

**COMMENTARY ON THE
UNITED NATIONS
STANDARD MINIMUM
RULES FOR
NON-CUSTODIAL
MEASURES
(THE TOKYO RULES)**



UNITED NATIONS

United Nations Office at Vienna

COMMENTARY ON THE UNITED NATIONS STANDARD MINIMUM RULES FOR NON-CUSTODIAL MEASURES

(THE TOKYO RULES)

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U.S. Department of Justice
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NOTE

There are two sets of footnotes used in the present document, both in arabic numerals. One set are those used in the Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) and are given immediately under the rules in which they occur. Those numbers are not sequential because they are the ones used in General Assembly resolution 45/110, annex, in which the Tokyo Rules are set out.

The other set are those used in the commentary, which are sequential from number 1, and are given at the end of the document.

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INTRODUCTION

The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) are the result of a global discussion and exchange of experiences initiated by the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders in Tokyo, pursuant to Economic and Social Council resolution 1986/10, section XI, of 21 May 1986. In that resolution, the Council requested the Secretary-General to study the question of alternatives to imprisonment with a view to the formulation of basic principles in that area.

The draft United Nations standard minimum rules for non-custodial measures were developed by the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, in close cooperation with experts from all parts of the world, as methods and measures likely to be most effective in preventing crime and improving the treatment of offenders, as emphasized in the report of the Committee on Crime Prevention and Control on its fourth session (E/CN.5/536, annex IV).

The Standard Minimum Rules for the Treatment of Prisoners, 1/ which were adopted by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva from 22 August to 3 September 1955, and were subsequently approved by the Economic and Social Council in its resolution 663 C (XXIV) of 6 November 1957, fulfil a similar function in respect of custodial measures.

Various intergovernmental and non-governmental organizations, in particular the International Penal and Penitentiary Foundation, contributed to the final version of the draft United Nations standard minimum rules for non-custodial measures.

At its tenth session, the Committee decided to submit the draft rules to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana from 27 August to 7 September 1990.

On the recommendation of the Eighth Congress, the General Assembly, in its resolution 45/110 of 14 December 1990, adopted the United Nations Standard Minimum Rules for Non-custodial Measures and approved the recommendation of the Committee that the Rules should be known as "The Tokyo Rules".

The General Assembly, in its resolution 45/110, also requested the Secretary-General to take the necessary steps to prepare a commentary to the Tokyo Rules for submission to the Committee at its twelfth session for approval and further dissemination, paying special attention to the legal safeguards, the implementation of the Rules and the development of similar guidelines at the regional level.

On the recommendation of the Commission on Crime Prevention and Criminal Justice at its first session, the Economic and Social Council adopted its resolution 1992/22 of 30 July 1992. In section VI of that resolution, the Council determined that three priority themes should guide the work of the Commission in the development of a detailed United Nations crime prevention and criminal justice programme and the budget allocations for the period 1992-1996. One of those priority themes was efficiency, fairness and improvement in the management and administration of criminal justice and related system, with due emphasis on the strengthening of national capacities in developing countries for the regular collection, collation, analysis and utilization of data in the development and implementation of appropriate

policies. The Council also determined that in implementing special operational activities and advisory services, the Secretariat should place major emphasis on serving as a broker and clearing-house, providing advisory services and training to Member States from within existing budgetary resources and through voluntary contributions.

The present commentary is an attempt to provide guidance in the implementation of the Tokyo Rules, as well as basic material for advisory services, including workshops and seminars, to Governments. Special acknowledgement is owed to the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, the Asia Crime Prevention Foundation and the International Penal and Penitentiary Foundation, whose financial contributions have made this publication possible.

The Tokyo Rules represent an important step in increasing the effectiveness of society's response to crime. Non-custodial sanctions and measures play a significant part in criminal justice in many different cultures and legal systems. Most penal sanctions imposed on convicted offenders are in fact non-custodial. One goal of the Tokyo Rules, therefore, is to emphasize the importance of non-custodial sanctions and measures themselves as a means of dealing with offenders.

In this connection, there needs to be an explanation of the terminology used in the Tokyo Rules. The common practice of referring to sanctions and measures not involving custody as "non-custodial" or "alternative" has been followed to facilitate understanding; however, this should not be taken to mean that custody or imprisonment is the primary penal sanction and that measures or sanctions that keep an offender in the community are secondary to or less important than imprisonment. On the contrary, developing views around the world about the problems of imprisonment have led to increased interest in finding effective ways of helping offenders in the community without resorting to imprisonment. Doubts are increasing about whether imprisonment can rehabilitate offenders. It is often suggested that sending offenders to prison can turn them into worse criminals and that, for that reason, imprisonment should be reserved for the more serious and dangerous offenders. Imprisonment, which is itself a costly undertaking, brings with it other social costs. Prison overcrowding is a problem faced by many countries. In severely overcrowded prisons it can be impossible to train prisoners to lead law-abiding lives following their release.

Against this background, there is a growing belief that non-custodial sanctions and measures may constitute a better way, providing penalties that are proportionate to the offence committed by the offender and that carry greater possibilities for the rehabilitation and constructive reintegration of the offender into society.

Non-custodial measures do not restrict offenders' liberty as much as imprisonment. They do not require offenders to leave their families or communities, relinquish their responsibilities or give up any employment they might have had. Nevertheless, offenders undergoing non-custodial measures may be subject to various conditions, restrictions and requirements. In order to enforce a non-custodial measure, the appropriate authorities must have the power to require offenders to comply with certain conditions and to refrain from certain activities. To exercise this power, the authorities need to collect information on the actions and behaviour of offenders. The authorities also have the power to modify or revoke the conditions during implementation of the sanctions or measures. Accordingly, the implementation of non-custodial measures is to a certain extent intrusive. Furthermore, non-compliance with

the conditions imposed can have serious consequences for offenders, such as imprisonment. Safeguarding respect for human rights and human dignity requires that standards be set for the imposition and implementation of any restrictions and conditions. This is one of the main purposes of the Tokyo Rules.

There is a great variety of political, economic, social and cultural conditions in the world; the Tokyo Rules have been formulated so as to be applicable in a wide range of legal systems and to help those systems in the promotion of fair and equitable use of community sanctions and measures. The Tokyo Rules represent the minimum standards that should prevail in the use of non-custodial measures. The Tokyo Rules should, therefore, promote efforts to overcome practical difficulties in the application of such measures.

The Tokyo Rules cover an area in which ideas are constantly developing. Non-custodial measures relate closely to life in the community. The potential for developing new ways of keeping offenders in the community is substantial. There is much scope for requiring offenders to make recompense to society in some way for their crimes. At the same time, offenders can undertake some form of rehabilitation that could well reduce the likelihood of their returning to crime. Thus, the Tokyo Rules are not intended to preclude experimentation and the development of practice; however, new developments should proceed with the full recognition of the need for the legal safeguards incorporated in the Tokyo Rules and should be in harmony with the aim of promoting the use of non-custodial measures.

The Tokyo Rules are not intended to be read as a detailed model for a system of non-custodial measures. Instead, they are based on the general consensus of contemporary thought and experience. They seek to set out what are generally accepted as good principles and current good practice in imposing and implementing non-custodial measures. The development of more detailed rules, with particular applicability to regional or subregional conditions, is to be encouraged.

The Tokyo Rules should be read within the context of internationally recognized human rights instruments, such as the Universal Declaration of Human Rights 2/ and the International Covenant on Civil and Political Rights. 3/ This point is stressed in rule 4.1.

Throughout the Tokyo Rules, the term "non-custodial measure" refers to any decision made by a competent authority, at any stage of the administration of criminal justice, which requires a person suspected of, accused of or sentenced for an offence to submit to certain conditions or obligations that do not include imprisonment. The term refers in particular to sanctions for an offence that require an offender to remain in the community and to comply with certain conditions.

As noted in rule 2.1, the term "offender" refers to all persons subject to prosecution, trial or the execution of a sentence. This usage simplifies the presentation of the Tokyo Rules, which would otherwise require the terms "offender, defendant or suspect" to be used throughout. The term is used only for the sake of convenience. Its usage must not be seen in any way as a detraction from the presumption of innocence or from strict observance of the rights of suspected and accused persons.

The term "competent authority" means a member of the judiciary, a prosecutor or a body that is empowered by law to make decisions about the imposition or implementation of a non-custodial measure.

The Tokyo Rules constitute a comprehensive guide to the operation of non-custodial measures at all stages of the criminal justice process. Following an introductory section setting out general principles, there is a section on the pre-trial stage, which includes a measure to avoid detention before trial. Then, considerations that should be taken into account at the trial and sentencing stage are set out; it is argued that non-custodial measures rather than imprisonment should be used whenever possible in sentencing offenders. The section on the post-sentencing stage presents ways of reducing the length of terms of imprisonment by substituting community measures at some point in a prison sentence.

