- Right to health
- Right to education,
- Right to leisure,
- Right to benefit from scientific advancements
- Right to participate in the cultural life of one's choice

3. ENVIRONMENTAL AND DEVELOPMENTAL RIGHTS (THIRD GENERATION HUMAN RIGHTS)

The last group of rights, the so-called 'green' rights, are the least evolved in terms of content and acknowledgment by the international community. They include environmental and developmental 'rights'. These two sets of rights are often in conflict with each other: those who wish to preserve the environment might be opposed to further development. These rights have less application to policing situations.

The most important Third Generation Human Rights

- Right to peace
- Right to a clean environment
- Right to humanitarian assistance
- Right to development (proclaimed in the 1986 General Assembly's Declaration on the Right to Development)

III. THE ROLE OF PRISON OFFICIALS

Prison staff receives 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.

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.

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.

PART II:

HUMAN RIGHTS STANDARDS

I. INTERNATIONAL HUMAN RIGHTS STANDARDS

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. 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.

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.

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.

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.
- The Charter of the United Nations, itself a legally binding treaty to which all Member States including Namibia are parties.

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.

1. CHARTER OF THE UNITED NATIONS

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 ...

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.

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

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. 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.

23. 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

24. 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.

Convention on the Prevention and Punishment of the Crime of Genocide

27. 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.

Convention on the Rights of the Child

The Convention on the Rights of the Child entered into force in September 1990 and currently has 191 States parties. It provides for certain special rights for juvenile offenders, in recognition of their special vulnerability and society's interest in rehabilitating them. In particular, article 37 of the Convention sets out a prohibition on life imprisonment of juveniles, as well as protecting them against capital punishment. Imprisonment of juveniles must be a measure of last resort and, when imposed, must be for the shortest appropriate period of time. Article 37 further requires States parties to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment. In every case, article 37 requires that juveniles in conflict with the law be treated with humanity and respect for the dignity of the human person, and in a manner which takes into account their age. In this regard, every child deprived of liberty shall be separated from adults unless it is considered in the

child's best interest not to do so. Detained children shall also have the right to maintain contact with their family through correspondence and visits, save in exceptional circumstances. Article 40, paragraph 1, underlines the desirability of promoting a child's reintegration and assuming a constructive role in society.

International humanitarian law

For the purposes of training prison officials, international humanitarian law may be defined as the subset of human rights law applicable in times of armed conflict. The basic substance of humanitarian law is set out, article by article, in the four Geneva Conventions of 1949, which protect, respectively, the wounded and sick in the field; shipwrecked persons; prisoners of war; and civilian persons. The four Geneva Conventions currently have 189 States parties.

Additional sources include the two Additional Protocols of 1977 to the Geneva Conventions. Protocol I reaffirms and further develops the provisions of the Geneva Conventions with regard to international armed conflicts, while Protocol II does the same for conflicts which are internal, rather than international. Protocol I currently has 161 States parties and Protocol II has 156. Under these instruments, international humanitarian law is to be applied in situations of armed conflict, during which principles of humanity are to be safeguarded in all cases. They hold further that non-combatants and persons put out of action by injury, sickness, capture or other causes must be respected and protected, and that persons suffering from the effects of war must be aided and cared for without discrimination. International humanitarian law prohibits the following acts in all situations:

- Murder;
- Torture;
- Corporal punishment;
- Mutilation;
- Outrages upon personal dignity;
- Hostage-taking;
- Collective punishment;
- Executions without regular trial;
- Cruel or degrading treatment.

The same instruments also prohibit reprisals against the wounded, sick or shipwrecked, medical personnel and services, prisoners of war, civilians, civilian and cultural objects, the natural environment, and works containing dangerous forces. They establish that no one may renounce, or be forced to renounce, protection under humanitarian law. Finally, they provide that protected persons must at all times have resort to a protecting power (a neutral State safeguarding their interests), the International Committee of the Red Cross, or any other impartial humanitarian organization.

4. PRINCIPLES, MINIMUM RULES AND DECLARATIONS

- *Standard Minimum Rules for the Treatment of Prisoners*
- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*
- *Basic Principles for the Treatment of Prisoners*

These three instruments provide a comprehensive set of safeguards for the protection of the rights of persons who are detained or imprisoned. The Standard Minimum Rules for the Treatment of Prisoners was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and later approved by the Economic and Social Council. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted by the General Assembly in December 1988. The Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in December 1990, complete the set of safeguards, with 11 point-form standards.

The content of these instruments forms the basis for organizing any prison regime and the texts are frequently quoted throughout this Manual. In sum, they state that all prisoners and detainees must be treated with respect for their human dignity, with regard to the conditions of their detention. They deal with the following issues: treatment and discipline; contact with the outside world; health; classification and separation; complaints; records; work and recreation; and religion and culture.

- *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*
- *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*
- *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*

These three instruments, together with the Convention on the Rights of the Child, form the basic standards relevant to the administration of juvenile justice. Like the Convention, these instruments (adopted by the General Assembly in December 1990, November 1985 and December 1990, respectively) require that national legal systems take into account the special status and vulnerability of juveniles who have come into conflict with the law. They deal with both prevention and treatment, on the basis of the central principle that the best interests of the child are to guide all action in the field of juvenile justice.

Declaration on the Elimination of Violence against Women

On 20 December 1993, by its resolution 48/104, the General Assembly proclaimed the Declaration on the Elimination of Violence against Women. The Declaration defines violence against women in detail and calls on States to condemn such violence without invoking any custom, tradition or religious consideration to avoid their obligation with respect to its elimination. The Declaration also urges States, among other things, to investigate and punish incidents of violence against women, to develop appropriate penal and civil sanctions against it and to devote adequate resources to activities related to the elimination of violence against women.

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

In December 1990, the General Assembly adopted the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), in order to encourage the provision by States of a wide range of non-custodial measures. Such measures increase community involvement in the management of criminal justice and support the cause of justice, while reducing the use of imprisonment, which in every case should be seen as an extreme penalty. Under the Tokyo Rules, non-custodial measures are to take into consideration the human rights and rehabilitation of the offender, the protection of society and the interests of victims. The Rules provide guidance for the use of temporary or conditional release, work release, parole, remission, pardon, community service, economic sanctions, etc.

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions were recommended to States by the Economic and Social Council in May 1989. The Principles provide guidance to law enforcement and other national authorities on preventing and investigating such crimes, and on legal proceedings to bring perpetrators to justice. They emphasize the importance of ensuring strict control, including a clear chain of command, over law enforcement agencies, as well as careful record-keeping, inspections, and notifications to families and legal representatives with regard to detention. They also require the protection of witnesses and family members of victims and the careful collection and consideration of relevant evidence. The Principles give crucial detail to the provisions of human rights treaties guaranteeing the right to life.

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

On 4 December 2000, in its resolution 55/89, the General Assembly recommended the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the Istanbul Principles). The Principles outline the necessary procedures States should take in order to ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. They detail, among other things, the independence of investigators, the appropriate powers and obligations of the investigative authority, the protection of witnesses and all persons involved in the investigation, the content and scope of written investigative reports, and the role of medical experts in the examination of alleged victims.

Declaration on the Protection of All Persons from Enforced Disappearance

On 18 December 1992, by its resolution 47/133, the General Assembly proclaimed the Declaration on the Protection of All Persons from Enforced Disappearance. The Declaration expresses the international community's concern at this atrocious global phenomenon. The text comprises 21 articles designed to prevent, as crimes against humanity, acts whereby persons are taken into custody with no trace of their fate being left behind. It requires the adoption of effective legislative, administrative, judicial and other measures to prevent and terminate such acts, and specifically provides for a number of such measures. These measures include attention to procedural guarantees, accountability, punishment and redress.

Code of Conduct for Law Enforcement Officials

In December 1979, the General Assembly adopted the Code of Conduct for Law Enforcement Officials. The Code is composed of eight fundamental articles, setting forth the specific responsibilities of law enforcement officials with regard to service to the community; protection of human rights; use of force; treatment of confidential information; prohibition of torture and cruel, inhuman or degrading treatment or punishment; protection of the health of detainees; corruption; and respect for the law and the Code itself.

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

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990. The Principles take into account the often dangerous nature of law enforcement, noting that a threat to the life or safety of law enforcement officials is a threat to the stability of society as a whole. At the same time, strict standards are set forth for the use of force and firearms. The Principles

emphasize that force may be used only when strictly necessary, and only to the extent required for the performance of legitimate law enforcement functions.

Basic Principles on the Role of Lawyers

The Basic Principles on the Role of Lawyers were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990. Principles 5 to 8 concerning special safeguards in criminal justice matters are relevant to this Manual. These include the right to be informed of access to a lawyer upon arrest or detention or when charged with a criminal offence; the right to be provided with counsel; the right to prompt access to a lawyer after arrest or detention; and the right for arrested, detained or imprisoned persons to have adequate opportunities, time and facilities to be visited by and confidentially communicate and consult with a lawyer.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

In its legislative activities, the United Nations has also dealt with the important issue of victims' rights. To this end, the General Assembly, in November 1985, adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The Declaration includes the requirements that States ensure that victims have access to justice; that they be treated by the legal system with compassion; that restitution be made where possible; that compensation be provided when restitution is not possible; and that victims receive medical, material, psychological and social aid.

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

By its resolution 37/194 of 18 December 1982, the General Assembly adopted the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Principles address many gross violations of medical ethics by physicians and other health personnel with regard to prisoners and detainees. These include, among other things, actively or passively engaging in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

5. THE UNITED NATIONS HUMAN RIGHTS MACHINERY

The United Nations has established a complex network of mechanisms for the adoption of human rights standards, and for their implementation and monitoring. Human rights standards relevant to the administration of justice have been adopted by a range of United Nations bodies, including the General Assembly, the Economic and Social Council, the Commission on Human Rights and the periodic United Nations Congresses on the Prevention of Crime and the Treatment of Offenders. The standard-setting process includes the full participation of all Member States, representing all the world's cultural, legal, religious and philosophical traditions. It benefits also from the advice of non-governmental organizations (NGOs), professional associations and relevant experts.

The above-mentioned bodies receive substantive assistance in these activities from two departments of the United Nations Secretariat. The Office of the United Nations High Commissioner for Human Rights has principal responsibility within the Organization for all human rights issues. The Crime Programme of the United Nations Office on Drugs and Crime has principal responsibility for criminal justice matters.

Implementation and monitoring mechanisms may be divided into two basic types, according to the source of their mandates:

- Conventional (i.e. treaty-based) mechanisms: These include committees set up under the terms of international human rights treaties to monitor the implementation of those treaties. Six such bodies are listed below.
- Extraconventional (i.e. Charter-based) mechanisms: These are the various special rapporteurs, independent experts and working groups established by the Commission on Human Rights to monitor the human rights situations in particular countries or, alternatively, certain human rights phenomena, such as torture, arbitrary detention and disappearances. They are not based on a particular human rights treaty, but rather on the authority of the Economic and Social Council, and its functional Commission on Human Rights, under the Charter of the United Nations.

6. CONVENTIONAL (TREATY-BASED) MECHANISMS

A number of committees within the United Nations system were established under various international treaties for the purpose of monitoring the compliance of States parties with the provisions of those instruments. The seven principal human rights treaties, and the bodies set up to monitor their implementation, are the following:

In the course of their work, these committees provide valuable guidance for proper administration of justice for all States parties seeking to implement the rights set out in the instruments in question. Treaty provisions are often general in character, but must be implemented by specific, detailed provisions in domestic law. For example, the rights to life, liberty and security of the person cannot be implemented by mere declaratory legal provisions. Rather, detailed criminal, civil and administrative laws and procedures must exist to provide remedies for victims and sanctions for perpetrators, together with crucial procedural guarantees.

