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## **Report on the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Vienna from 31 January to 2 February 2012**

### **I. Introduction**

1. The General Assembly, in paragraph 10 of its resolution 65/230, entitled “Twelfth United Nations Congress on Crime Prevention and Criminal Justice”, requested the Commission on Crime Prevention and Criminal Justice to establish an open-ended intergovernmental expert group to exchange information on best practices, as well as national legislation and existing international law, and on the revision of existing United Nations standard minimum rules for the treatment of prisoners so that they reflected recent advances in correctional science and best practices, with a view to making recommendations to the Commission on possible next steps.

2. With a view to preparing the ground for the discussion during the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners, a number of consultations with international experts were organized in the course of 2011, including a high-level expert group meeting held in Santo Domingo from 3 to 5 August and an expert group meeting held in Vienna on 6 and 7 October. In addition, in the margins of a meeting organized by the World Health Organization on health in prisons, held in Abano Terme, Italy, on 4 and 5 October 2011, technical consultations took place on comments on rules 22-26, 32, 52 and 82 of the Standard Minimum Rules for the Treatment of Prisoners.<sup>1</sup> The Secretariat also requested Member States to provide information on best practices, as well as national legislation and existing international law, and on the revision of existing United Nations standard minimum rules for the treatment of prisoners.

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<sup>1</sup> *Human Rights: A Compilation of International Instruments*, Volume I (First Part), *Universal Instruments* (United Nations Publication, Sales No. E.02.XIV.4 (vol. I, Part 1)), sect. J, No. 34.



## **II. Recommendations**

3. The Expert Group agreed on the recommendations presented below, for submission to the Commission on Crime Prevention and Criminal Justice at its twenty-first session for consideration and further action.

4. There was general agreement that the Standard Minimum Rules for the Treatment of Prisoners had stood the test of time and were universally acknowledged as the minimum standards for the detention of prisoners. There was also a consensus that any changes to the Rules should not lower any of the existing standards.

5. Bearing that in mind, the Expert Group recognized a need for some areas of the Standard Minimum Rules to be reviewed, and it identified the following preliminary areas for possible consideration in order to ensure that the Rules reflected recent advances in correctional science and best practices:

- (a) Respect for prisoners' inherent dignity and value as human beings;
- (b) Medical and health services;
- (c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet;
- (d) Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment of prisoners;
- (e) Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances;
- (f) The right of access to legal representation;
- (g) Complaints and independent inspection;
- (h) The replacement of outdated terminology;
- (i) Training of relevant staff to implement the Standard Minimum Rules.

6. The Expert Group recommended continuing to exchange best practices, including on technical assistance, as well as to identify and share experiences in facing the challenges to implementing the Standard Minimum Rules.

7. The Expert Group also recommended the continuation of its work, pursuant to General Assembly resolution 65/230.

## **III. Organization of the meeting**

### **A. Opening of the meeting**

8. The meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners was held in Vienna from 31 January to 2 February 2012. On behalf of the Executive Director of the United Nations Office on Drugs and Crime (UNODC), the meeting was opened by the Chief of the Justice Section, Division for Operations, UNODC.

## B. Attendance

9. The meeting was attended by 143 representatives from 52 States: Angola, Argentina, Austria, Azerbaijan, Belgium, Brazil, Canada, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Iran (Islamic Republic of), Israel, Italy, Japan, Lebanon, Malaysia, Mexico, Morocco, Mozambique, Netherlands, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Poland, Romania, Russian Federation, Serbia, Slovakia, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of) and Zimbabwe.

10. The Department of Peacekeeping Operations of the Secretariat, the Office of the United Nations High Commissioner for Human Rights and the United Nations Office for Project Services were represented at the meeting.

11. The following institutes of the United Nations crime prevention and criminal justice programme network, were represented at the meeting: United Nations Interregional Crime and Justice Research Institute; African Institute for the Prevention of Crime and the Treatment of Offenders; International Scientific and Professional Advisory Council; and Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

12. The Council of Europe, the European Union and the International Committee of the Red Cross were represented.

13. Twelve non-governmental organizations in consultative status with the Economic and Social Council were represented at the meeting. One additional non-governmental organization was represented.

14. Three experts from the Ludwig Boltzmann Institute of Human Rights, one from the University of Essex and one from the Latin American Committee for the Revision and Update of the Standard Minimum Rules for the Treatment of Prisoners also attended the meeting.

## C. Election of officers

15. At its 1st meeting, on 31 January 2012, the Expert Group elected the following officers:

<i>Chair:</i>	Eduardo Vetere (Italy)
<i>Vice-Chairs:</i>	Julio Cezar Zelner Gonçalves (Brazil)
	Alina Barbu (Romania)
	Lucky Mthethwa (South Africa)
<i>Rapporteur:</i>	Vongthep Arthakaivalvatee (Thailand)

## **D. Adoption of the agenda**

16. At its 1st meeting, on 31 January, the Expert Group adopted the following agenda:

1. Opening of the meeting.
2. Election of officers.
3. Adoption of the agenda and organization of work.
4. Consideration of existing United Nations standard minimum rules for the treatment of prisoners in the light of recent best practices and advances in national and international law.
5. Conclusions and recommendations.
6. Closing of the meeting.