The section on implementation of non-custodial measures presents requirements for supervision, treatment, and breaches of conditions. Staffing is covered in section VI, and the involvement of volunteers and the general public is the subject of section VII. Finally, section VIII deals with research, planning, policy formulation and evaluation.

I. GENERAL PRINCIPLES

General observations

Section I sets out the general ideas that form the basis for the Tokyo Rules. These ideas constitute the philosophy and framework that should guide legislative action, sentencing, implementation and new developments. The principles call for the promotion of non-custodial measures and the strengthening of community involvement. They stress that, as in all areas of criminal justice, a balance has to be achieved when developing, imposing or enforcing non-custodial measures. Section I emphasizes the importance of rational criminal justice policies.

1. Fundamental aims

- 1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.
- 1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.
- 1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.
- 1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.
- 1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

Commentary

Rule 1.1 expresses two of the fundamental aims of the Tokyo Rules: to encourage the widest possible use of non-custodial measures and to ensure that non-custodial measures are imposed and implemented in a fair and just manner and that the human rights of offenders are protected. The balance between the two aims is important. Developing new non-custodial measures and promoting existing measures is worth while; but enthusiasm for non-custodial measures should not lead to developments that infringe human rights or subject offenders to more control than is justified or proportionate.

The reasons for advocating the promotion of non-custodial measures are substantial. First, non-custodial measures have considerable potential value for offenders, as well as for the community. Custodial measures may have detrimental effects on those subjected to them. Imprisonment cannot be considered an appropriate sanction for a wide range of offences and many types of offenders, in particular those who are not likely to repeat offences, those convicted of minor crimes and those needing medical, psychiatric or social help. Imprisonment severs community ties and hinders reintegration into

society. Imprisonment reduces offenders' sense of responsibility and their ability to make their own decisions. Avoiding custodial measures whenever possible, however, is likely to enhance the prospect of better reintegration into society and better internalization of social values. Non-custodial measures have the unique characteristic of making it possible to exercise control over an offender's behaviour while allowing it to evolve under natural circumstances. This offers opportunities for the development of the offender's sense of responsibility. Reducing the likelihood of further crime and helping offenders to become responsible citizens would benefit society as a whole.

Secondly, crime and the effects of crime are a great financial burden to States. The administration of criminal justice alone is expensive. Many non-custodial measures cost less to implement than custody. Specifically, the cost of the enforcement of the sentence may be less than the cost of imprisonment. In addition, indirect financial benefits may result from a reduction in the social costs of imprisonment and a reduction in crime.

Non-custodial measures have the advantage that it is easier to involve the public in them than in the sanction of imprisonment. This is stressed in rule 1.2. The Tokyo Rules set out two facets of a community focus. First, offenders undergoing non-custodial measures are not locked away in a separate, perhaps distant institution. They are still living in society. Thus, by their very nature non-custodial measures should encourage community involvement in their implementation. This should have the wider benefit of involving the public in the administration of criminal justice more generally. Public participation and community involvement should have the added advantage of improving the public's understanding and acceptance of non-custodial measures. The more the public can see the beneficial results of non-custodial measures, the more credible those measures will become.

Secondly, community involvement is essential if non-custodial measures are to succeed in reintegrating the offender into society. Involvement of the community can contribute to the rehabilitation of the offender and may reduce the risk of stigmatization.

Rule 1.3 emphasizes that the Tokyo Rules are not intended to describe a model system of non-custodial measures and their implementation. The variety of criminal justice systems throughout the world and the differences in the infrastructure of the various criminal justice administrations preclude such a possibility. The variety of systems should, however, encourage a diversity of approaches and should allow for a fruitful exchange of ideas about methods and developments.

Rules 1.4 and 1.5 serve as reminders of the different goals of the administration of criminal justice. Each set of international norms and guidelines applicable to law enforcement and criminal justice operations ensures that a balance is maintained between the different elements involved. The Tokyo Rules follow this pattern. They call for implementation directed at defending society against crime. They promote the use of measures aimed at reducing crime. At the same time, limits are placed on the amount of deprivation of liberty and restriction of rights of the individual that is acceptable in pursuing that end. In addition, the important role of the victim is recognized and it is suggested that measures that assist the individual victim or victims in general should be encouraged.

Rule 1.5 emphasizes the need for non-custodial measures to be developed within a framework of legality. It also highlights the importance of taking

an overall view of the development and promotion of non-custodial measures within criminal justice and social policy. .

Despite the obvious advantage of non-custodial measures, reforms intended to promote the use of such measures contain potential dangers and may lead to unintended consequences. For example, the use of non-custodial measures may be increased, not at the expense of imprisonment but at the expense of other less onerous penalties. This may lead to an increase in the total use of penal measures in society, an increase that cannot be justified by a reference to a worsened crime situation. At the same time, there may be no reduction in the use of imprisonment. This has been termed the net-widening effect.

Another possible danger is that new non-custodial measures may be introduced that impose more intensive forms of control. Instead of replacing imprisonment, they may replace non-custodial penalties that involve less control. More intrusive control than the circumstances warrant may thus be introduced. Ways of identifying and avoiding these disadvantages can be found in the Tokyo Rules.

Rule 1.5 states clearly that the reduction of imprisonment is an aim. This should be understood to refer not only to a reduction in the number of custodial measures imposed (including both pre-trial detention and prison sentences), but also to a reduction of the actual length of any such deprivation of liberty. This is also stressed in rule 2.7.

In line with rule 1.4 on the need for balance, in rule 1.5 it is noted that the reduction of imprisonment and the use of non-custodial measures must be done with due respect for human rights, social justice and rehabilitation. The Tokyo Rules seek to ensure that a wider use of non-custodial measures should not lead to an increase in the number of people subject to penal measures or to an increase in the intensity of such measures. The Tokyo Rules seek to protect basic human rights and to avoid the abuse of discretion by setting out rules of conduct for the persons responsible for the implementation of non-custodial measures.*

2. The scope of non-custodial measures

- 2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.
- 2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions.

*See also the Code of Conduct for Law Enforcement Officials (Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G).

The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.

- 2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.
- 2.5 Consideration shall be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.
- 2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.
- 2.7 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.

Commentary

Rule 2.1 sets out the scope of the Tokyo Rules, making it clear that they and the safeguards contained in them extend very widely. The Tokyo Rules apply to non-custodial measures imposed on a convicted person by a court as a penalty for an offence. They also cover measures taken and applied to suspected persons and defendants before their trial. Finally, they cover measures that enable some part of a prison sentence to be served in the community rather than in prison and measures that reduce the length of imprisonment and substitute for it some form of supervision.

Rule 2.1 thus makes it clear that one of the fundamental aims of the Tokyo Rules, namely the promotion of non-custodial measures, applies equally to all stages of the process, to the pre-trial stage, to sentencing, and to the stage after some period of imprisonment has been served. The development and use of non-custodial measures instead of pre-trial detention is particularly to be encouraged. In principle, the use of pre-trial custody should be used sparingly whenever possible, as those subjected to it have not yet been found guilty of any offence and are still innocent persons.

The reduction of the length of prison sentences by the imposition of a non-custodial measure is also worth encouraging in the light of the general objective of reducing the uses of imprisonment set out in rule 1.5.

Rule 2.1 deals also with terminology. Persons suspected or accused of an offence may become subject to a non-custodial measure before or in place of court proceedings. In the Tokyo Rules, the term "offender" is used to describe a person who is suspected, accused or sentenced. This usage should in no way, however, allow the important distinction between convicted and unconvicted persons to become blurred. The principle of the presumption of innocence must be maintained when non-custodial measures are being considered.

The requirement of non-discrimination and equal treatment enunciated in rule 2.2 is of special importance. An unfair exercise of discretion that results in an unwarranted distinction being made between people is a violation of the basic principle of equality.

One of the great advantages of non-custodial measures is their flexibility and capacity to be suited to the needs of the individual offender. One of the dangers of such a level of discretion is, however, the possibility of discrimination against a person or group. When measures are carried out in the

community, their implementation can reflect any discrimination currently being practised in that community. Thus, groups that face discrimination in the wider community could find themselves, for a range of reasons, more likely than other groups to be sentenced to imprisonment rather than to become subject to a non-custodial measure. The content of the measures imposed on groups facing discrimination could also be less favourable and helpful to social reintegration. For example, it could prove more difficult to find training opportunities or work placements for ethnic minorities or women undergoing non-custodial measures.