The work of the treaty bodies serves to inform domestic legislative processes and agencies in their efforts to interpret and implement the rights guaranteed by the international instruments. One important function of the committees is dealing with periodic reports from all States parties to the treaties. Following the committees' guidelines, States parties submit reports on the steps they have taken to give effect to the rights spelled out in the respective treaties. The committees issue concluding observations to the States parties, based on the examination of these reports, and include those observations in their annual reports. On a number of occasions, committees have concluded that violations of the treaties had taken place, and urged States parties to desist from any further infringements of the rights in question. Within the ambit of concluding observations, the committees can make specific recommendations to the States parties to prevent further violations.

Although these observations are not legally binding, States parties are expected to undertake the necessary measures to implement them in good faith. Furthermore, both CAT and HRC have recently created special rapporteurs on follow-up of concluding observations to strengthen the committees' activities in this field.

Perhaps the most important function of the committees in developing the system of periodic reports from States parties is the adoption of general comments or general recommendations. Regarding general comments, International Covenant on Economic, Social and Cultural Rights (CESCR), International Covenant on Human Rights Committee (HRC), CRC and CAT have adopted this practice with a view to assisting States parties in fulfilling their reporting obligations and to provide greater interpretative clarity as to the intent, meaning and

content of their respective treaties. Furthermore, the general comments promote the implementation of the treaties by drawing the attention of States parties to insufficiencies disclosed by a large number of reports, and by inciting renewed attention to particular provisions of the respective treaties from States parties, United Nations agencies and NGOs with a view to progressively realising the established rights.

Other treaty bodies adopt general recommendations in which they make authoritative interpretations about the concrete meaning of specific articles of their respective treaties based on the examination of reports and information received from States parties. CEDAW, CERD and CESCR issue general recommendations to all States parties. CEDAW and CERD report their general recommendations to the General Assembly and CESCR reports them to the Economic and Social Council. Both general comments and general recommendations have made a major contribution to the development of substantive human rights law.

In addition to the above practices, some committees are able to address individual complaints of human rights violations and make decisions on their admissibility and express views on their merits. Individuals can submit complaints under five of the above treaties: the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; and the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families. In order for individuals to bring complaints, two conditions need to be satisfied. First, they must be addressed against a State party to the treaty. Secondly, the State party must have recognized the competence of the committee established under the relevant treaty to consider individual complaints (by means of an optional clause or protocol).

The two major stages in any individual complaints procedure are the admissibility and the merits. In order for the committee to find a complaint admissible, the complaint must satisfy the formal requirements of the procedure. In general, the complaint must be filed by the victim or his or her representative, in written form and signed. All domestic remedies should have been exhausted, unless they were unavailable or unreasonably prolonged. The merits of the case refer to its substance, where the committee states its reasons for concluding that a violation of the treaty has or has not occurred. If the committee finds a violation of an individual's rights under the particular treaty, it invites the State party to provide information within three months on the steps it has taken to deal with the committee's views. If the State party fails to take appropriate action, the committee refers the case for follow-up in order to consider further measures to be taken. For example, the Human Rights Committee established its special rapporteur on Follow-up of Views in order to address with concerned States parties their particular difficulties in complying with the Committee's views. According to reports submitted by this special rapporteur, around 30 per cent of the Committee's views are fully implemented by relevant States parties.

7. EXTRACTIONAL (CHARTER-BASED) MECHANISMS

A number of procedures have been established under the authority granted by the Charter of the United Nations to the Economic and Social Council and, through it, to its subsidiary Commission on Human Rights and Subcommission on the Promotion and Protection of Human Rights. These procedures may be either confidential or public. The so-called "1503 procedure" is the confidential one, whereas the various thematic or country-orientated special rapporteurs and working groups of the Commission on Human Rights operate publicly under the authority of Economic and Social Council resolution 1235 (XLII) of 6 June 1967. It should be noted that the confidential procedure has been rendered partially obsolete by the development of the public procedure discussed below.

Confidential procedure

The confidential procedure was established pursuant to Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 and amended by its resolution 2000/3 of 16 June 2000. Under the "1503 procedure", the Commission on Human Rights has the mandate to examine a consistent pattern of gross and reliably attested systematic violations of human rights and fundamental freedoms occurring in any country of the world.

The Secretariat, together with the chairperson of the Subcommission's Working Group on Communications, screen complaints from both individuals and groups. If the communication is not prima facie ill-founded and the individual has exhausted all domestic remedies, it will be acknowledged and forwarded to the Government concerned for comment in a confidential manner. After the initial screening, the Working Group on Communications meets to assess complaints and any replies received from Governments. It forwards to the Commission on Human Rights' Working Group on Situations any situation that reveals a consistent pattern of gross and reliably attested human rights violations. The Working Group on Situations decides whether, in the light of all the material from the previous stages of the process, the situation referred to it appears to reveal a situation of systematic human rights violations. In that case it may forward a situation to the Commission on Human Rights, usually with specific recommendations. Otherwise, the Working Group may decide to keep a situation pending before it or close the file.

The Commission on Human Rights considers in closed session the situations referred to it by its Working Group on Situations. Representatives of the Governments concerned may also be present at this point. The Commission may decide to keep a situation under review; it may appoint an independent expert on the matter to report confidentially to the Commission (in 2002 an independent expert was appointed to study the human rights situation in Liberia); it may discontinue the matter if no further consideration is warranted; or it may take up the same matter under the public procedure governed by resolution 1235 (XLII) of the Economic and Social Council. If it wishes, the Commission may also make recommendations to its parent body, the Economic and Social Council. After the Commission has considered the situations before it, the chairperson announces at a public meeting the names of the countries examined under the procedure and those of countries no longer being dealt with under the procedure. All material provided by individuals and Governments, as well as decisions taken at the various stages of the procedure, remain confidential. The Economic and Social Council, however, sometimes decides—on its own initiative, after a study of a particular situation has been ended, on the recommendation of the Commission on Human Rights, or by the express wish of the Government concerned—that secrecy may be lifted.

Public procedure

Pursuant to Economic and Social Council resolution 1235 (XLII) of 6 June 1967, the Commission on Human Rights appoints working groups or individuals (special rapporteurs or independent experts) to examine, monitor and publicly report either on the human rights situation in a specific country or territory—known as geographic mandates - or on human rights violations worldwide—known as thematic mandates. To fulfil their mandate, experts may receive individual complaints and bring them to the attention of the Governments concerned, which are asked to undertake a full investigation of the allegations, to adopt all necessary measures to prevent further violations and to report back to the experts on every step taken in that regard. Cases are made public through the experts' annual reports to the Commission on Human Rights.

II. HUMAN RIGHTS STANDARDS AT THE REGIONAL AND SUBREGIONAL LEVEL

1. THE AFRICAN SYSTEM UNDER THE AFRICAN UNION

The African Charter on Human and Peoples' Rights was adopted by the then Organization of African Unity in 1981 and entered into force in October 1986. Under the Charter, the African Commission on Human and Peoples' Rights was established to promote and protect human rights in Africa. The Commission also interprets provisions of the Charter and is empowered to receive complaints of human rights violations from States, individuals and groups. On the basis of such complaints, the Commission may seek an amicable solution, initiate studies and make recommendations.

In 1997 the African Commission on Human and Peoples' Rights appointed a special rapporteur on Prisons and Conditions of Detention in Africa to assess prison conditions and point out the major problems. The special rapporteur visits prisons, police and gendarmerie cells, or any other place where people are imprisoned or detained in various African countries in order to obtain information. He then prepares a report on the visit and submits it to the Government concerned. The Government is invited to make comments and to describe the measures taken to deal with the recommendations of the special rapporteur. The reports of the special rapporteur and Governments' comments are published by the African Union.

In addition, it is important to note the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, adopted in 1998. Although the Court is not yet in operation, it is important to understand some of its functions. The Court may entitle relevant nongovernmental organizations with observer status before the African Commission on Human and Peoples' Rights, and individuals, to introduce cases directly before it, in accordance with article 34, paragraph 6, of the Protocol. States parties must first have made a declaration, however, accepting the jurisdiction of the Court to receive individual cases concerning them. Furthermore, the Court will complement the mandate of the Commission. Finally, at its 32nd session in October 2002, the African Commission adopted the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines). These Guidelines state in clear and concrete terms the measures that are recommended to African States and other actors in order to prevent torture and ill-treatment. Paragraphs 2 and 3 of the Guidelines encourage States to cooperate with the African Commission's special rapporteurs on prisons and conditions of detention in Africa; on arbitrary, summary and extrajudicial executions in Africa; and on the rights of women in Africa; as well as with the United Nations human rights treaty bodies and the thematic and country-specific special procedures of the Commission on Human Rights, in particular its special rapporteur on torture.

2. SUB-REGIONAL SYSTEMS AND HUMAN RIGHTS PROTECTION

The dawn of various Regional Economic Communities (RECs) in Africa can be traced back to the 1960s, when the United Nations Economic Commission for Africa (UNECA) encouraged African States to incorporate single economies into subregional systems within the aim to ultimately create one single economic union on the African continent. Meanwhile, several RECs have been established on the African continent. At the seventh ordinary session of the AU's Assembly of Heads of State and Government in Banjul, The Gambia, in July 2006, the African Union has officially recognised eight such communities. The Southern African Development Community (SADC), to which Namibia is a member, is one of the officially recognised RECs.

Although the primary responsibility for upholding human rights and fundamental freedoms is primarily on States, RECs also play a role when it comes to the protection of human rights as they function as guardians of human rights. As a matter of fact however, the protection of human rights plays an essential role in economic development as it has an impact on the investment climate, which again contributes to growth, productivity and employment creation, all being essential for sustainable reductions in income poverty.

The SADC Treaty itself refers to regional integration and to human rights directly or indirectly at several stages. In its Preamble, the Treaty *inter alia* determines to ensure, through common action, the progress and well-being of the people of southern Africa and recognises the need to involve the people of the Region centrally in the process of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law. Under Chapter 3 of the Treaty, which deals with principles, objectives, the SADC common agenda and general undertakings, it is provided that SADC and its member state shall act in accordance with the principles of human rights, democracy and the rule of law.

Besides the aforementioned provisions, the SADC legal system provides for human rights protection in many legal instruments other than the SADC Treaty, *inter alia* the SADC Protocols, such as the SADC Protocol on Gender and Development and others.

The SADC Tribunal is the judicial institution within SADC and has its seat in Windhoek. The Tribunal started to hear cases in 2007. The SADC Tribunal was set up to protect the interests and rights of SADC member states and their citizens, and to develop the community jurisprudence also with regard to applicable treaties, general principles and rules of public international law. In one recent judgement of the Tribunal commonly known as the Campbell case it impressively demonstrated that the Tribunal can also be called upon to consider human rights matters as the claimant argued that the Zimbabwean land acquisition process was racist and illegal by virtue of Article 6 of the SADC Treaty and the African Union Charter that outlaw arbitrary and racially motivated government action. The SADC Treaty in its Article 4 stipulates that SADC and its member states shall act in accordance with the principles of human rights, democracy and the rule of law as well as equity, balance and mutual benefit; and the peaceful settlement of disputes, *inter alia*. According to Article 6 (2) of the SADC Treaty SADC and member states shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture or disability. All of the above is also relevant for prison officials.

III. HUMAN RIGHTS STANDARDS AT THE NATIONAL LEVEL

1. THE PROTECTORS OF HUMAN RIGHTS IN NAMIBIA

The following human rights protectors must be considered in Namibia:

- Government through its different branches
 - Legislature
 - Executive
 - Judiciary

- The Ombudsman
- National and international governmental and non-governmental organizations
- The individual

2. MAIN SOURCES OF HUMAN RIGHTS LAW IN NAMIBIA - OVERVIEW

The following are the main sources of human rights law in Namibia:

- International Law binding upon Namibia (ratified treaties, conventions, etc.)
- The Constitution
- Statutory law
 - The Married Persons Equality Act 1 of 1996
 - The Combating of Domestic Violence Act 4 of 2003
 - The Combating of Immoral Practices Amendment Act 7 of 2000
 - The Combating of Rape Act 8 of 2000
 - Racial Discrimination Prohibition Act 26 of 1991 and Racial Discrimination Amendment Act 26 of 1998
 - Affirmative Action (Employment) Act 29 of 1998
 - Namibia Prisons Act 17 of 1998
 - The Labour Act
- Policies
- Case Law

3. NAMIBIA AND HUMAN RIGHTS INTERNATIONAL OBLIGATIONS

Article 144 of the Constitution: Unless otherwise provided the general rules of public international law and international agreements binding upon Namibia under this Constitution form part of the law of Namibia. Public international law is *ab initio* part of the law of Namibia and needs no transformation or subsequent legislative act to become so.

- CAT-Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (Accession 28/12/94)
- CAT-OP-Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment (No Action)
- CCPR-International Covenant on Civil and Political Rights (Accession 28/02/95)
- CCPR-OP1-Optional Protocol to the International Covenant on Civil and Political Rights (Accession 28/02/95)
- CCPR-OP2-DP-Second Optional Protocol to the International Covenant on Civil and Political Rights (Accession 28/02/95)
- CED-Convention for the Protection of All Persons from Enforced Disappearance (No Action)
- CEDAW-Convention on the Elimination of All Forms of Discrimination against Women (Accession 23/12/92)
- CEDAW-OP-Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Ratification 19/05/2000)

- CERD-International Convention on the Elimination of All Forms of Racial Discrimination (Accession 11/12/82)
- CESCR-International Covenant on Economic, Social and Cultural Rights (Accession 28/02/95)
- CMW-International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (No Action)
- CPD-Convention on the Rights of Persons with Disabilities (Signature only 25/04/2007)
- CPD-OP-Optional Protocol to the Convention on the Rights of Persons with Disabilities (Signature only 25/04/2007)
- CRC-Convention on the Rights of the Child (Ratification 26/09/90)
- CRC-OP-AC-Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Ratification 08/09/2000)
- CRC-OP-SC-Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (Ratification 08/09/2000)

4. THE NAMIBIAN CONSTITUTION

The Namibian Constitution contains some of the most advanced provisions concerning human rights and other fundamental protections of rights and freedoms, including those of the environment. Chapter 3 of the Constitution provides fundamental rights and freedoms and stipulates that the powers of parliament and the President or any other organ of the government and state are limited by the provisions on fundamental human rights and liberties.

(a) THE FUNDAMENTAL RIGHTS (ARTICLES 6 – 20)

- Protection of life with a prohibition of capital punishment
- Protection of liberty
- Respect for human dignity
- Equality and freedom from discrimination
- Prohibition of forced labour and slavery
- Prohibition of arbitrary arrest and detention
- Right to a fair trial
- Right to privacy
- Right to marry and found a family
- Children's rights
- Right to own property
- Right to just compensation if property is expropriated
- Right to participate in peaceful political activity
- Right to administrative justice
- Right to practice one's own culture
- Right to use one's own language
- Right to promote one's own tradition and religion
- Right to education and to receive free primary education at state schools

(b) FUNDAMENTAL FREEDOMS (ARTICLE 21)

- Freedom of speech
- Freedom of thought, conscience and belief
- Freedom of religion
- Freedom of assembly
- Freedom of association
- Freedom to withhold labour without being exposed to criminal penalties
- Freedom of movement
- Freedom to choose one's residence
- Freedom to leave or to return to Namibia
- Freedom to practice any profession or any trade

(c) LIMITATIONS (ARTICLE 22)

Limitations on human rights may be justified on a number of grounds, eg:

- In the exercise of his/her human rights, the individual bears a duty to society. Limitations are assigned to ensure that the enjoyment of the protected human right does not prejudice the rights of others
- Limitations may be necessary for the promotion of democracy
- Limitations may be required for the maintenance of morality and decency in society
- Limitations may be necessary for the protection of the nation

CONSTITUTION OF THE REPUBLIC OF NAMIBIA

CHAPTER 3

Fundamental Human Rights and Freedoms

Article 5 - Protection of Fundamental Rights and Freedoms

The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed.

Article 6 - Protection of Life

The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

Article 7 - Protection of Liberty

No persons shall be deprived of personal liberty except according to procedures established by law.

Article 8 - Respect for Human Dignity

- (1) The dignity of all persons shall be inviolable.
- (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
(b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9 - Slavery and Forced Labour

- (1) No persons shall be held in slavery or servitude.
- (2) No persons shall be required to perform forced labour.
- (3) For the purposes of this Article, the expression "forced labour" shall not include:
 - (a) any labour required in consequence of a sentence or order of a Court;
 - (b) any labour required of persons while lawfully detained which, though not required in consequence of a sentence or order of a Court, is reasonably necessary in the interests of hygiene;
 - (c) any labour required of members of the defence force, the police force and the prison service in pursuance of their duties as such or, in the case of persons who have conscientious objections to serving as members of the defence force, any labour which they are required by law to perform in place of such service;
 - (d) any labour required during any period of public emergency or in the event of any other emergency or calamity which threatens the life and well-being of the community, to the extent that requiring such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation;
 - (e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Article 10- Equality and Freedom from Discrimination

- (1) All persons shall be equal before the law.
- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

Article 11 - Arrest and Detention

- (1) No persons shall be subject to arbitrary arrest or detention.
- (2) No persons who are arrested shall be detained in custody without being informed promptly in a language they understand of the grounds for such arrest.
- (3) All persons who are arrested and detained in custody shall be brought before the nearest Magistrate or other judicial officer within a period of forty-eight (48) hours of their arrest or, if this is not reasonably possible, as soon as possible thereafter, and no such persons shall be detained in custody beyond such period without the authority of a Magistrate or other judicial officer.

- (4) Nothing contained in Sub-Article (3) hereof shall apply to illegal immigrants held in custody under any law dealing with illegal immigration: provided that such persons shall not be deported from Namibia unless deportation is authorised by a Tribunal empowered by law to give such authority.
- (5) No persons who have been arrested and held in custody as illegal immigrants shall be denied the right to consult confidentially legal practitioners of their choice, and there shall be no interference with this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security or for public safety.

Article 12 - Fair Trial

- (1)
 - (a) In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law: provided that such Court or Tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a democratic society.
 - (b) A trial referred to in Sub-Article (a) hereof shall take place within a reasonable time, failing which the accused shall be released.
 - (c) Judgments in criminal cases shall be given in public, except where the interests of juvenile persons or morals otherwise require.
 - (d) All persons charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against them.
 - (e) All persons shall be afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice.
 - (f) No persons shall be compelled to give testimony against themselves or their spouses, who shall include partners in a marriage by customary law, and no Court shall admit in evidence against such persons testimony which has been obtained from such persons in violation of Article 8(2)(b) hereof.
- (2) No persons shall be liable to be tried, convicted or punished again for any criminal offence for which they have already been convicted or acquitted according to law: provided that nothing in this Sub-Article shall be construed as changing the provisions of the common law defences of "previous acquittal" and "previous conviction".
- (3) No persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

Article 13 – Privacy

- (1) No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.
- (2) Searches of the person or the homes of individuals shall only be justified:

- (a) where these are authorised by a competent judicial officer;
- (b) in cases where delay in obtaining such judicial authority carries with it the danger of prejudicing the objects of the search or the public interest, and such procedures as are prescribed by Act of Parliament to preclude abuse are properly satisfied.

Article 14 – Family

- (1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 15 - Children's Rights

- (1) Children shall have the right from birth to a name, the right to acquire a nationality and, subject to legislation enacted in the best interests of children, as far as possible the right to know and be cared for by their parents.
- (2) Children are entitled to be protected from economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or physical, mental, spiritual, moral or social development. For the purposes of this SubArticle children shall be persons under the age of sixteen (16) years.
- (3) No children under the age of fourteen (14) years shall be employed to work in any factory or mine, save under conditions and circumstances regulated by Act of Parliament. Nothing in this Sub-Article shall be construed as derogating in any way from Sub-Article (2) hereof.
- (4) Any arrangement or scheme employed on any farm or other undertaking, the object or effect of which is to compel the minor children of an employee to work for or in the interest of the employer of such employee, shall for the purposes of Article 9 hereof be deemed to constitute an arrangement or scheme to compel the performance of forced labour.
- (5) No law authorising preventive detention shall permit children under the age of sixteen (16) years to be detained.

Article 16 – Property

- (1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.
- (2) The State or a competent body or organ authorised by law may expropriate property in the public interest subject to the payment of just compensation, in accordance with requirements and procedures to be determined by Act of Parliament.

Article 17 - Political Activity

- (1) All citizens shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government. All citizens shall have the right to form and join

political parties and; subject to such qualifications prescribed by law as are necessary in a democratic societyⁱ to participate in the conduct of public affairs, whether directly or through freely chosen representatives.

- (2) Every citizen who has reached the age of eighteen (18) years shall have the right to vote and who has reached the age of twenty-one (21) years to be elected to public office, unless otherwise provided herein.
- (3) The rights guaranteed by Sub-Article (2) hereof may only be abrogated, suspended or be impinged upon by Parliament in respect of specified categories of persons on such grounds of infirmity or on such grounds of public interest or morality as are necessary in a democratic society.

Article 18 - Administrative Justice

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal.

Article 19 – Culture

Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.

Article 20 – Education

- (1) All persons shall have the right to education.
- (2) Primary education shall be compulsory and the State shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining State schools at which primary education will be provided free of charge.
- (3) Children shall not be allowed to leave school until they have completed their primary education or have attained the age of sixteen (16) years, whichever is the sooner, save in so far as this may be authorised by Act of Parliament on grounds of health or other considerations pertaining to the public interest.
- (4) All persons shall have the right, at their own expense, to establish and to maintain private schools, or colleges or other institutions of tertiary education: provided that:
 - (a) such schools, colleges or institutions of tertiary education are registered with a Government department in accordance with any law authorising and regulating such registration;
 - (b) the standards maintained by such schools, colleges or institutions of tertiary education are not inferior to the standards maintained in comparable schools, colleges or institutions of tertiary education funded by the State;
 - (c) no restrictions of whatever nature are imposed with respect to the admission of pupils based on race, colour or creed;
 - (d) no restrictions of whatever nature are imposed with respect to the recruitment of staff based on race or colour.

Article 21 - Fundamental Freedoms

- (1) All persons shall have the right to:
 - (a) freedom of speech and expression, which shall include freedom of the press and other media;
 - (b) freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;
 - (c) freedom to practise any religion and to manifest such practice;
 - (d) assemble peaceably and without arms;
 - (e) freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties;
 - (f) withhold their labour without being exposed to criminal penalties;
 - (g) move freely throughout Namibia;
 - (h) reside and settle in any part of Namibia;
 - (i) leave and return to Namibia;
 - (j) practise any profession, or carry on any occupation, trade or business.
- (2) The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Article 22 - Limitation upon Fundamental Rights and Freedoms

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Chapter is authorised, any law providing for such limitation shall:

- (a) be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;
- (b) specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest.

Article 23 - Apartheid and Affirmative Action

- (1) The practice of racial discrimination and the practice and ideology of apartheid from which the majority of the people of Namibia have suffered for so long shall be prohibited and by Act of Parliament such practices, and the propagation of such practices, may be rendered criminally punishable by the ordinary Courts by means of such punishment as Parliament deems necessary for the purposes of expressing the revulsion of the Namibian people at such practices.
- (2) Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the police force, the

defence force, and the prison service.