Rule 2.2 requires that, in imposing and implementing non-custodial measures, every effort must be made to avoid any discrimination and ensure equal access to non-custodial measures and equal treatment within them. A distinction must be made, however, between discrimination and positive differentiation. Avoiding discrimination does not mean that all offenders must be dealt with identically. Offenders must, to a certain extent, be treated differently in order to take account of their individual problems, to meet their special individual needs or to take account of particular situations.

It is also important to ensure that, when dealing with offenders, the religious beliefs and moral precepts of the group to which the offender belongs should be respected. Furthermore, there are a number of special categories of offenders, such as aged people, women, and people with specific mental or physical health problems, on whom imprisonment may have a particularly damaging effect, and for whom non-custodial measures would thus be appropriate. It may be desirable or even necessary in these circumstances to distinguish between offenders in order to meet their special needs. Regulations such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 43/173, annex, of 9 December 1988) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (General Assembly resolution 45/112, annex, of 14 December 1990) set out a framework for such differentiation. The important distinction between differentiation and discrimination is that differentiation takes place in order to affect the offender favourably rather than adversely.

Non-custodial measures have the potential to be much more flexible than imprisonment. Rule 2.3 recognizes this potential. It lists the range of different considerations to be taken into account in imposing non-custodial measures, namely the nature of the offence, the characteristics of the offender and the need to protect society and avoid the use of imprisonment. It suggests that a range of non-custodial measures should be provided to meet this range of needs. It also points out, however, the inevitable consequence of flexibility and wide discretion, that is, inconsistency in imposing measures. Consistency is clearly desirable in the interests of fairness and justice. Ways should be found to ensure consistency while allowing flexibility and discretion. Sentencing guidelines that establish the equivalencies among different measures would assist those imposing non-custodial measures.

Rule 2.4 calls for the systematic evaluation of non-custodial measures. This is particularly important because of the flexibility inherent in non-custodial measures. Monitoring and evaluation, referred to in rule 2.4, are necessary to ascertain whether the objectives of the various measures, as set out in rule 2.3, are met. In recent years, many countries have developed non-custodial measures such as community work, victim-offender reconciliation, compensation orders, and differentiated forms of parole and probation assistance. From the viewpoint of a rational criminal justice policy, as stressed

in rule 1.5, new non-custodial measures should be added and further developed only if accompanied by systematic evaluation. This evaluation provides feedback that is also essential to operational effectiveness.

Monitoring and evaluation also focus on the appropriate use of each non-custodial measure by the judiciary and administrative authorities and can assist with ensuring consistency and fairness. Unintended consequences of non-custodial measures also need to be monitored. As mentioned in the commentary to rule 1.5, introducing new non-custodial measures may have an effect contrary to the one intended, resulting in offenders being subjected to more severe measures than before.

Rule 2.5 highlights the possibility of the great advantage in suitable cases of avoiding all the consequences of trial, prosecution and formal sanctioning, both for the suspect and his or her family and for society. Such a possibility is very much in accordance with the principles of minimum intervention, depenalization and decriminalization set out in rules 2.6 and 2.7.

It is very important, however, that such a process of diversion from formal proceedings should be within the framework of due process and the rule of law. When informal measures such as sanctions imposed by the police or prosecution are used instead of formal prosecution, the full rights of the suspected person must be respected.

Rule 2.6 emphasizes the important principle that, in order to respect basic rights and freedoms, the intervention of the criminal justice system should be kept to the minimum amount needed to protect society. The Tokyo Rules therefore require that the sanction chosen in all circumstances should be the least intrusive one available.

Rule 2.7 places the development and use of non-custodial measures firmly in the context of the movement towards restricting and reducing the use of criminal law and the numbers of persons affected by it as the social environment changes. Respect for individual rights and freedoms as set out in international instruments requires that penal measures should not be imposed where they cannot be justified using strict criteria. Since non-custodial measures are less intrusive than custody there is a danger that they may be imposed even when the development of society would no longer require it.

3. Legal safeguards

- 3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.
- 3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, the background of the offender, the purposes of sentencing and the rights of victims.
- 3.3 Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.
- 3.4 Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.

- 3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender.
- 3.6 The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.
- 3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.
- 3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.
- 3.9 The dignity of the offender subject to non-custodial measures shall be protected at all times.
- 3.10 In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.
- 3.11 In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family.
- 3.12 The offender's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons.

Commentary

Rule 3.1 stresses the importance of the legal framework for all aspects of non-custodial measures. The establishment of such measures in the legislation and their definition shall be exclusively based on law.

Rule 3.1 also requires that the application of non-custodial measures shall be based on law. Thus, the imposition of requirements and obligations by the competent authorities shall have a legal basis. The law should specify which authorities are responsible for the implementation of non-custodial measures and should also provide the basis for their work. The delegation of authority to third parties when this is required should be founded in law. If the offender fails to comply with the conditions imposed on him or her, the measures taken by the implementing or competent authorities in response to this breach must be founded in law.

Rule 3.2 requires the selection of the non-custodial measure to take place within a clear framework. Criteria should be established setting up the relative weight to be given to the offence, its nature and seriousness, the offender, his or her background and personality, the purposes of sentencing and the need to give attention to the rights of the victim. Further guidance on criteria comes from rule 1.4, on the balance between various considerations, and rule 2.6, on the principle of minimum intervention.

By their nature, non-custodial measures call for more discretion and flexibility to be exercised by the competent authority than do custodial measures. These possibilities of flexibility and discretion, while welcome, can lead to arbitrary decisions and abuses of basic rights. In order to avoid such a possibility, which harms not only the offender but society in general, rule 3.3 underlines the fact that discretion should be exercised in accordance with lawful principles. This applies both to any original decision imposing a non-custodial measure and to any subsequent decision about implementation. The original decision may well set limits to the exercise of discretion during implementation.

Rule 3.4 is of relevance exclusively to measures applied before or instead of formal proceedings or trial. It therefore relates to persons accused but not yet convicted. Particular safeguards are necessary in such cases. It is essential that the suspected or accused person consents to the imposition of such measures. Where a measure is imposed instead of formal proceedings, consent to it can lead to the renunciation of the legal safeguards that would exist if the case were proceeded with.

Therefore, consent must be informed consent. The accused person should be given clear and accurate information on the potential consequences of refusing to consent to the measure. Any indirect pressure on the suspected person to consent should be avoided. The suspect should be given a realistic chance to obtain access to every possible means of defence. Refusal to consent to the imposition of a non-custodial measure before trial or instead of formal proceedings should not be held against the suspected person or affect his or her position adversely in any way.

Rule 3.5 is important in safeguarding the legal and human rights of the offender and offers protection against arbitrary decision-making. In order for this safeguard to be truly effective, the offender must be able to make use of it. He or she must be informed of this right and must be provided with the possibility of contacting the authority in question. The review by the judicial or other competent independent authority should be speedy. The offender should have the right to appear in person or to have access to some other way of being heard by the review body. Ex post facto review may be important to establish principles, but might be only of symbolic assistance to an offender who has already been subjected to an arbitrarily imposed measure.

Good practice would suggest that offenders and, where appropriate, their legal representatives should be given at the time of the imposition of the measure a document setting out the right to have the decision reviewed by a judicial or other competent authority and explaining where to contact the review body and the procedures to be followed when asking for a review. To ensure the effectiveness of rule 3.5 at the time of imposition of the non-custodial measure, an explanation of this right should be given to the offender by the authority imposing the measure.

Even after the offender has accepted the imposition of a non-custodial measure, he or she may need to seek recourse through an independent body to complain about arbitrary or unfair implementation. Rule 3.6 provides for this right. The body hearing the complaints should be independent of the authority implementing the measure and could be a court, a review board or an ombudsman empowered to investigate. As with rule 3.5, it is essential that offenders and their legal representatives, where appropriate, know about the entitlement set out in this rule, know how to contact the appropriate body and have those rights explained to them in a way and in a language that they understand. Similarly, investigation by the appropriate independent body should be speedy

and the results should be communicated to offenders in a language and in a manner that they understand.

The restriction of liberty possible in non-custodial measures can give rise to the possibility that internationally recognized human rights might be infringed. Rule 3.7 requires that States should establish machinery that allows offenders who consider their basic human rights to have been abused to seek redress. To exercise the right to seek redress, offenders and their legal representatives, where appropriate, should be given access to information on the relevant human rights instruments and on the machinery available for the redress of grievances.

Authorities administering sanctions are responsible for the safety and well-being of persons under their charge. The imposition of non-custodial measures involves the exercise of power. In many cases, the offender has no choice but to submit. Rule 3.8 makes it clear that it would be an unwarranted violation of the offender's right to security of person to apply non-custodial measures or any conditions of non-custodial measures that involve any medical or psychological experimentation or that place the offender at undue risk of physical or mental injury. The imposition of a non-custodial measure rather than imprisonment should never be dependent on the offender agreeing to become involved in any activity that places him or her in undue danger or that is a threat to his or her mental or physical health.

Rule 2.4, which calls for the development of new non-custodial measures and for a continuing search for new methods of dealing with offenders without recourse to custody, should be seen in the light of rule 3.8. The application of rule 3.8 should not prevent the development of new non-custodial methods of dealing with offenders. It is possible, however, to develop new methods of dealing with and helping offenders without using them as guinea-pigs or requiring them to participate in medical or psychological experiments.

Rules 3.9-3.12 all relate to the importance of maintaining the offender's rights to dignity and privacy while he or she is subject to non-custodial measures. Taken together, they require that supervision shall not be carried out in a way that would harass offenders, jeopardize their dignity or intrude on their privacy or that of their families. Methods of supervision that treat offenders solely as objects of control should not be employed. Surveillance techniques should not be used without the offenders' knowledge. Third parties other than properly accredited volunteers should not be employed for the surveillance of offenders.

In line with international guarantees of human rights, rule 3.9 requires respect for the dignity of the offender undergoing non-custodial measures. Non-custodial measures keep the offender in the community. They may involve the offender working in the community or participating in a community activity. It may then become publicly known that that work or participation is part of a non-custodial measure and that the person is an offender. Damaging publicity, insult or stigmatization may result. Such an outcome can be an affront to the offender's dignity. It can also hinder rehabilitation and social reintegration. For this reason, provisions aimed at protecting the dignity of the offender have been incorporated into a number of the Tokyo Rules, such as rules 3.11, 6.2 and 10.1.

The reference in rule 1.5 to the protection of human rights, the requirement of social justice and the rehabilitative needs of the offender presuppose

that a non-custodial measure shall not be used for the purpose of restricting the offender's civil and political rights beyond the restrictions contained in the measure. This is also reflected in rule 3.10, which states that the offender's rights shall not be restricted in the implementation of non-custodial measures to any greater extent than would necessarily follow from the decision of the competent authority.

The right to privacy of the offender and his or her family, mentioned in rule 3.11, is of special importance. Current developments and new intensified forms of supervision and control, such as electronic monitoring and house arrest, give this rule particular significance; the utmost vigilance is required to ensure that undue intrusion does not take place.

Another aspect of privacy is the right to have personal information kept confidential. Rule 3.12 recognizes this right and restricts access to case records to the offender, supervisor and any other person directly involved with the case or otherwise authorized. Offenders and their families are entitled to know that personal information about them will not become public knowledge and will not be used to hinder their chances of social reintegration.

Keeping records confidential, involves not only limiting access to the records, but also properly storing records long after they are no longer necessary. This is particularly important when the offender has not committed a new offence for a long period. Consideration should therefore be given to the desirability of destroying records after a reasonable period.

4. Saving clause

4.1 Nothing in the present Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners,⁷⁹ the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),⁸² the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment³⁵ or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

³⁵General Assembly resolution 43/173, annex.

⁷⁹See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

⁸²General Assembly resolution 40/33, annex.

Commentary

Rule 4.1 states that the contents, intention and application of the Tokyo Rules are in no way meant to contravene or supersede any relevant existing or emerging United Nations instrument or other international instruments. The Tokyo Rules should not impair the use or application of the principles incorporated in such instruments and should be applied within the particular national context of each Member State.

II. PRE-TRIAL STAGE

General observations

Section II highlights non-custodial measures that could be applied instead of proceeding with prosecution or at the pre-trial stage in order to avoid pre-trial detention. In view of the principles of the presumption of innocence and of minimum intervention, pre-trial detention should only be used when considered absolutely necessary for specific purposes.

5. Pre-trial dispositions

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

Commentary

Judicial or administrative authorities may be empowered by law to discharge the offender even before formal action has been taken if they consider that it is not necessary for the protection of society, the prevention of crime or the promotion of respect for the law and the rights of victims to proceed with the case.

Discharge constitutes the earliest possible non-custodial measure in the pre-trial stage. It has been accepted formally and informally in many legal systems as an effective means of dealing with certain types of offender, as well as for certain categories of offences, in accordance with the principle of minimum intervention as set out in rule 2.6 and in order to avoid stigmatization. It could be considered a particularly appropriate method of dealing with juveniles. Keeping juveniles out of the formal criminal justice process whenever possible is believed to reduce the chances of them becoming more deeply involved in crime.

As a secondary consideration, using discharge rather than proceeding to prosecution may contribute to reducing the overburdened case-load of the judicial system and prison overcrowding, thus decreasing the cost to society and promoting efficiency in the criminal justice system.

The discretionary power to dismiss proceedings or discharge the offender should be restricted and clearly defined by legal criteria as expressed in rule 5.1. If certain conditions are to be imposed in connection with dismissal or discharge, only authorities mandated by law should be empowered to do so. The principle of the presumption of innocence and rule 3.4 require the offender's agreement to the conditions to be imposed.

6. Avoidance of pre-trial detention

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

- 6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 6.1 and shall be administered humanely and with respect for the inherent dignity of human beings.
- 6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

Commentary

Pre-trial detention involves depriving an unconvicted person of his or her liberty. As rule 6.1 makes clear, pre-trial detention should therefore be avoided whenever possible. Reasons for imposing pre-trial detention should be related to the requirements of the investigation or to fears that further offences may take place or that the alleged victim may be endangered.

Rule 6.2 requires that alternatives to pre-trial detention should be made available as soon as possible during the criminal procedure. Furthermore, whenever the circumstances surrounding the holding of a defendant in pre-trial detention change, there should be an opportunity for a hearing in which consideration is given to releasing the defendant. Among the alternatives to pre-trial detention that merit consideration and wider application are bail, release on recognizance and release under supervision.

Rule 6.3 provides a safeguard for defendants subject to pre-trial detention. When pre-trial detention is imposed, it is essential that opportunities exist for appeal to a higher authority to challenge the decision. As with other rights of appeal (see rules 3.5 and 3.6) defendants should be informed of their right to appeal and of the method to be used, should be given help when necessary in preparing their case and should have an opportunity to be heard.

III. TRIAL AND SENTENCING STAGE

General observations

Section III deals with social inquiry reports and sentencing dispositions. It provides a non-exhaustive list of non-custodial measures. As noted in the section, when choosing the sanction, the sentencing authority should be guided by the principle that imprisonment should be a measure of last resort. Accordingly, every effort should be made to apply non-custodial measures.

7. Social inquiry reports

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

Commentary

Rule 7.1 recognizes that a decision by a competent authority on non-custodial measures has important consequences for the offender, society and the victim. It should therefore be based on valid and reliable information. As a first step in this direction the rule 7.1 requires that a social inquiry report should be prepared by a competent and authorized official or agency as a guarantee of the quality of the information submitted.

Rule 7.1 defines some essential elements of valid and reliable information. Such information should be relevant to the alleged offence and, where appropriate, to any pattern of offending. Opinions may be expressed, but they should be clearly distinguished from factual information. Information that may be considered relevant to sentencing should be included and recommendations may be made. The principle of minimum intervention laid down in rule 2.6, however, requires that the information in social inquiry reports should be restricted to what is clearly relevant to the imposition of the non-custodial measure. It is in the interests of justice that the preparation and presentation of social inquiry reports should be made in such a way that the decision of a competent authority is not unduly delayed.

A social inquiry report requires an official or competent person to collect information about an offender. This must be done with proper regard to rule 3.11, which calls for the offender's right to privacy to be respected.

Furthermore, since the Tokyo Rules call for an offender's dignity to be respected (rule 3.9) and his or her sense of responsibility to be developed (rule 1.2), it would be appropriate for the information provided in the social inquiry report to be made available to the offender, unless there are special grounds for not releasing specific pieces of information.

8. Sentencing dispositions

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the

rehabilitative needs of the offender, the protection of society, and the interests of the victim, who should be consulted whenever appropriate.

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

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

Commentary

The commentary to rule 1.1 sets out the arguments for choosing non-custodial measures whenever possible when imposing a sentence; rule 2.3 calls for consistency in sentencing; and rule 3.2 sets out the criteria to be used in choosing a non-custodial measure. Rule 8.1 on sentencing must be seen within this framework. It requires the judicial authority to balance a range of considerations when choosing the appropriate sentence.