- (3) In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

Article 24 – Derogation

- (1) Nothing contained in or done under the authority of Article 26 hereof shall be held to be inconsistent with or in contravention of this Constitution to the extent that it authorises the taking of measures during any period when Namibia is in a state of national defence or any period when a declaration of emergency under this Constitution is in force.
- (2) Where any persons are detained by virtue of such authorisation as is referred to in Sub-Article (1) hereof, the following provisions shall apply:
 - (a) they shall, as soon as reasonably practicable and in any case not more than five (5) days after the commencement of their detention, be furnished with a statement in writing in a language that they understand specifying in detail the grounds upon which they are detained and, at their request, this statement shall be read to them;
 - (b) not more than fourteen (14) days after the commencement of their detention, a notification shall be published in the Gazette stating that they have been detained and giving particulars of the provision of law under which their detention is authorised;
 - (c) not more than one (1) month after the commencement of their detention and thereafter during their detention at intervals of not more than three (3) months, their cases shall be reviewed by the Advisory Board referred to in Article 26 (5)(c) hereof, which shall order their release from detention if it is satisfied that it is not reasonably necessary for the purposes of the emergency to continue the detention of such persons;
 - (d) they shall be afforded such opportunity for the making of representations as may be desirable or expedient in the circumstances, having regard to the public interest and the interests of the detained persons.
- (3) Nothing contained in this Article shall permit a derogation from or suspension of the fundamental rights or freedoms referred to in Articles 5, 6, 8, 9, 10, 12, 14, 15, 18, 19 and 21(1)(a), (b), (c) and (e) hereof, or the denial of access by any persons to legal practitioners or a Court of law.

Article 25 - Enforcement of Fundamental Rights and Freedoms

- (1) Save in so far as it may be authorised to do so by this Constitution, Parliament or any subordinate legislative authority shall not make any law, and the Executive and the agencies of Government shall not take any action which abolishes or abridges the fundamental rights and freedoms conferred by this Chapter, and any law or action in contravention thereof shall to the extent of the contravention be invalid: provided that:
 - (a) a competent Court, instead of declaring such law or action to be invalid, shall have the power and the discretion in an appropriate case to allow Parliament, any subordinate legislative authority, or the Executive and the agencies of Government, as the case may be, to correct any defect in the impugned law or action within a specified period, subject to such conditions as may be specified by it. In such event and until such correction, or until the expiry of the time limit set by the Court, whichever be the shorter, such impugned law or action shall be deemed to be valid;

- (b) any law which was in force immediately before the date of Independence shall remain in force until amended, repealed or declared unconstitutional. If a competent Court is of the opinion that such law is unconstitutional, it may either set aside the law, or allow Parliament to correct any defect in such law, in which event the provisions of Sub-Article (a) hereof shall apply.
- (2) Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.
- (3) Subject to the provisions of this Constitution, the Court referred to in SubArticle (2) hereof shall have the power to make all such orders as shall be necessary and appropriate to secure such applicants the enjoyment of the rights and freedoms conferred on them under the provisions of this Constitution, should the Court come to the conclusion that such rights or freedoms have been unlawfully denied or violated, or that grounds exist for the protection of such rights or freedoms by interdict.
- (4) The power of the Court shall include the power to award monetary compensation in respect of any damage suffered by the aggrieved persons in consequence of such unlawful denial or violation of their fundamental rights and freedoms, where it considers such an award to be appropriate in the circumstances of particular cases.

PART III

STATUTORY PRISON REGULATION

I. PRISONS ACT, 17 OF 1998

In terms of Article 7 of the Constitution of Namibia, no one shall be deprived of personal liberty except according to the law. Consequently this provision specifically authorizes deprivation of liberty, such as imprisonment, if established by law. Most international documents elaborate upon the basic rule enshrined in Article 7 of the Constitution. In the premise this provision should be read with Article 11 thereof which prohibits arbitrary arrest and detention and enshrines the right of *habeas corpus* in that all arrested or detained persons must be brought before a magistrate within 48 hours of their arrest and detention, failing which a person cannot remain in custody. This provision is comparable to similar provisions of a vast number of international instruments. Arrest or detention must be reasonable and necessary in the circumstances otherwise the accused have a right to release pending trial.

The Namibian Constitution does not specifically lay down minimum rules for the protection of persons subjected to detention or imprisonment, except for the aforementioned broad provisions which comes under the entrenched provisions of the Bill of Rights in Chapter 3. The Namibian Declaration of Rights, like many other such documents, can be somewhat general and vague at times, to be determined by subsequent Acts of Parliament. Moreover, Article 121 of the Constitution explicitly states that an Act of Parliament that establishes a *Namibian prison service with prescribed powers, duties and procedures* should be promulgated. As a result the *Prisons Act, 17 of 1998* was enacted by the Parliament of Namibia.

This Act provides for the establishment of the Namibia prisons service and it replaces the Prisons Act 8 of 1959. It came into force on 15 August 1998. Sections 13 and 14 of the Act respectively provides for the establishment of prisons and temporary prisons throughout Namibia as determined by the Minister (i.e. the Minister of Safety and Security). A *prisoner* is defined in section 1 of the Act as *any person, whether convicted or not, who is lawfully detained in a prison*. According to this elucidation one can accept that the word prisoner includes pre-charge suspects, trial awaiting prisoners and convicted prisoners.

Section 15 of the Act explicitly states that male and female prisoners should be kept apart and confined in separate prisons or separate parts of the same prison. Furthermore, according to section 56 (1) a juvenile who is awaiting trial or the conclusion of his or her trial shall not be detained in prison. However this provision confers a discretion on the Commissioner of Prisons either to detain or not detain a juvenile offender. Section 52 (2) lay down certain factors that must be considered by the Commissioner in deciding on a suitable place of detention for a juvenile. It is clear from section 52 that juvenile offenders should also be segregated from adult male and male trial awaiting detainees. Moreover section 51 under the heading *Classification and separation of prisoners provides that:*

Prisoners shall, on admission to a prison, be classified by the officer in charge into one or more of the following groups, namely –

- (a) *convicted prisoners;*

- (b) *unconvicted prisoners;*
- (c) *juvenile offenders;*
- (d) *adult prisoners;*
- (e) *first offenders;*
- (f) *prisoners with previous convictions;*
- (g) *prisoners who are suffering from mental illness; and*
- (h) *such other groups as the Commissioner may determine, and so far as the prison accommodation renders it practicable, each group shall be detained separately.*

This provision reiterates that persons arrested and detained or if convicted and sentenced to imprisonment should be categorized into one of the enumerated groups and be detained accordingly. The aforementioned provisions are in particular important in that they illustrate the rationale for a study on holding cells in Namibia. The point is that often the legal framework protecting the rights and freedoms of individuals is in place, but the problem often rests with the implementation of the relevant law. Implementation of laws can be hampered by various factors, ranging from availability of resources to incompetence or deliberateness. Laws are enacted for the purpose of addressing social, economic and political challenges, and when it is not put into practice in line with the purpose for which it was enacted, it becomes *a good dead law on a piece of paper*. In the end the ultimate aim of law, namely to govern human conduct with a view to facilitate social change will not be accomplished.

II. PRISONS ACT, 17 OF 1998: REGULATIONS FOR THE ADMINISTRATION AND CONTROL OF THE NAMIBIAN PRISON SERVICE OF 2001

The Regulations made in terms of the previous Act survive in terms of section 127 of the Prisons Act of 1998. GN 67/1987 amends the regulations promulgated under the previous Act. A new set of regulations was promulgated by the then Minister of Prisons and Correctional Services accordance with section 124 of the Prisons Act of 1998. The regulations deals with prison service personnel and the treatment of prisoners and are contained in GN 226/2001 (GG 2643).

Chapter 3 of the 2001 regulations deals with various aspects relating to prisoners. Part 3, under this Chapter lays down minimum standards regarding the accommodation of prisoners. In particular section 195 provides that a dormitory or cell use by prisoners for sleeping purposes should comply with the prescribed requirements in respect of floor space, cubic capacity lighting, ventilation and general health conditions. Sections 250-251 deals with hygienic conditions and explicitly states that prisoners should be provided with bathing and toilette facilities. These provisions are in line with the Standard Minimum Rules for the Treatment of Prisoners. Furthermore section 198 reiterates that male and female prisoners should be detained separately, while section 259 sets out the basis for classification of prisoners.

Chapter 4 of the regulations regulates the treatment of different categories of prisoners. Section 298 provides that *a trail or sentence awaiting prisoner should be segregated from sentenced and other categories of unsentenced prisoners*. In my view this section clearly stipulates that trail or sentenced awaiting prisoners should be detained separately from convicted prisoners and pre-charge suspects. Moreover, juveniles and women, whether they are pre-charge suspects, trail awaiting prisoners or convicted prisoners should at all times be segregated from adults and males. Failure to separate the

different groups could result in gross human rights violations, such as rape, sodomy, cruel inhuman and degrading treatment, to mention but a few.

PART IV

HUMAN RIGHTS PRINCIPLES PARTICULARLY RELEVANT FOR PRISON OFFICIALS

The following 180 principles reflect the basic human rights standards necessary for prison officials. Many of these principles, which reflect international human rights standards, are incorporated into national legislation, eg the 1998 Prisons Act. The principles are numbered, also the corresponding list of references at the end of Part III of this handbook which reveals the principles' legal source:

GENERAL PRINCIPLES

- 1 International human rights law is binding on all States and their agents, including prison officials.¹
- 2 Human rights are a legitimate subject for international law and international scrutiny.²
- 3 Law enforcement officials are obliged to know, and to apply, international standards for human rights.³

RIGHT TO PHYSICAL AND MORAL INTEGRITY

- 4 All human beings are born free and equal in dignity and rights.⁴
- 5 Human rights derive from the inherent dignity of the human person.⁵
- 6 All persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person.⁶
- 7 No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. There are no exceptions.⁷
- 8 Torture is defined as any act by which severe physical or mental pain or suffering is intentionally inflicted on a person, other than that which is inherent in or incidental to lawful sanctions.⁸

¹ International Covenant on Civil and Political Rights [hereinafter "ICCPR"], article 2, para. 3.

² Charter of the United Nations, Preamble, Article 1 and Article 55 (c).

³ ICCPR, article 2, para. 3; Code of Conduct for Law Enforcement Officials [hereinafter "Code of Conduct"], article 2.

⁴ Universal Declaration of Human Rights [hereinafter "UDHR"], preamble and article 1; ICCPR, preamble.

⁵ UDHR, preamble and article 1; ICCPR, preamble.

⁶ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment [hereinafter "Principles on Detention or Imprisonment"], principle 1; Basic Principles for the Treatment of Prisoners [hereinafter "BPT"], principle 1.

⁷ UDHR, article 5; ICCPR, article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [hereinafter "CAT"], preamble and article 2; Code of Conduct, article 5.

⁸ CAT, article 1.

- 9 Ill-treatment is defined as other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.⁹
- 10 Any act of torture committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, is a crime against humanity.¹⁰
- 11 No prisoner shall be subjected, even with his or her consent, to any medical or scientific experimentation which may be detrimental to health.¹¹
- 12 Like torture and ill-treatment, enforced disappearances and summary executions are completely prohibited.¹²
- 13 All law enforcement officials shall be fully informed and educated about the prohibition of torture and ill treatment.¹³
- 14 Any statement made as a result of torture shall not be invoked as evidence in any proceedings, except as evidence to bring the perpetrators to justice.¹⁴
- 15 Orders from a superior officer may not be invoked as a justification of torture.¹⁵
- 16 Law enforcement officials may use force only when it is strictly necessary.¹⁶
- 17 Any individual who alleges that he or she has been subjected to torture has the right to complain and to have the case promptly and impartially examined by competent authorities.¹⁷
- 18 All deaths in custody and disappearances of prisoners shall be properly investigated.¹⁸
- 19 All interrogation rules, instructions, methods and practices pertaining to detained and imprisoned persons shall be kept under systematic review with a view to preventing torture.¹⁹
- 20 Persons deprived of their liberty shall be held in places which are officially recognized as places of custody.²⁰
- 21 A detailed register shall be kept of every person deprived of liberty.²¹
- 22 All prisoners shall be provided promptly with written information about the regulations which apply to them and on their rights and obligations.²²
- 23 The families, legal representatives and, if appropriate, diplomatic missions of prisoners are to receive full information about the fact of their detention and where they are held.²³
- 24 All prisoners shall be offered a proper medical examination and treatment as soon as possible after admission.²⁴

⁹ CAT, article 16.

¹⁰ Rome Statute of the International Criminal Court, article 7.

¹¹ Principles on Detention or Imprisonment, principle 22.

¹² Declaration on the Protection of All Persons from Enforced Disappearance [hereinafter “Declaration on Enforced Disappearance”], article 1; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions [hereinafter “Principles on Summary Executions”], principle 1.

¹³ CAT, article 10.

¹⁴ CAT, article 15.

¹⁵ CAT, article 2.

¹⁶ Code of Conduct, article 3.

¹⁷ CAT, article 13.

¹⁸ Principles on Detention or Imprisonment, principle 34.

¹⁹ CAT, article 11.

²⁰ Principles on Summary Executions, principle 6.

²¹ Standard Minimum Rules for the Treatment of Prisoners [hereinafter “SMR”], rule 7; Declaration on Enforced Disappearance, article 10;

²² Principles on Summary Executions, principle 6.

²³ Principles on Detention or Imprisonment, principle 13; SMR, rule 35.

RIGHT TO AN ADEQUATE STANDARD OF LIVING

- 25 All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.²⁵
- 26 All persons deprived of their liberty shall have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding.²⁶
- 27 Accommodation for prisoners shall provide adequate cubic content of air, floor space, lighting, heating and ventilation.²⁷
- 28 Prisoners required to share sleeping accommodation shall be carefully selected and supervised at night.²⁸
- 29 Adequate food and drinking water are human rights.²⁹
- 30 All prisoners shall be provided with wholesome and adequate food at the usual hours and with drinking water available whenever needed.³⁰
- 31 Clothing as a component of the right to an adequate standard of living is a human right.³¹
- 32 All prisoners not allowed to wear their own clothing shall be provided with suitable clothing.³²
- 33 There shall be facilities for keeping clothing clean and in proper condition.³³
- 34 All prisoners shall be provided with a separate bed and clean bedding, with facilities for keeping bedding clean.³⁴
- 35 There must be facilities to wash and dry clothing and bedding regularly.³⁵

HEALTH RIGHTS OF PRISONERS

- 36 The enjoyment of the highest attainable standard of physical and mental health is a human right.³⁶
- 37 It is a basic requirement that all prisoners should be given a medical examination as soon as they have been admitted to a prison or place of detention.³⁷
- 38 Any necessary medical treatment should then be provided free of charge.³⁸
- 39 Prisoners should generally have the right to request a second medical opinion.³⁹

²⁴ Principles on Detention or Imprisonment, principle 12; Principles on Summary Executions, principle 6.

²⁵ Principles on Detention or Imprisonment, principle 24; SMR, rule 24.

²⁶ ICCPR, article 10, para. 1.

²⁷ UDHR, article 25; International Covenant on Economic, Social and Cultural Rights [hereinafter "ICESCR"], article 11; Convention on the Rights of the Child [hereinafter "CRC"], article 27; Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa [hereinafter "Robben Island Guidelines"], paragraph 34.

²⁸ SMR, rule 10.

²⁹ SMR, rule 9 (2).

³⁰ ICESCR, article 11.

³¹ SMR, rule 20.

³² SMR, rule 20.

³³ SMR, rules 17 (2) and 18.

³⁴ SMR, rule 19.

³⁵ SMR, rule 19.

³⁶ ICESCR, article 12.

³⁷ Principles on Detention or Imprisonment, principle 24; SMR, rule 24.

³⁸ Principles on Detention or Imprisonment, principle 24.

³⁹ Principles on Detention or Imprisonment, principle 25.

- 40 Prisoners and all detained persons have the right to the highest attainable standard of physical and mental health.⁴⁰
- 41 Prisoners should have free access to the health services available in the country.⁴¹
- 42 Decisions about a prisoner's health should be taken only on medical grounds by medically qualified people.⁴²
- 43 The medical officer has an important responsibility to ensure that proper health standards are met. He or she can do this by regularly inspecting and advising the director of the prison on the suitability of food, water, hygiene, cleanliness, sanitation, heating, lighting, ventilation, clothing, bedding and opportunities for exercise.⁴³
- 44 Every prison should have proper health facilities and medical staff to provide for a range of health needs, including dental and psychiatric care. Sick prisoners who cannot be treated in the prison, such as prisoners with mental illness, should be transferred to a civilian hospital or to a specialized prison hospital.⁴⁴
- 45 All prisoners shall have access to a qualified dental practitioner.⁴⁵
- 46 Services for psychiatric diagnosis and, if appropriate, treatment shall be available at every prison.⁴⁶
- 47 Prisoners who are insane shall not be detained in prisons, but transferred as soon as possible to mental institutions.⁴⁷
- 48 Prisoners suffering from other mental diseases shall be treated in specialized institutions under medical management.⁴⁸
- 49 During their stay in a prison, insane and mentally ill prisoners shall be supervised by a medical officer.⁴⁹
- 50 It is important that health care for prisoners be provided by at least one qualified medical officer.⁵⁰
- 51 Medical personnel have a duty to provide prisoners and detainees with health care equal to that which is afforded to those who are not imprisoned or detained.⁵¹
- 52 The primary responsibility of health-care personnel is to protect the health of all prisoners.⁵²
- 53 Health-care personnel shall not commit or give their permission for any acts which may adversely affect the health of prisoners.⁵³
- 54 All prisoners shall be provided with facilities to meet the needs of nature in a clean and decent manner and to maintain adequately their own cleanliness and good appearance.⁵⁴

⁴⁰ UDHR, article 25; ICESCR, article 12.

⁴¹ BPT, principle 9.

⁴² SMR, rule 25.

⁴³ SMR, rule 26.

⁴⁴ SMR, rule 22 (1) and (2).

⁴⁵ SMR, rule 22 (3).

⁴⁶ SMR, rule 22 (1).

⁴⁷ SMR, rule 82 (1).

⁴⁸ SMR, rule 82 (2).

⁴⁹ SMR, rule 82 (3).

⁵⁰ SMR, rule 22 (1).

⁵¹ Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [hereinafter "Principles of Medical Ethics"], principle 1.

⁵² Principles of Medical Ethics, principles 1 to 6.

⁵³ Principles of Medical Ethics, principles 1 to 6.

⁵⁴ SMR, rules 12 to 16.

- 55 All prisoners shall have at least one hour's daily exercise in the open air if the weather permits.⁵⁵

MAKING PRISONS SAFE PLACES

- 56 Use of force, including use of firearms, to prevent escape should only be applied when less extreme means are insufficient to prevent the escape.⁵⁶
- 57 Restraints may be used only as a precaution against escape during transfer, for no longer than strictly necessary, and provided that they are removed when the prisoner appears before a judicial or administrative authority; or on medical grounds.⁵⁷
- 58 Prisons should be safe environments for all who live and work in them, in other words for prisoners and staff, and for visitors.⁵⁸
- 59 No one in a prison should fear for his or her physical safety.⁵⁹
- 60 Chains and irons shall not be used as restraints.⁶⁰
- 61 Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.⁶¹
- 62 All disciplinary offences and punishments must be specified by law or published legal regulations.⁶²
- 63 No prisoner shall be punished before being informed of the alleged offence and having the opportunity to present a proper defence.⁶³
- 64 No prisoner shall be employed in any disciplinary capacity.⁶⁴
- 65 All cruel, inhuman or degrading punishments are completely prohibited, including corporal punishment or placing in a dark cell.⁶⁵
- 66 Punishment by close confinement or reduction of diet shall never be inflicted unless the prisoner is certified by the medical officer as medically fit to sustain it.⁶⁶
- 67 Instruments of restraint shall never be applied as a punishment.⁶⁷
- 68 Prisoners who are subject to disciplinary action should have the right of appeal to a higher authority.⁶⁸

MAKING THE BEST USE OF PRISONS

- 69 The main aim of the prison authorities in their treatment of prisoners should be to encourage personal reformation and social rehabilitation.⁶⁹

⁵⁵ SMR, rule 21.

⁵⁶ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials [hereinafter "Principles on Force and Firearms"], principle 9.

⁵⁷ SMR, rule 33.

⁵⁸ SMR, rule 27.

⁵⁹ SMR, rule 27.

⁶⁰ SMR, rule 33.

⁶¹ SMR, rule 27.

⁶² Principles on Detention or Imprisonment, principle 30; SMR, rules 29 and 30.

⁶³ SMR, rule 30 (2).

⁶⁴ SMR, rule 28 (1).

⁶⁵ SMR, rule 31.

⁶⁶ SMR, rule 32.

⁶⁷ SMR, rule 33.

⁶⁸ ICCPR, article 2; Principles on Detention or Imprisonment, principle 30, para. 2.

⁶⁹ ICCPR, article 10, para. 3.

- 70 The purpose of the prison regime should be to help prisoners to lead law-abiding and self-supporting lives after their release.⁷⁰
- 71 All sentenced prisoners who are medically fit shall be required to work. As far as possible, this work should give them skills that will enable them to earn an honest living after their release.⁷¹
- 72 National legislation regarding health and safety at work shall apply in prison in the same way as it does in the community.⁷²
- 73 Vocational training shall be provided, especially for young prisoners.⁷³
- 74 Prisoners should be remunerated for the work they do.⁷⁴
- 75 Prisoners should be allowed to spend at least a part of their earnings, to send a part to their families and to save a part.⁷⁵
- 76 Education and cultural activities shall be provided and encouraged, including access to an adequate library.⁷⁶
- 77 Education in prisons should be aimed at developing the whole person, taking account of prisoners' social, economic and cultural background.⁷⁷
- 78 Education shall be compulsory for young prisoners and illiterate prisoners. The prison authorities should give this high priority.⁷⁸
- 79 The outside community should be involved as much as possible in educational and cultural activities in prisons.⁷⁹
- 80 All prisoners have the right to observe the tenets of their religion and to have access to a minister of that religion.⁸⁰
- 81 Prisoners shall be allowed access to qualified representatives of any religion.⁸¹
- 82 From the beginning of a prisoner's sentence consideration shall be given to his or her future after release and prisoners shall be assisted in ensuring their future reintegration into society.⁸²
- 83 All agencies and services responsible for the reintegration of prisoners into society shall ensure that all prisoners have means and available resources to maintain themselves in the period immediately following their release.⁸³

PRISONERS' CONTACT WITH THE OUTSIDE WORLD

- 84 No one shall be subjected to arbitrary interference with his or her privacy, family, home or correspondence.⁸⁴

⁷⁰ SMR, rules 65 and 66 (1).

⁷¹ SMR, rules 66 (1) and 71; BPT, principle 8.

⁷² SMR, rules 72 (1) and 74.

⁷³ SMR, rule 71 (5).