One of these considerations is the interests of the victim. In accordance with paragraph 6 (b) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 4/ in which active involvement of victims in judicial and administrative processes is encouraged, the views and concerns of victims should be presented and considered when appropriate. Victim involvement may raise the possibility of compensation or restitution to the victim. Such compensation or restitution may constitute a penalty in its own right and could make the imposition of further sanctions unnecessary.

Rule 8.2 lists a number of sentencing dispositions. The list, though not exhaustive, contains a wide range of non-custodial measures to suit different circumstances and achieve different objectives. For example, verbal sanctions such as admonition, reprimand and warning may be appropriate for young offenders, enabling them to realize that they have done wrong without being stigmatized as criminals.

Economic penalties such as fines and day-fines are widely used in many countries. The disadvantage of fines is that offenders with little money have difficulty in paying them. Day-fines can solve this problem by linking the amount to be paid to the level of disposable income of the offender.

Restitution and compensation to the victim are valuable sentencing tools. Their application is very much within the spirit of the Tokyo Rules, especially rules 1.4 and 3.2, which require the needs of the victim to be taken into account.

Community service is a form of restitution that benefits the community rather than the individual victim. It has the advantage of making demands on the offender and, at the same time, producing a useful outcome, that is, the work done for the community.

Supervision and other forms of treatment have the advantage that they can be adapted to the rehabilitative needs of individual offenders, helping them to reintegrate into society.

Rule 8.2 provides scope for new non-custodial measures such as traffic education for offenders sentenced for drunken driving. It also leaves scope for upgrading non-custodial measures that were originally ancillary or supplementary to a principal sentence, such as suspension or revocation of a driving licence, confiscation of profit, and forfeiture, to principal measures in their own right. Combinations of custodial and non-custodial measures may also be considered.

The legislative authorities should continue to study the potential of non-custodial measures, with a view to expanding the options available within their legal system.

IV. POST-SENTENCING STAGE

General observations

Section IV deals with measures to reduce the length of prison sentences or to offer alternatives to enforcing prison sentences.

9. Post-sentencing dispositions

- 9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.
- 9.2 Post-sentencing dispositions may include:
- (a) Furlough and halfway houses;
 - (b) Work or education release;
 - (c) Various forms of parole;
 - (d) Remission;
 - (e) Pardon.
- 9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.
- 9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

Commentary

The basis of rules 9.1-9.4 is the system, practised in many countries, for reducing the actual length of the prison term originally imposed by the judicial authorities. This can be done by substituting other, less severe, forms of supervision, by reducing the sentence as a reward for good behaviour in custody or by administrative action, such as a pardon.

Rule 9.1 encourages such action on the grounds that reducing the length of imprisonment can reduce the danger of offenders becoming institutionalized and thus unable to cope with society once they have been released. More positively, early release can help offenders to take advantage of practical opportunities for reintegration into society while being subject, if necessary, to supervision.

Rule 9.2 lists some viable options for early release that have proved to be successful in different legal systems. The options can take various forms. Some constitute alternative ways of serving a prison sentence. The offender is still under the authority of the prison but spends his or her days outside the prison working or undergoing training. The advantage of allowing the offender to undertake work release is that he or she can earn money that can be used to help meet commitments to any family members or can be saved to assist with reintegration on release. In a halfway house, the offender is still technically under the supervision of the prison authorities but lives in "semi-freedom", readjusting to life in the community. Such options can contribute to the protection of society by preparing prisoners for release, thus making it more likely that they will be able to settle into the community at the end of their prison sentences.

Rule 9.3 requires that decisions by the competent or implementing authorities to give or withhold various forms of early release should be

subject to review upon application by the offender. This is a necessary response to the requirements of due process set out in rule 3.5. As with rules 3.5 and 3.6, offenders should be given clear information on the possibilities for review and on how to apply for it.

As a decision on early release or the granting of parole requires an implicit review of a previous sentencing decision, a formal decision-making procedure by a judicial or other competent independent authority should be developed for such cases. Well-defined criteria for the granting of early release or parole should be drawn up. The criteria should be made clear and understandable to the prisoners. They should also be explained to prison staff who often have to explain them to prisoners. By setting out clear criteria, abuses of discretionary power can be reduced to a minimum and prisoners can work towards release knowing what criteria they will need to satisfy. An additional advantage of clear criteria is that measures of early release will be easier to explain to the general public, who may be suspicious of such measures.

Legal provisions should be enacted to ensure that the competent authority in charge of granting early release takes its decision before the earliest possible release date. This is necessary to provide enough time for prison administrators and parole officers in the community to prepare for the offender's release, thereby helping to meet the requirement expressed in rule 9.4 that any form of release to a non-custodial programme should be considered at the earliest stage. It would also be helpful if offenders were made aware of their earliest possible release dates and were given all the available information on the release procedures and their rights in those procedures.

V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES

General observations

Section V focuses on the implementation of non-custodial measures. The authorities responsible for implementation should be guided by the principle that non-custodial measures should help the offender to avoid a relapse into crime. The emphasis should be on increasing the offender's sense of responsibility and providing opportunities for reintegration into society. The punitive or penal element of the measure lies in the obligations it imposes on the offender to comply and accept the amount of deprivation of liberty inherent in the sanction. As the rules in section V indicate, the purposes of supervision are not punitive but constructive.

10. Supervision

- 10.1 The purpose of supervision is to reduce reoffending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.
- 10.2 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.
- 10.3 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the offender to work on his or her offending. Supervision and treatment should be periodically reviewed and adjusted as necessary.
- 10.4 Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

Commentary

Many non-custodial measures such as verbal sanctions, fines or confiscation do not require any kind of supervision at all. A number of different non-custodial measures (including probation, parole, community service, attendance centres and furloughs), however, are designed to provide the offender with guidance and assistance towards his or her rehabilitation. The basis of such measures is supervision and the important element is the personal relationship between supervisor and offender. It is obvious that such measures cannot be implemented without the consent of the offender as they are dependent on the offender's cooperation and participation.

The main objectives of supervision are set out in rule 10.1. On the one hand, supervision has a control function, encouraging the offender not to reoffend. On the other hand, supervision has a welfare and assistance function, helping the offender to integrate into society. These objectives of supervision are reflected in two approaches. The more control-oriented approach is focused on the responsibilities of the offender to the community. The other more help-oriented approach is focused on overcoming the problems that may have caused the offending.

Supervision is therefore a highly skilled task. Rule 10.2 requires that supervision of offenders must be carried out within a legal framework by a properly constituted authority. Parts of the supervisory task may be

delegated or contracted out to community groups or volunteers. When this is done it must be made clear that all the statutory power rests with the competent authorities. When supervisory functions are delegated to agencies working for commercial profit, many questions arise that need careful consideration in the light of rule 10.2.

In view of the large scope of possible measures of supervision, the principle of minimum intervention as laid down in rule 2.6 should be applied, together with rule 10.3, which calls for decision-making based on the individual background and circumstances of the offender. The goal of supervision is achieved when the offender assumes responsibility for his or her action and is able to live a law-abiding life without further outside control. Excessive intervention may undermine the offender's self-confidence and might result in the offender becoming overly dependent on the supervising officers.

The method of implementation used should be adapted to the particular circumstances of each offender. This requires considerable discretion on the part of the implementing authorities, who must also make great efforts to ensure that offenders are treated equally.

The offender should be involved to the greatest possible extent in the formulation of the treatment plan, the assessment of the intensity of the supervision and its revision in the light of changed circumstances.

The supervision methods should be focused on the individual needs of the offender. It is important that the plan should seem meaningful and helpful to the offender and should contribute to his or her personal and social development. The progress made by the offender may require an adjustment of the supervision and treatment. The periodical review noted in rule 10.3 should apply to the duration of the measure, to conditions attached to the non-custodial measure, and to the treatment process as addressed in rules 13.1-13.6. The offender should be involved in the review and should have a chance to express his or her viewpoint. If the offender asks for a change of supervisor, the request should be seriously considered.

Offenders may have a wide range of needs and problems. The assistance to be provided to the offender in order to facilitate his or her reintegration or to strengthen his or her links with society may include specialized psychological help. Help with acquiring the basic skills to live in society may be required. Straightforward material assistance, such as a place to live, may be all that is necessary. Because of the principle of minimum intervention this assistance, as required by rule 10.4, should only be provided when appropriate and must be carried out under the conditions prescribed in rule 10.2.

11. Duration

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

11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it.

Commentary

Rule 11.1 reinforces the principle of strict legality. The duration of a non-custodial measure has to be set by a judicial authority. The implementing authorities have no power to extend the duration of the measure. An ongoing measure may be extended if doing so can be shown to be beneficial to the

offender, for example continuing a course of treatment; any such extension must be entirely voluntary, a point that must be made completely clear to the offender.