⁷⁴ UDHR, article 23; SMR, rule 76 (1).

⁷⁵ SMR, rule 76 (2) and (3).

⁷⁶ UDHR, articles 26 and 27; ICESCR, article 13; SMR, rules 40, 77 and 78.

⁷⁷ BPT, principle 6; Economic and Social Council resolution 1990/20 of 24 May 1990, paragraph 3 (a).

⁷⁸ SMR, rule 77.

⁷⁹ Economic and Social Council resolution 1990/20 of 24 May 1990, paragraph 3 (i).

⁸⁰ UDHR, article 18; ICCPR, article 18.

⁸¹ SMR, rule 41.

⁸² SMR, rule 80.

⁸³ SMR, rule 81; BPT, principle 10.

⁸⁴ UDHR, article 12; ICCPR, article 17.

- 85 All prisoners shall have the right to communicate with the outside world, especially with their families.⁸⁵
- 86 Foreign prisoners shall be allowed to communicate with their diplomatic representatives.⁸⁶
- 87 A prisoner's request to be held in a prison near his or her home shall be granted as far as possible.⁸⁷
- 88 Prisoners shall be kept informed of important items of news.⁸⁸

COMPLAINTS AND INSPECTION PROCEDURES

- 89 Anyone whose rights and freedoms have been violated has the right to an effective remedy, determined by a competent court.⁸⁹
- 90 Every prisoner shall have the right to make a complaint regarding his or her treatment and, unless the complaint is evidently frivolous, to have it dealt with promptly and, if requested, confidentially. If necessary, the complaint may be lodged on behalf of the prisoner by his or her legal representative or family.⁹⁰
- 91 Every prisoner on admission shall be provided with written information on regulations and on complaints and disciplinary procedures in a language which he or she understands. If necessary, these rules should be explained orally.⁹¹
- 92 If a complaint is rejected or not responded to in a timely manner, the complainant shall be entitled to bring it before a judicial or other authority.⁹²
- 93 States shall ensure a prompt and impartial investigation whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed.⁹³
- 94 There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary execution, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances.⁹⁴
- 95 Prisons shall be inspected regularly by qualified and experienced inspectors from a competent authority separate from the prison administration.⁹⁵
- 96 Every prisoner shall have the right to communicate freely and confidentially with inspectors, subject only to the demands of good order and discipline in the institution.⁹⁶

NON-DISCRIMINATION

- 97 All persons are equal before the law and are entitled, without discrimination, to equal protection of the law.⁹⁷

⁸⁵ Principles on Detention or Imprisonment, principle 19; SMR, rules 37 and 79.

⁸⁶ SMR, rule 38.

⁸⁷ Principles on Detention or Imprisonment, principle 20.

⁸⁸ SMR, rule 39.

⁸⁹ ICCPR, article 2; CAT, article 13; Principles on Detention or Imprisonment, principle 33.

⁹⁰ Principles on Detention or Imprisonment, principle 33; SMR, rule 36.

⁹¹ SMR, rule 35.

⁹² Principles on Detention or Imprisonment, principle 33, para. 4.

⁹³ CAT, article 12; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 2.

⁹⁴ Principles on Summary Executions, principle 9.

⁹⁵ Principles on Detention or Imprisonment, principle 29, para. 1; SMR, rule 55.

⁹⁶ SMR, rules 36 (2) and 55; Principles on Detention or Imprisonment, principle 29, para. 2.

⁹⁷ UDHR, article 7; ICCPR, articles 2 and 26; International Convention on the Elimination of All Forms of Racial Discrimination, articles 2 and 5.

- 98 Everyone has the right to freedom of thought, conscience and religion and persons belonging to ethnic, religious or linguistic minorities have the right to their own culture, religion and language.⁹⁸
- 99 A prisoner who does not adequately understand or speak the language used by the authorities is entitled to receive relevant information promptly in a language which he understands.⁹⁹
- 100 Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with diplomatic representatives of their State.¹⁰⁰
- 101 Prisoners who are nationals of States without diplomatic representation in the country or refugees or stateless persons shall be allowed reasonable facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.¹⁰¹

WOMEN IN PRISON

- 102 Women are entitled to the equal enjoyment and protection of all human rights in the political, economic, social, cultural, civil and all other fields.¹⁰²
- 103 Women prisoners shall not suffer discrimination and shall be protected from all forms of violence or exploitation.¹⁰³
- 104 Women prisoners shall be detained separately from male prisoners.¹⁰⁴
- 105 Women prisoners shall be supervised and searched only by female officers and staff.¹⁰⁵
- 106 Pregnant women and nursing mothers who are in prison shall be provided with the special facilities which they need for their condition.¹⁰⁶
- 107 Whenever practicable, women prisoners should be taken to outside hospitals to give birth.¹⁰⁷

JUVENILES IN DETENTION

- 108 Children are to benefit from all the human rights guarantees available to adults.¹⁰⁸
- 109 In addition, the following rules shall be applied to children: Children who are detained shall be treated in a manner which promotes their sense of dignity and worth, facilitates their reintegration into society, reflects their best interests and takes their needs into account.¹⁰⁹

⁹⁸ UDHR, article 18; ICCPR, articles 18 and 27.

⁹⁹ Principles on Detention or Imprisonment, principle 14.

¹⁰⁰ SMR, rule 38 (1).

¹⁰¹ SMR, rule 38 (2).

¹⁰² UDHR, article 2; ICCPR, article 3; Convention on the Elimination of All Forms of Discrimination against Women [hereinafter "CEDAW"], articles 1, 2 and 3; Declaration on the Elimination of Violence against Women [hereinafter "Declaration on Violence against Women"], article 3.

¹⁰³ CEDAW, articles 1, 6 and 7; Declaration on Violence against Women, articles 2 and 4.

¹⁰⁴ Principles on Detention or Imprisonment, principle 5; SMR, rule 8 (a).

¹⁰⁵ SMR, rule 53.

¹⁰⁶ SMR, rule 23 (1).

¹⁰⁷ SMR, rule 23 (1).

¹⁰⁸ UDHR, article 1 and article 25, para. 2; CRC, preamble; ICCPR, preamble.

¹⁰⁹ CRC, articles 3 and 37; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) [hereinafter "Beijing Rules"], rules 1, 5 and 6; United Nations Rules for the Protection of Juveniles Deprived of their Liberty [hereinafter "Rules for Juveniles"], rules 1, 4, 14, 31, 79 and 80.

- 110 Children shall not be subjected to corporal punishment, capital punishment or life imprisonment without possibility of release.¹¹⁰
- 111 Children who are detained shall be separated from adult prisoners. Accused juveniles shall be separated from adults and brought for trial as speedily as possible.¹¹¹
- 112 Special efforts shall be made to allow detained children to receive visits from and correspond with family members.¹¹²
- 113 The privacy of a detained child shall be respected, and complete and secure records are to be maintained and kept confidential.¹¹³
- 114 Juveniles of compulsory school age have the right to education and to vocational training.¹¹⁴
- 115 Weapons shall not be carried in institutions which hold juveniles.¹¹⁵
- 116 Disciplinary procedures shall respect the child's dignity and be designed to instil in the child a sense of justice, self-respect and respect for human rights.¹¹⁶
- 117 Parents are to be notified of the admission, transfer, release, sickness, injury or death of a juvenile.¹¹⁷

PRISONERS UNDER SENTENCE OF DEATH (N.A. IN NAMIBIA)

- 118 Every human being has the inherent right to life, which shall be protected by law.¹¹⁸
- 119 In countries which have not abolished the death penalty, it shall be imposed only for the most serious crimes and after a final judgement rendered by a competent court.¹¹⁹
- 120 The death penalty shall not be imposed for crimes committed by persons below the age of eighteen and shall not be carried out on pregnant women, new mothers or persons who have become insane.¹²⁰
- 121 Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.¹²¹
- 122 Abolition of the death penalty is encouraged.¹²²

LIFE AND LONG-TERM PRISONERS

- 123 The essential aim of the treatment of prisoners shall be their reformation and social rehabilitation.¹²³

¹¹⁰ CRC, article 37 (a); Beijing Rules, rule 27; Rules for Juveniles, rules 64, 66 and 67.

¹¹¹ ICCPR, article 10, para. 2 (b); CRC, article 37 (c); Beijing Rules, rules 13.4 and 26.3; Rules for Juveniles, rule 29.

¹¹² CRC, articles 9, 10 and 37 (c); Beijing Rules, rules 13.3, 26.5 and 27.2; SMR, rule 37; Rules for Juveniles, rule 59.

¹¹³ CRC, article 40, para. 2 (b) (vii); Beijing Rules, rule 21.1.

¹¹⁴ ICESCR, article 13; CRC, article 28; Rules for Juveniles, rules 38 and 42.

¹¹⁵ Rules for Juveniles, rule 65.

¹¹⁶ Rules for Juveniles, rule 66.

¹¹⁷ CRC, article 37 (c) and article 40, para. 2 (b) (ii); Beijing Rules, rules 10.1 and 26.5; SMR, rules 37 and 44; Rules for Juveniles, rules 56 and 57.

¹¹⁸ UDHR, article 3; ICCPR, article 6, para. 1.

¹¹⁹ ICCPR, article 6, para. 2; Safeguards guaranteeing protection of the rights of those facing the death penalty [hereinafter "Death Penalty Safeguards"], para. 1.

¹²⁰ ICCPR, article 6, para. 5; Death Penalty Safeguards, para. 3.

¹²¹ Death Penalty Safeguards, para. 9.

¹²² ICCPR, article 6, para. 6.

¹²³ ICCPR, article 10, para. 3.

- 124 Life imprisonment without possibility of release shall not be imposed for offences committed by persons below eighteen years of age.¹²⁴
- 125 The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.¹²⁵
- 126 Treatment shall be such as to encourage long-term prisoners' self-respect and to develop their sense of responsibility.¹²⁶
- 127 Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.¹²⁷
- 128 Life-sentence prisoners should be eligible for release into society once they have served a sufficient period of time in custody to mark the seriousness of their offences.¹²⁸

PERSONS UNDER DETENTION WITHOUT SENTENCE

- 129 Everyone charged with a penal offence has the right to be presumed innocent until proved guilty.¹²⁹
- 130 Everyone has the right to liberty and security. No one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law.¹³⁰
- 131 Anyone who is arrested shall be informed, at the time of arrest, of the reasons for the arrest and of his or her rights. Anyone who is arrested shall be promptly informed of any charges.¹³¹
- 132 Anyone who is arrested shall be brought promptly before a judicial authority for the purpose of having the legality of his or her arrest or detention reviewed and shall be released if the detention is found to be unlawful.¹³²
- 133 Anyone who is arrested has the right to trial within a reasonable time or to release.¹³³
- 134 Comprehensive written records of all interrogations must be kept, including the identity of all persons present during the interrogation.¹³⁴
- 135 All arrested or detained persons shall have access to a lawyer or other legal representative and adequate opportunity to communicate with that representative.¹³⁵
- 136 Untried prisoners shall be allowed immediately to inform their families of their detention and shall be given all reasonable facilities for communicating with their families and friends.¹³⁶

¹²⁴ CRC, article 37 (a).

¹²⁵ SMR, rule 60 (1).

¹²⁶ SMR, rules 65 and 66.

¹²⁷ SMR, rule 37.

¹²⁸ Resolution (76) 2 of 17 February 1976 of the Committee of Ministers of the Council of Europe on the treatment of long-term prisoners.

¹²⁹ UDHR, article 11; ICCPR, article 14, para. 2; Principles on Detention or Imprisonment, principle 36; SMR, rule 84 (2).

¹³⁰ UDHR, article 3; ICCPR, article 9, para. 1.

¹³¹ ICCPR, article 9, para. 2, and article 14, para. 3 (a); Principles on Detention or Imprisonment, principle 10.

¹³² ICCPR, article 9, para. 4; Principles on Detention or Imprisonment, principle 37.

¹³³ ICCPR, article 9, para. 3; Principles on Detention or Imprisonment, principle 38.

¹³⁴ Robben Island Guidelines, para. 28.

¹³⁵ UDHR, article 11; ICCPR, article 14, para. 3 (b) and (d); Principles on Detention or Imprisonment, principles 17 and 18; SMR, rule 93.

- 137 Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment.¹³⁷
- 138 Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.¹³⁸
- 139 Untried prisoners may, if they so desire, have their food procured at their own expense from the outside.¹³⁹
- 140 Untried prisoners shall be allowed to wear their own clothing if it is clean and suitable.¹⁴⁰
- 141 If an untried prisoner wears prison clothing, it shall be different from that supplied to convicted prisoners.¹⁴¹
- 142 Untried prisoners shall always be offered the opportunity to work, but shall not be required to work.¹⁴²
- 143 Untried prisoners shall generally be allowed to procure at their own expense books, newspapers and writing materials.¹⁴³
- 144 Untried prisoners shall generally be allowed visits from their own doctor or dentist.¹⁴⁴
- 145 Persons awaiting trial shall not be detained in custody as a general rule.¹⁴⁵
- 146 Release pending trial shall be envisaged as early as possible.¹⁴⁶
- 147 A pre-trial prisoner shall have the right to appeal to a judicial or other independent authority against his or her detention.¹⁴⁷
- 148 Persons arrested or imprisoned without charge shall be accorded the same protection and facilities as pre-trial prisoners and those awaiting trial.¹⁴⁸

NON-CUSTODIAL MEASURES

- 149 The use of non-custodial measures should be recommended and encouraged.¹⁴⁹
- 150 Non-custodial measures should be applied without discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁵⁰
- 151 Consideration should be given where possible to dealing with offenders in the community, without resort to the courts.¹⁵¹

¹³⁶ Principles on Detention or Imprisonment, principle 16, para. 1; SMR, rules 44 (3) and 92; Declaration on Enforced Disappearance, article 10, para. 2; Principles on Summary Executions, principle 6.

¹³⁷ ICCPR, article 10, para. 2 (a); Principles on Detention or Imprisonment, principle 8; SMR, rules 8 (b) and 85 (1).

¹³⁸ SMR, rule 86.

¹³⁹ SMR, rule 87.

¹⁴⁰ SMR, rule 88 (1).

¹⁴¹ SMR, rule 88 (2).

¹⁴² SMR, rule 89.

¹⁴³ SMR, rule 90; Principles on Detention or Imprisonment, principle 28.

¹⁴⁴ SMR, rule 91.

¹⁴⁵ ICCPR, article 9, para. 3.

¹⁴⁶ Principles on Detention or Imprisonment, principle 39; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) [hereinafter "Tokyo Rules"], rule 6.2.

¹⁴⁷ Tokyo Rules, rule 6.3.

¹⁴⁸ SMR, rule 95.

¹⁴⁹ Tokyo Rules, rule 1.

¹⁵⁰ Tokyo Rules, rule 2.2.

¹⁵¹ Tokyo Rules, rule 2.5.

- 152 Non-custodial measures should be used in accordance with the principle of minimum intervention.¹⁵²
- 153 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.¹⁵³
- 154 There should be suitable mechanisms to facilitate linkages between services responsible for non-custodial measures and other relevant agencies in the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.¹⁵⁴
- 155 The criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions, in order to avoid the unnecessary use of imprisonment.¹⁵⁵
- 156 Pre-trial detention shall be used as a means of last resort in criminal proceedings, and alternatives to pre-trial detention should be employed as early as possible.¹⁵⁶
- 157 The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.¹⁵⁷
- 158 Sentencing authorities, when considering non-custodial measures, should take into consideration the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.¹⁵⁸
- 159 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.¹⁵⁹

THE ADMINISTRATION OF PRISONS AND PRISON STAFF

- 160 All law enforcement officials, including prison staff, shall respect and protect human dignity and maintain and uphold the human rights of all persons.¹⁶⁰
- 161 The administration of the prison staff should be in civilian hands. It should not be part of a military structure.¹⁶¹
- 162 Personnel shall be carefully selected for their integrity, humanity, professional capacity and personal suitability.¹⁶²
- 163 The prison administration should be diligent in informing the personnel and the public that prison work is a social service of great importance.¹⁶³
- 164 Personnel shall be appointed as full-time prison officers, with civilian status, salaries adequate to attract and retain suitable men and women, and favourable employment benefits and conditions of service.¹⁶⁴
- 165 Both law enforcement agencies and prison authorities shall not discriminate against women in recruitment, hiring, training, assignment, promotion, salary or other career and administrative matters.¹⁶⁵

¹⁵² Tokyo Rules, rule 2.6.

¹⁵³ Tokyo Rules, rule 9.4.

¹⁵⁴ Tokyo Rules, rule 22.

¹⁵⁵ Tokyo Rules, rule 2.3.

¹⁵⁶ ICCPR, article 9, para. 3; Tokyo Rules, rules 5 and 6.

¹⁵⁷ Tokyo Rules, rules 2.3 and 8.1.

¹⁵⁸ Tokyo Rules, rule 8.1.

¹⁵⁹ Tokyo Rules, rule 2.4.

¹⁶⁰ ICCPR, preamble; Code of Conduct, article 2.

¹⁶¹ SMR, rule 46 (3).

¹⁶² SMR, rule 46 (1).

¹⁶³ SMR, rule 46 (2).

¹⁶⁴ SMR, rule 46 (3).

- 166 Both law enforcement agencies and prison authorities shall recruit sufficient numbers of women to ensure fair community representation and the protection of the rights of women prisoners.¹⁶⁶
- 167 Personnel shall have an adequate standard of intelligence and education and shall be trained before entering on duty and while they are in service.¹⁶⁷
- 168 Personnel shall conduct themselves in a manner which commands the respect of prisoners.¹⁶⁸
- 169 Personnel shall include, so far as possible, sufficient numbers of specialists such as psychiatrists and psychologists, and also social workers, teachers and trade instructors.¹⁶⁹
- 170 The director of an institution should be adequately qualified for his or her task, appointed on a full-time basis and resident on the premises or in the immediate vicinity.¹⁷⁰
- 171 The director, his or her deputy and the majority of the other personnel shall be able to speak the language of the majority of the prisoners.¹⁷¹
- 172 There shall be adequate medical personnel resident close to the institution.¹⁷²
- 173 In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer and women prisoners shall be attended and supervised only by women officers.¹⁷³
- 174 Prison officers shall not use force, except in self-defence or in cases of attempted escape or active or passive resistance to an order based on law or regulations.¹⁷⁴
- 175 Officers who have recourse to force must use only the minimum force and must report the incident immediately to the prison director.¹⁷⁵
- 176 Staff in direct contact with prisoners should not usually be armed.¹⁷⁶
- 177 Law enforcement officials shall respect the confidentiality of information in their possession unless the performance of duty or the needs of justice strictly require otherwise.¹⁷⁷
- 178 Law enforcement officials shall ensure the full protection of the health of persons in their custody.¹⁷⁸
- 179 Firearms shall not be used against persons in custody or detention except in the following circumstances: In self-defence or defence of others against imminent threat of death or serious injury; or when strictly necessary to prevent the escape of a person presenting a grave threat to life.¹⁷⁹

¹⁶⁵ UDHR, article 2; ICCPR, articles 2, 3 and 26; CEDAW, preamble and articles 2, 3 and 7 (b); General Assembly resolution 34/169 of 17 December 1979 (resolution adopting the Code of Conduct for Law Enforcement Officials), eighth preambular paragraph, subpara. (a).

¹⁶⁶ General Assembly resolution 34/169 of 17 December 1979, eighth preambular paragraph, subpara. (a); SMR, rule 53.

¹⁶⁷ SMR, rule 47.

¹⁶⁸ SMR, rule 48; Code of Conduct, article 8.

¹⁶⁹ SMR, rule 49.

¹⁷⁰ SMR, rule 50.

¹⁷¹ SMR, rule 51 (1).

¹⁷² SMR, rule 52.

¹⁷³ SMR, rule 53.

¹⁷⁴ SMR, rule 54 (1); Code of Conduct, article 3; Principles on Force and Firearms, principles 4 and 15.

¹⁷⁵ Principles on Force and Firearms, principle 5.

¹⁷⁶ SMR, rule 54 (3).

¹⁷⁷ Code of Conduct, article 4.

¹⁷⁸ Code of Conduct, article 6.

¹⁷⁹ Principles on Force and Firearms, principle 9.

180 Intentional lethal use of force or firearms shall be permitted only when strictly unavoidable in order to protect human life.¹⁸⁰

¹⁸⁰ Principles on Force and Firearms, principle 9.

PART V

THE OMBUDSMAN AND HUMAN RIGHTS

I. LEGAL FOUNDATIONS

The legal foundations of the institution of the Ombudsman in Namibia can in the first place be found in the Constitution of Namibia. The Constitution deals with the Ombudsman in its Chapter 10. Another provision relating to the institution of the Ombudsman is laid down in Chapter 3 of the Constitution – the Bill of Rights - providing for the enforcement of fundamental human rights and freedoms. Article 25(2) reads –

[a]ggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.

In addition to the constitutional provisions, the Ombudsman Act (Act No 7 of 1990 GG 32/1990 GN 11; in this part referred to as the Act) defines and prescribes the powers, duties and functions of the Ombudsman, and provides for matters incidental thereto.

II. BASIC CHARACTERISTICS OF THE OMBUDSMAN INSTITUTION IN NAMIBIA

The institution of the Ombudsman in Namibia intends to be independent, impartial, fair, and acting confidential in terms of the investigation process. Negotiation and compromise between the parties concerned are the main objective when handling complaints. Through investigation and the resolution of complaints, the institution of the Ombudsman in Namibia promotes and protects human rights, and fair and effective public administration; it combats corrupt practices, and protects the environment and natural resources. In order to effectively fulfil these functions, the Ombudsman has to be impartial, fair, and independent.

Independence is probably the most fundamental and indispensable value for the purpose of the successful functioning of the Ombudsman. Generally speaking, *independence* describes a state of not being controlled by other people or things. The underlying rationale for independence in this context is that an Ombudsperson must be capable of conducting fair and impartial investigations credible to both complainants and the authorities under the institution's competence.

A bundle of legal provisions within the constitutional and statutory regime build the necessary foundations for the Ombudsman to act independently and there are several factors, which, taken as a whole, are suitable for securing independence of the institution. These factors are related to the

positioning of the institution within the legal framework, the method of appointment and removal from the office, accountability, funding and personnel issues, enforcement mechanisms and the investigation process. The existing legal provisions provide a solid legal basis for the Ombudsman to perform his or her mission independently from other institutions or authority and the Ombudsman is able to take decisions in an autonomous manner without fear of reprisals by the subjects under review.

The positioning of the institution within the constitutional and statutory framework, the method of the Ombudsman's appointment and removal from the office, accountability provisions, funding and personnel issues, enforcement mechanisms, and the investigation process: all these elements have to be designed in a manner that promote the institution's independence. In Namibia, the existing legal provisions provide a solid legal basis for the Ombudsman to perform his/her mission, independent from any other institution or authority. At least theoretically, independence is firmly embedded in the existing legal regime.