It follows from the principle of minimum intervention that non-custodial measures should not be too long. The aim of non-custodial measures, that is the reintegration of offenders into society, is best served in many cases by measures of short duration.

Rule 11.2 reflects the principle that non-custodial measures should be limited to the shortest possible time. It provides for possible early discharge of a non-custodial measure when the offender has made satisfactory progress. This should encourage the offender in his or her efforts to become rehabilitated. Procedures for early termination should be clear and understood by the offender.

12. Conditions

- 12.1 If the competent authority shall determine the conditions to be observed by the offender, it should take into account both the needs of society and the needs and rights of the offender and the victim.
- 12.2 The conditions to be observed shall be practical, precise and as few as possible, and shall be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and at increasing the offender's chances of social integration, taking into account the needs of the victim.
- 12.3 At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.
- 12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the offender.

Commentary

Whichever authority decides on the conditions to be observed by the offender, it should base its decisions on achieving a balance between satisfying the needs of society, the needs and rights of the offender, and the needs of the victim. The implementing authority should never impose conditions that subject the offender to requirements going beyond those resulting from the decision of the judicial authority. This is in line with rule 1.4, on the need for a proper balance in the implementation of the Tokyo Rules, and rules 2.3 and 3.2, on achieving a balance in the range and selection of the non-custodial measures themselves.

Conditions should be as few as possible, taking into account rule 2.6, on minimum intervention. If the offender is to benefit from them and to achieve some progress towards social reintegration, then the conditions should be achievable and realistic. They should also be precise. Vague conditions will only confuse the offender and cause difficulties in the relationship between the offender and the supervisor. It is important for the offender to understand the conditions.

Conditions may include those reinforcing the offender's responsibility to society and his or her family; other examples are keeping a job, pursuing an education, living at a specific address, refraining from involvement in criminal activities, and avoiding specific places. The conditions that are imposed should never interfere unreasonably with an offender's religious and cultural requirements or unduly impair his or her ability to exercise family responsibilities.

If one of the conditions of a non-custodial measure is the performance of community service, the work assigned to the offender should be socially useful and meaningful rather than pointless and should enhance the offender's skills as much as possible, in line with rule 12.2. Furthermore, in line with rule 3.8, the working and occupational conditions in community service should be in accordance with all current health and safety legislation. Offenders carrying out work as part of a non-custodial measure should be insured against accident, injury and public liability, in accordance with the national legislation.

Since the conditions are important instruments for the implementation of non-custodial measures and since non-observance of imposed conditions can have serious consequences, it is essential that the offender understand what is required of him or her. Rule 12.3 therefore requires the offender to be carefully informed, both by word of mouth as well as in writing, of his or her obligations and rights and of the consequences of non-compliance. Professional staff and any volunteers involved with the offender should also be given that information. Such information also serves the implementing authority in that it establishes the criteria for assessing whether or not the obligations and conditions have been complied with.

Rule 12.4 states that the conditions may be subject to modification in accordance with the progress made. If the offender responds favourably to the non-custodial measure, the conditions may be modified by the competent authority. Alternatively, if the offender does not respond favourably, the conditions may be made more stringent within the limits of discretion allowed by the law. This flexibility makes it possible to maintain the use of a non-custodial measure, without immediately proceeding to its revocation and, consequently, to the possible imposition of a custodial measure.

13. Treatment process

- 13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.
- 13.2 Treatment should be conducted by professionals who have suitable training and practical experience.
- 13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.
- 13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

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

Commentary

Rule 13.1 should be read in conjunction with rule 10.1, which stresses the constructive purposes of supervision and the positive aims it seeks to achieve. Rule 13.1 outlines the scope of various forms of treatment aimed at helping offenders with particular problems or with meeting particular needs. It calls for programmes to be developed so that the needs of offenders can be met more effectively. Much more needs to be known about appropriate treatments and rule 13.1 encourages implementing authorities to be innovative. Groups such as sex offenders and drug-dependent persons pose particular problems and the development of innovatory treatment programmes is encouraged by this rule.

Rule 13.2 requires the treatment to be conducted by suitably trained and experienced professionals. This should be understood as a reference to formal treatment (various examples of which are given in rule 13.1), which should be controlled by professionals. It should not be understood as a prohibition of the use of non-professionals in programmes of assistance, where the essential strength of such programmes lies in persons with practical experience rather than professional qualifications.

Rule 13.3 stresses that it is important to assess information on the offender and the offence in choosing an individualized and suitable treatment programme. The information required goes considerably beyond what would normally be contained in the social inquiry report referred to in rule 7.1.

Rule 13.4 amplifies the general provision in rule 1.2 on the importance of community involvement and the involvement of social support systems such as the family, neighbourhoods, schools, the work place and social or religious organizations (including women's organizations in the case of female offenders) in the implementation of non-custodial measures. In the Tokyo Rules it is recognized that community acceptance of and participation in the treatment process contribute greatly to the successful integration of the offenders into society.

The competent authority may decide whether community involvement in an individual case is deemed appropriate and what form that involvement should take. Coordination and utilization of all available professional and community resources play an important role in meeting the needs of the offender and in encouraging the development and utilization of various special measures as necessary.

Specialized treatment of the kind advocated in rules 13.1-13.6 needs time and resources. If supervisors have a heavy case-load, they may not be able to implement effectively the treatment programmes that are needed. Therefore, rule 13.5 stresses the need to limit the case-load and to maintain practicable and manageable case-load assignments.

The case record called for in rule 13.6 is an important tool in the treatment process. The needs of treatment, however, should never be allowed to take precedence over protection of basic rights. Thus, case records should be confidential. Access to them should be restricted to persons directly concerned with the disposition or the implementation of the non-custodial measure. Case

records should be kept up to date so that cases are not evaluated on the basis of out-of-date information. The case record should only cover material relevant to the measure and its treatment. It should be as reliable and objective as possible. Good practice requires the case record to be seen by and discussed with the offender. Case records should be destroyed after an appropriate amount of time has passed.

14. Discipline and breach of conditions

- 14.1 A breach of the conditions to be observed by the offender may result in a modification or revocation of the non-custodial measure.
- 14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the offender.
- 14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.
- 14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.
- 14.5 The power to arrest and detain the offender under supervision in cases where there is a breach of the conditions shall be prescribed by law.
- 14.6 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a judicial or other competent independent authority.

Commentary

Even though the imposition of some non-custodial measures is dependent on the consent of the offender, most non-custodial measures are still sanctions that are imposed on an offender as a penalty and imply some restriction of liberty. Offenders may therefore, for a variety of reasons, fail to observe the conditions imposed on them. Rule 14.1 states that such non-observance can lead to modification or revocation of the non-custodial measure.

The principles of proportionality and minimum intervention lead to the conclusion that the violation of all or any of the conditions of the non-custodial measure should not in itself be considered an offence unless it fulfils the legal definition of a separate offence. If violations of conditions were to be considered as offences in themselves, it might result in an accumulation of penalties quite disproportionate to the original offence.

Rule 14.1 states that a breach of the conditions may result in a modification or revocation of the non-custodial measure. Not all breaches, however, need lead to modification or revocation. Some may be minor transgressions that can be dealt with by the supervisor or competent authority by less formal means.

Modification or revocation of a non-custodial measure can have serious consequences for the offender. Rule 14.2, therefore, requires that a decision to modify or revoke a non-custodial measure must be made by a competent authority in accordance with established provisions. To ensure that the rights of

the offender are protected, great care should be taken in reaching the decision to modify or revoke the measure. The offender should have the right to see the documents on which the request for modification or revocation is based, to make representations and to be heard.

The procedures for modifying or revoking a non-custodial measure should be laid down and should be made clear to the officers of the implementing authority and to the offender. If revocation or modification is being considered, account should be taken of the extent and manner of compliance by the offender before the breach occurred. If, for example, the offender has already satisfactorily carried out a substantial proportion of the number of hours of community work imposed, this should be a favourable factor.

Rules 14.3 and 14.4 are based on the principle that imprisonment should be a penalty of last resort. If a non-custodial measure is imposed on a convicted offender, the offence has not been deemed so serious as to merit imprisonment. To impose imprisonment for a breach of the non-custodial measure can therefore be disproportionate to the original offence. Rule 14.4 requires the competent authority to look for another appropriate non-custodial measure before considering imprisonment. Non-payment of a fine is a common form of breach of conditions. There could be many reasons for inability to pay, some of which could be beyond the offender's control and for which he or she could not be blamed. According to rule 14.3, if there is a breach for such reasons, non-payment of a fine should not lead automatically to imprisonment. Other means could be found of enforcing the fine. Alternatively, rule 14.4 gives scope for the fine to be replaced by a different non-custodial measure. Imprisonment may be an appropriate response to non-payment of a fine only if the offender can pay and wilfully refuses to do so.

Rule 14.5 circumscribes the method of responding to non-compliance with the conditions of a non-custodial measure. If an offender is to be arrested and detained because of a breach of conditions, the law must lay down how this can be done and the criteria according to which the cases are to be determined. The implications of rule 14.5 are that all the safeguards of due process should be in place. The offender's essential freedoms and rights should be protected. A maximum period for detention prior to investigation and decision by the competent authority should be laid down. This period should be short. The decision of the competent authority should be made as soon as possible after the investigation is completed.

As the modification or revocation of a non-custodial measure can have serious consequences for the offender, rule 14.6 provides for the right of appeal to a judicial or other independent authority. This is in line with the right to review the imposition of the original measure, provided for in rule 3.5. The offender should be informed, in a manner that he or she understands, of the nature of the appeal process and of the mechanism for gaining access to it.

VI. STAFF

General observations

The demanding and complex nature of the implementation of non-custodial measures makes it essential that the staff have professional knowledge, skills and experience. They need therefore to be recruited, selected, trained and supported so as to ensure the necessary professional competence.

15. Recruitment

- 15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the offenders to be supervised.
- 15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.
- 15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

Commentary

Rule 15.1 asserts the basic principle that all individuals who fulfil the recruitment criteria should be given equal opportunity for employment. Discrimination in recruitment, selection, appointment and promotion is unacceptable. Rule 15.1 does not, however, preclude the application of policies that promote positive or affirmative action in employment and thus give opportunities to previously disadvantaged groups such as ethnic minorities and women.

Steps should be taken to ensure that the professional staff includes both men and women, as well as people from various minority groups. Women offenders may require a woman supervisor in order to make progress. If there are minorities in a society, it may be appropriate to have staff recruited from those minorities, who might have a better understanding of the background of certain offenders.

As a result of internationalization and migration, the number of foreign offenders who are subject to non-custodial measures is growing. They may have problems relating to language and cultural differences. This, too, should be considered when staff are being recruited.

Rule 15.2 highlights the importance of recruiting staff capable of forming relationships with offenders and of helping them to reintegrate into the community. This work calls for skills of the highest order, sensitivity and understanding, together with firmness and clarity. The implementing authority employing the staff should set out clear criteria for recruitment.

Rule 15.3 lays stress on the professional nature of the task and the need to attract staff of the highest quality. There must be appropriate pay, proper conditions of service and prospects for advancement.

Staff supervising non-custodial measures should be given status equal to staff performing comparable functions in the administration of criminal justice. Staff with long-term contracts and legally defined conditions of service are likely to function better than part-time or temporary staff. Continuity and stability are important in this kind of work, where the psychological pressure can be intense. Frequent contact needs to be maintained with others in the criminal justice administration.

16. Staff training

- 16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to cooperate in and coordinate activities with the agencies concerned.
- 16.2 Before entering on duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.
- 16.3 After entering on duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

Commentary

Rule 16.1 stresses the need to provide all personnel with a broad and clear understanding of their primary responsibilities. Since the effective use of non-custodial measures requires the cooperation of the community and social support systems, as noted in rule 13.4, the staff should be trained in cooperation and coordination with other agencies. As with all personnel working in law enforcement, staff should be given adequate training in human rights and should be informed of the international norms and guidelines that protect human rights.

Rule 16.2 stresses the importance of adequate preparation for any kind of supervisory activities. The staff should have an understanding of the various kinds of non-custodial measures and of the differences between them.

The training should include appropriate instruction on the nature, the purposes and the modalities of the application of non-custodial measures. The use of research findings on non-custodial measures as resource materials in training courses for criminal justice personnel should be encouraged.

It would also be desirable for staff to be given training in a wide range of basic subjects such as law, sociology, psychology and criminology. Specialized staff should be made available as far as possible. Staff involved in the treatment processes set out in rule 13.1 should have appropriate training in those areas.

Although it is desirable that staff be given training in a broad range of subjects, it should also be borne in mind that there are difficulties in giving extensive training to staff members who lack essential experience, since they do not yet have the required frame of reference for the assimilation of theoretical training. Theoretical training in a broad range of subjects should therefore be combined with practical assignments connected to the theoretical area to be taught, or should be part of ongoing in-service training. The

latter form of education permits staff members to widen their theoretical knowledge in relation to problems that they have themselves experienced, thereby enhancing the motivation to learn and the assimilation of what is being taught.

Staff should have sufficient opportunities to share experiences with others responsible for non-custodial measures and should be permitted and encouraged to participate in in-service training and refresher courses in order to maintain and enhance their professional competence. Rule 16.3 states that adequate facilities should be made available for that purpose. In addition, Member States may also avail themselves of the training programmes offered by the United Nations at the regional and interregional levels, in line with rule 23.1.

VII. VOLUNTEERS AND OTHER COMMUNITY RESOURCES

General observations

Section VII stresses the need to involve the general public and volunteers in particular in the application of non-custodial measures, to increase their acceptability and to improve their effectiveness.

17. Public participation

- 17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.
- 17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

Commentary

Effective criminal justice administration cannot be achieved through the efforts of governmental agencies alone, without involving the community. It is essential that the full range of community resources be mobilized to assist and support the criminal justice administration authorities in achieving the social reintegration of the individual offender. Public participation can help offenders to develop meaningful ties in the community, to become aware of the community's interest in them and to broaden possibilities for contact and support. That contact and support may continue once the non-custodial measure is over and may contribute towards the offender's reintegration into society.

Rule 17.1 calls for a policy that encourages public participation and accepts it as an integral aspect of efforts to broaden the application of non-custodial measures. Technical and financial support should be provided for this purpose.

Public participation can increase public confidence in non-custodial measures and can secure a commitment to them. The active support and participation of concerned groups and individuals within the community are indispensable for the success of non-custodial measures. Volunteers should be recruited from a wide range of social and ethnic backgrounds and from different age groups in order to ensure that volunteers have some natural affinity with the offenders they are to assist. The services that the community can mobilize to assist in effectively resocializing offenders and their families are unique and qualitatively different from those provided by the official organizations. The local community can tap a wealth of resources, such as voluntary welfare agencies and associations, employer groups and employee unions, ethnic organizations, social and sporting clubs, women's organizations and many others. Such organizations often have the capability and motivation to extend specific aid to meet the needs of offenders and their families.

Rule 17.2 underlines the fact that arrangements for public participation do not solely benefit the criminal justice system, or the rehabilitation of offenders. At the same time, as offenders are assisted by volunteers who can provide them with access to appropriate community networks, volunteers are given an opportunity to become directly involved in the treatment process and to contribute in that way to the protection of society.

Measures to involve the public should be taken seriously by the implementing authority. Such measures should be regarded as an intrinsic part of the administration of non-custodial measures. The implementing authority should therefore consider entering into an agreement with community groups specifying the nature of their involvement and the way they should work.

18. Public understanding and cooperation

- 18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote non-custodial measures.
- 18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.
- 18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.
- 18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

Commentary

Non-custodial measures need the widest support if they are to be used to their full potential. Voluntary organizations are a medium through which members of society can participate, express their concerns and influence social developments. Voluntary organizations therefore have an important part to play in the promotion of non-custodial measures. Rule 18.1 calls on all elements of society to support such organizations in this work. Furthermore, voluntary organizations working with offenders in the community, with their unique perspective, can make a valuable contribution to the thinking of the implementing authority about organizational and managerial matters.

When the State imposes custody on offenders or defendants, they are taken out of society and dealt with by a specialist prison administration, which keeps them incarcerated and caters for their needs. Non-custodial measures are an expression of the opposite principle, that people should be kept in society and that their needs should be met within the community. Thus, the support of the wider public and of local communities is essential to the success of non-custodial measures. Rules 18.2, 18.3 and 18.4 therefore call for efforts to be made to inform the public of the importance of non-custodial measures and of the need for public participation in them.

The public has a need and a right to know what non-custodial measures are available. They should also be informed of the conditions that are applied to offenders and of offender's rights and responsibilities. The public needs to be aware of how effective various measures are and how the effectiveness of non-custodial measures compares with that of custody.

The mass media plays an extensive social role and has great influence on public opinion. Therefore rule 18.3 suggests in particular that the mass media should be used to inform the public and to create a positive climate for non-custodial measures and their expansion. The mass media also plays an important role in helping the public to understand the importance to crime prevention of reintegrating offenders into society. In this context, reference should be

made to rule 22.1, which calls for links between services responsible for non-custodial measures and, among others, the mass media.