The second stage, however, is to put these underlying legal provisions into practice. In this regard, the annual reports issued by the Office of the Ombudsman serve as vital evidence that the institution can indeed act independently. The reports not only show that complaints are directed against a broad range of institutions, including the highest in government, local authorities, parastatals and others; they also clearly speak out on specific complaints as well as on difficulties in the execution of the Office's duties, which are caused principally by bad governance in the offending institutions.

Complaints may be submitted to the Office of the Ombudsman by any person free of charge and without specific form requirements. The Office of the Ombudsman cannot investigate complaints regarding decisions of courts. Neither can the Office assist complainants financially or represent a complainant in criminal or civil proceedings. Authorities that may be complained about include government institutions, parastatals, local authorities and - in case of the violation of human rights or freedoms – private institutions and persons.

In 2006 complaints have inter alia been brought against the City of Windhoek, the Government Institutions Pension Fund, several Ministries, the Namibian Police, the Namibian Wildlife Resorts, the Public Service Commission, Prison Service etc. Within the group of complaints against government institutions, statistical breakdowns of the years 2004-2006 show that ca. 65% of these complaints refer to the Ministry of Justice, the Namibian Police and to prison related matters.

Several types of actions can give rise to complaints including the failure to carry out legislative intent, unreasonable delay, administrative errors, abuse of discretion, lack of courtesy, oppression, oversight, negligence, inadequate investigation, unfair policy, partiality, failure to communicate, rudeness, maladministration, unfairness, unreasonableness, arbitrariness, arrogance, inefficiency, violation of law or regulations, abuse of authority, discrimination and all other acts of injustice.

III. THE HUMAN RIGHTS MANDATE OF THE OMBUDSMAN

The Office of the Ombudsman is intended to ensure that citizens have an avenue open to them, free of bureaucratic tape and free of political interference. The Ombudsman has relatively broad mandates and corresponding powers. According to Article 91 of the Constitution, the mandates of the Ombudsman in Namibia mainly relate to four broad categories: Human rights, administrative practices, corruption and the environment.

Article 91(a) and (d) of the Constitution and Section 3(1)(a) of the Act refer to the Ombudsman's mandate with regard to human rights. According to Article 91(a) of the Constitution, the functions of the Ombudsman include

the duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether central or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society

and according to Article 91 (d) of the Constitution

the duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place.

The Ombudsman therefore has a mandate to investigate allegations of the breach of fundamental rights and freedoms which are set out in the Namibian Bill of Rights. The Ombudsman by enforcing the Namibian Bill of Rights supplements the work of the Courts. The Ombudsman can in this context investigate complaints against public officials as well as private persons, private enterprises or any other private institutions.

In dealing with its human rights mandate, the Ombudsman can follow different approaches: If the Office of the Ombudsman receives complaints from an aggrieved person, such complaints will be investigated. In case a violation of a fundamental right or freedom has occurred, the Ombudsman may provide suitable remedies including those provided for in the Ombudsman Act as well as the remedies provided for in Article 25(2) of the Namibian Constitution. In case a fundamental right or freedom has been infringed, the Ombudsman gives legal assistance or advice or takes appropriate actions such as negotiation and compromise between the parties concerned, referring the matter to the Prosecutor-General or bringing proceedings before a competent court.

In 2006, 177 complaints related to basic human right violations have been received by the Office of the Ombudsman, dealing inter alia with wrongful arrest and detention, assaults, ill treatment of prisons and undue delay in finalization of appeals to the High Court.

Despite the investigation approach, the Office of the Ombudsman provides for outreach programs and specific human rights education, in order to enhance public education regarding human rights and their enforcement. These programs are done in collaboration with NGOs, community leaders, local authorities, etc. Several awareness campaigns have been and are being performed by the Office of the Ombudsman. Such awareness campaigns take place in form of public lectures, community meetings or the distribution of newsletters and brochures, to name but a few. Furthermore, the Ombudsman during April 2006, in collaboration with NGOs, civil society organisations and the Council of Churches, has established the Ombudsman Human Rights Advisory Committee consisting of 20 members of the aforementioned institutions, in order to create a forum for exchange of dialogue regarding all areas of human rights. In order to improve the protection of human rights, the Office of the Ombudsman in selected cases undertakes special activities and drafts special reports subject to submission to Parliament.

IV. THE INVESTIGATION PROCESS

Usually, the investigation process is started by a complaint brought before the Ombudsman by an individual. Although neither the Constitution, nor the Ombudsman Act contain an explicit provision allowing the Ombudsman to investigate without having received a complaint, the Ombudsman may decide to undertake an own-motion investigation, in case such investigation is about issues and authorities that would be within the institution's competence if they were brought by a complainant. The wording of the Constitution attaches investigation procedures to complaints brought before the Ombudsman, however, the Act, which according to Article 91 of the Constitution defines and describes the functions of the Ombudsman in its Section 3(1) is broader in the sense that inquiries or investigations shall be undertaken upon *any request or complaint*. Even if this wording does not contain an explicit mandate to investigate violations on the Ombudsman's own motion, it would be completely against the object and rationale of the institution if the Ombudsman could not become active in cases in which he or she gets knowledge about violations of rights under his or her mandate. Moreover, there is no restriction on the question who is allowed to bring a complaint before the Ombudsman. Therefore, there is no reason, why a complaint or request from out of the Office of the Ombudsman itself should not be permissible.

Own motion investigations can be appropriate in case the persons affected are unable to make a complaint themselves e.g. if the person affected who could bring a complaint would be in danger for doing so or if the matter is an important issue and no complainants are likely to bring the matter to the Ombudsperson.

After having received and focussed the complaint and after having decided on the question of jurisdiction and whether to investigate, investigations are undertaken through fact-finding by collecting all necessary information with the goal to resolve complaints where possible and to achieve a remedy for the complainant and/or a restoration of rights that have been violated. In case the Ombudsman is of the opinion that any instance investigated by him or her can be rectified or remedied in any lawful manner, he or she gives notification of his or her findings and the manner in which the matter can, in his or her opinion, be rectified or remedied.

The Ombudsman may in general not make binding orders. It could be argued that without such power, the Ombudsman cannot protect the rights under his or her mandate efficiently and the lack of such power might be interpreted as a weakness of the Ombudsman institution. On the other hand, the Ombudsman has extensive powers to inquire and investigate. If the Ombudsman would have the power to make binding orders, the institution would take the function of *a court of last instance*, which would – despite the fact that much more financial resources would be needed - not meet the basic rationale of such institution. In case that complaint investigations result in a determination that the complainant was justified in bringing the complaint, the Ombudsman's main instrument is rather to make recommendations in order to solve problems or prevent them from reoccurring. By using this method, government agencies are rather persuaded than forced to act, which in many cases may lead to a solution more effective and efficient.

Due to the fact that the Ombudsman may not issue binding orders, he or she cannot be taken to court to appeal the findings; neither can the findings and reports be subject for review or modification. However, courts may decide upon the question, whether or not the Ombudsman has jurisdiction in specific cases.

As soon as the investigation process is completed, the Ombudsman notifies the person who laid the matter before him or her and takes appropriate action or steps to call for or require the remedying, correction and reversal of matters such as: negotiation and compromise between the parties concerned;

reporting the findings to the superior of an offending person; referring the matter to the Prosecutor-General or to the Auditor-General or both or bringing proceedings in a court.

The investigation generally ends once the Ombudsman is satisfied that the investigation has yielded all relevant facts. The Ombudsman's findings and reports are final. The Office of the Ombudsman is obliged to draft different types of reports regarding the investigations according to the Constitution and the Act. The reports can be divided in two main categories: Reports that have to be drafted for single complaints and those reports that contain all activities of the office within a specific period of time.

When investigations are completed, the Ombudsman drafts a report containing findings on the complaint, as well as recommendations to solve the problems or to prevent them from happening again. Despite the final recommendations, such report summarizes the complaint, the facts the investigation found, the law governing the situation, an analysis of the facts in light of the law, as well as a finding on what the complaint alleged.

An annually report containing all the Ombudsman's activities during the period ending on 31 December of the previous year has to be drafted which is submitted to the Speaker of the National Assembly and subsequently to the National Assembly. The annual reports contain inter alia information as to the scope of activities, complaints, investigations, management services and administration and on outreach and public education. The reports impressively reflect that the Office of the Ombudsman takes the task seriously to protect and promote the values under his mandate through independent and impartial investigations as they do not mince matters. Despite specific case summaries, referring to complaints against several government and other institutions statistical breakdowns draw a clear picture on the work performed by the office in several respects. The reports are published annually.

PART VI

THE HUMAN RIGHTS AND DOCUMENTATION CENTRE (HRDC)

AT THE FACULTY OF LAW OF THE UNIVERSITY OF NAMIBIA

The Human Rights and Documentation Centre (HRDC) at the Faculty of Law of the University of Namibia (UNAM) serves the central mission of promoting human rights, the rule of law and democracy in Namibia. On 16 April 1993 by the then Minister of Justice, Dr EN Tjiriange, and the Vice-Chancellor, Prof. Peter H Katjavivi. The HRDC was found by an Memorandum of Understanding. The HRDC is a semi-autonomous component of the Faculty of Law. In this respect the Faculty of Law and the HRDC, namely the Dean of the Faculty and the Directorate of the Centre traditionally cooperate closely. Although the HRDC and the Ministry of Justice have a strong relationship, the Centre's academic independence is guaranteed by UNAM statutes. The HRDC serves the central mission of creating and cultivating a sustainable culture of human rights and democracy in Namibia. Focusing on this mission, the HRDC promotes the implementation of human rights by organising workshops, seminars, and conferences, and by reviewing the human rights situation in Namibia and the southern African region as a whole. The HRDC also organises and conducts training programmes for the broadest variety of target groups, and prepares and disseminates information on human rights and related issues.

The Centre's activities include –

- research and publication in the field of human rights and related areas
- dissemination of information and materials for the use of individuals and institutions, and
- the training of law students, lawyers, judges, magistrates, traditional authorities, prison officials and law enforcement officers in human rights.

To this end, the Centre collects, processes and disseminates human rights information in Namibia and southern Africa. The materials collected thus far consist of more than 6,000 documents, which include monographs, reports, and periodicals, as well as selected videos and CD-ROMs. The HRDC is a research Centre, meaning that – except for UNAM lecturers' purposes – materials do not circulate outside the Centre. Admission to the Centre is open to the general public. The Centre provides access to its collection through a publication database. Entries in the database can be searched by author, subject, date of publication, publisher, or geographic region. Awareness services are offered and information is disseminated to lecturers, researchers and students. Furthermore, the Centre collects newspaper clippings on human-rights-related issues in Namibia, and delivers online resource services. An extensive HIV/AIDS collection can be found in the specialised library, where a photocopying service is available. The broad compilation of bibliographic material on human rights is supported by electronic library services as well as referral services. In addition, various publication and research projects were able to be realised in the past few years, covering a broad spectrum of human-rights-related issues such as HIV/AIDS, gender, cultural rights, and indigenous knowledge – to name but a few.

Furthermore, the Centre provides advocacy and reviews the human rights situation in Namibia, gives consultancy, and contributes to capacity-building and advocacy in the field of human rights. In the light of the above, courses, conferences, seminars and workshops on human rights are organised on a frequent basis.

ABOUT THE AUTHOR

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Recent publications: Ruppel OC (2008): *Third-generation human rights and the protection of the environment in Namibia*; in: Boesl A & Horn N (eds.): *Human Rights and the Rule of Law in Namibia*; Windhoek (Macmillan): 101 – 120. Hinz MO & Ruppel OC (eds.) (2008): *Biodiversity and the Ancestors - Case Studies from Namibia*, Windhoek (Namibia Scientific Society). Ruppel OC (ed.) (2008) *Women and Custom in Namibia. Cultural Practice versus Gender Equality?* Windhoek (Macmillan).