19. Volunteers

- 19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.
- 19.2 Volunteers should encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance according to their capacity and the offenders' needs.
- 19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for authorized expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

Commentary

Voluntary involvement in implementing non-custodial measures provides an opportunity for members of society to make a contribution to the rehabilitation of offenders and thereby to social defence. Volunteers provide an important link between offenders and society. Involvement of volunteers also ensures public scrutiny of the way offenders are treated. It can therefore provide an additional protection for offenders' basic rights and freedoms. Rules 19.1, 19.2 and 19.3 set out the requirements to be preserved when involving volunteers in work with offenders undergoing non-custodial measures.

Rule 19.1 sets out the responsibilities of the competent authorities towards volunteers. Working with offenders can be difficult and demanding. It requires those who undertake it to have special knowledge and experience, as well as particular personal qualities. Though many members of the general public have such qualities, they are not universal. It is therefore necessary for the authority responsible for recruiting volunteers to have clear criteria for recruitment, selection and training.

Volunteers should receive initial training before they begin their tasks. They should also receive further training during their involvement. The training given to volunteers should inform them of the nature of non-custodial measures, their aims and objectives and the rights of those undergoing them. Volunteers need to understand the importance of social reintegration and of the offender acquiring a sense of responsibility.

The competent authority should enter into an agreement with the volunteers that takes into account the amount of training that the authority will provide and the amount of support that will be provided by the professional staff in charge of the implementation of the non-custodial measure.

Rule 19.2 stresses the important contributions that volunteers can make to non-custodial measures. Volunteers have extensive information about the local community and its available resources. They are especially able to diminish possible resistance by the offender to treatment by virtue of their unofficial status. Thus, they provide a bridge between offenders and the

community. It is in the interest of the implementing authority, the volunteers and the offenders with whom they are working, however, that the relationships should be made clear. It is important that volunteers and offenders understand the nature and limits of the authority of the volunteers and the basis of the relationship between them. This clarity should be extended to the nature and limits of the volunteers' relationships with the offenders' families. In establishing such relationships the importance of respect for privacy should be borne in mind.

The tasks undertaken by volunteers should always be complementary to the work of the professional staff. It should be clear that volunteers are not being employed in order to take on work that ought to be carried out by professional staff fully accountable to the implementing authority.

Member States, as well as agencies responsible for the implementation of non-custodial measures, should protect individuals willing to contribute as volunteers from dangers inherent in their volunteer activities. Also, it is important to ensure that the conditions under which volunteers work should encourage people rather than discourage them from coming forward and offering to become involved. It is therefore important that volunteers should be insured and protected when carrying out their duties.

According to rule 19.3, volunteers should receive public recognition and the agencies in charge should reimburse them for authorized expenses incurred in the performance of their duties. The public recognition may be in the form of, for example, public awards for meritorious service or reports in the media on individual volunteers or the activity of such volunteers in general.

VIII. RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

General observations

Section VIII deals with further research and planning, policy formulation and evaluation. It highlights the importance of intergovernmental cooperation. It should be read in the light of the resolution entitled "Principles and directions for research on non-custodial sanctions", adopted by the Eighth Congress. 5/

20. Research and planning

- 20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of offenders.
- 20.2 Research on the problems that confront clients, practitioners, the community and policy makers should be carried out on a regular basis.
- 20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.

Commentary

The systematic collection and exchange of information, together with the results of research and policy analysis, are desirable for the evaluation and promotion of non-custodial measures, as well as for the planning of programmes for non-custodial measures and periodical reviews of those plans.

Research is an important tool for planning and policy-making on non-custodial measures. The exchange of information on the results of research can facilitate the development of an appropriate response to pressing problems in criminal justice and can be used to promote a better understanding by the public of the advantages of non-custodial measures. This research should be supplemented by research on the development and use of custodial measures.

Accordingly, rule 20.1 calls upon public and private organizations to promote research on non-custodial measures and to ensure its funding. Close cooperation between scholars and practitioners is necessary for the development of action-oriented research on non-custodial measures.

According to rule 20.2, this research should be carried out on a regular basis. As noted in the resolution entitled "Principles and directions for research on non-custodial sanctions" adopted by the Eighth Congress, 5/ policy-relevant research should focus on those areas and issues that present obstacles to the realization of the potential of non-custodial sanctions within a specific system.

Rule 20.3 emphasizes that the research and information mechanisms should be an integral part of the criminal justice system. The data and statistics thus collected and analysed provide the basis for rational policy decisions and for the effective implementation of non-custodial measures in individual cases.

21. Policy formulation and programme development

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

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

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

Commentary

The Tokyo Rules emphasize the need to develop additional innovative measures in response to changing conditions in the criminal justice system. The planning and implementation of non-custodial measures should not be solely viewed as a criminal justice issue or even more narrowly as a response to an immediate crime problem. Instead, according to rule 21.1, the measures imposed on offenders should be developed and implemented within the framework of comprehensive national development plans, including the development of employment, education, social welfare and health. In this way treatment programme priorities and objectives can be coordinated with overall development goals.

Rule 21.2 stresses the importance of the regular review and evaluation of existing programmes aimed at improving the effectiveness of these services. This includes regular evaluation aimed at the identification and allocation of sufficient financial and other necessary resources to ensure effective implementation.

Statistical information should be used together with qualitative research and evaluation data to obtain valid and reliable information on the effectiveness of the implementation of non-custodial measures. Such evaluations may require further development of policy plans for non-custodial measures. Special attention should be paid to the criteria and methodologies for measuring the effectiveness of non-custodial measures from the perspectives of the various interests and needs involved. The principles and directions for policy-oriented research on non-custodial measures adopted by the Eighth Congress 5/ should be taken into full consideration.

An evaluation by non-governmental institutions is also important, and it is essential that independent researchers have access to the relevant data. Financial resources for scientific research on evaluation and implementation should also be provided. Substantive progress or an expansion in the application of non-custodial measures in conformity with the principle of due process cannot be reached if evaluation is left solely to state researchers.

The interregional and regional institutes cooperating with the United Nations in the field of crime prevention and criminal justice may assist Member States in conducting research and in utilizing research results to promote credible and effective non-custodial measures.

The periodic reviews required by rule 21.3 should be carried out with the cooperation of the legislator, criminal justice agencies, volunteers and other competent individuals and bodies. The reviews should be made widely available to stimulate public discussion and debate in line with rule 18.3.

22. Linkages with relevant agencies and activities

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

Commentary

One of the most commonly used non-custodial measures is some form of supervision by trained professionals, which is aimed at helping the offender to solve his or her problems and to reintegrate into society. For such measures to be successful, a wider range of resources of society needs to be accessible to the implementing authority and ultimately to the offender. Accordingly, rule 22.1 suggests that the services responsible for non-custodial measures should make the necessary links with the social and welfare agencies that can help. Such links should include not only governmental agencies but also non-governmental organizations in the social and welfare fields. Such non-governmental organizations can be particularly useful in helping offenders in a non-stigmatizing way. The general social and welfare agencies in society, both governmental and non-governmental, may need encouragement to include offenders within their remit. To provide that encouragement, rule 22.1 calls for suitable mechanisms to be set up so that the necessary linkages can be formalized and incorporated into the daily work of the authority implementing non-custodial measures and into the regular procedures of social and welfare agencies.

23. International cooperation

- 23.1 Efforts shall be made to promote scientific cooperation between countries in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs* of the United Nations Secretariat.
- 23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released.⁸³

⁸³General Assembly resolution 45/119, annex.

Commentary

Rule 23.1 emphasizes the importance of broad international cooperation and exchange of information. Non-custodial measures are new and developing. States have much to learn from each other. Comparative research, evaluation of the success of the various non-custodial measures and intensified training to extend their use would further the application of more effective and humane non-custodial measures within the criminal justice system.

In view of the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, efforts should be made to

*In May 1993, the Centre for Social Development and Humanitarian Affairs was dissolved. The Crime Prevention and Criminal Justice Branch remained as part of the United Nations Office at Vienna.

harmonize the legislative provisions on non-custodial measures transnationally in order to facilitate their application across national boundaries. Foreign offenders are often less likely to be given a non-custodial measure because of the difficulties of serving such a measure in a foreign country rather than the country where the offender will eventually settle. Harmonization of the legislative provisions could encourage a wider application of non-custodial measures to foreign offenders. Rule 23.2 stresses the need for conducting further studies of non-custodial measures in different countries and for harmonizing the legislative provisions on non-custodial measures so that transfers of sentenced offenders can take place.

Notes

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

2/ Ibid., sect. A.

3/ Ibid.

4/ Ibid., sect. G.

5/ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 17 August-7 September 1990 (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.16.