17. Pursuant to General Assembly resolution 65/230, it was agreed that agenda item 4 would cover both the exchange of information on best practices, as well as national legislation and existing international law, and the revision of existing United Nations standard minimum rules for the treatment of prisoners.

## **IV. Summary of deliberations**

18. The Expert Group had before it a conference room paper containing a brief history of the Standard Minimum Rules and progress in their implementation; a summary of replies from Member States on exchange of best practices; an overview of the work undertaken in preparation of the meeting of the Expert Group; and four options to be considered by the Expert Group. A conference room paper entitled “Notes and comments on the Standard Minimum Rules for the Treatment of Prisoners” had also been submitted (in English only). In the paper, advances in internationally recognized good practice were identified for each of the Standard Minimum Rules and relevant developments related to more recent international and regional instruments and human rights treaties were highlighted.

19. All speakers commended both the preparatory work of the Secretariat and the documentation submitted for the meeting. Many speakers also recommended that the conference room paper entitled “Notes and comments on the Standard Minimum Rules for the Treatment of Prisoners” should be translated into the other official languages of the United Nations and published as soon as possible.

20. The discussion covered the two-pronged mandate of the Expert Group.

### **A. Exchange of information on best practices**

21. Numerous examples of best practices on the various aspects of prison administration and management were provided by the experts. In many countries, prison overcrowding represented a critical challenge to the proper rehabilitation of prisoners and to the implementation of the Standard Minimum Rules. Several speakers underlined the importance of alternatives to imprisonment and shared their experiences of various measures ranging from conditional sentencing to early

release and electronic monitoring in order to reduce overcrowding in prisons and ensure that imprisonment would only be used as a punishment for the most serious offenders. In that connection, the importance of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) was repeatedly stressed.

22. It was observed that over 10 million people were currently detained and reference was made to a “global prison crisis”. Generally, not only was the prison population increasing, but its composition was also rapidly changing, with more children, young people and women being imprisoned. In some countries, there was an increase in the number of older prisoners, which required the provision of special medical care. In numerous countries, foreign nationals represented more than 50 per cent of the total prison population, posing a serious challenge to prison administrations because of their special requirements, including in terms of language and culture. The importance of agreements and treaties to facilitate the transfer of foreign prisoners was highlighted, including the need to make full use of the Model Agreement on the Transfer of Foreign Prisoners.

23. Several experts highlighted the critical role of mechanisms such as that created by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Protocol, which had entered into force in 2006, had established a system of regular visits to places of detention by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, complemented by regular visits conducted by independent national bodies.

24. In addition, several experts elaborated on their national experiences with external monitoring and inspection mechanisms. Opening prisons to external scrutiny by Parliament and civil society, sharing reports on inspection with the media and the public and creating independent organs with the right to make unannounced visits to places of detention and to issue recommendations were all practices that had contributed to greater transparency within the relevant authorities and had greatly improved prison management. It was recognized that, even when prisons were subcontracted to private services, responsibility for the treatment of prisoners remained with the State. It was also reported that, in one country, a recent ruling by the Supreme Court had declared the privatization of prisons to be unconstitutional and a violation of human rights.

25. In many countries, measures had been introduced to prevent torture and other forms of inhuman and degrading treatment against prisoners. Some experts mentioned provisions and training programmes that had led to an increased capacity to identify and investigate alleged cases of violence and abuse in the prisons. Others commented on recent legislation that reduced the maximum duration of solitary confinement and restricted its use to very limited and defined cases.

26. Experts also shared relevant good practices on the prevention of suicide in prisons and described strict protocols addressing the matter that were to be observed in all places of detention. Such measures had led to a dramatic decrease in the number of suicides among prisoners. In addition, some experts shared information on important policies to reduce violence in prisons, including the use of mediation.

27. The issue of access to medical care in prison was raised by many speakers. Some experts reported on the successful introduction of electronic medical files for

all prisoners. In some countries, relations between the Ministry of Justice in charge of prisons and the Ministry of Health providing medical care to prisoners were still being fine-tuned, while in others, a specialized system of medical care had been created for prisons. The confidentiality of medical records was a critical issue raised by numerous speakers.

28. As far as the management of prisons was concerned, single-occupancy cells were not unanimously recognized as a best practice. In many countries, double occupancy or dormitories were considered better options, provided that sufficient space and privacy were allocated to each prisoner.

29. Many experts provided information on good practices on normalization. In some countries, even long-term prisoners were entitled to receive extended family visits in areas ensuring sufficient intimacy so as to be able to keep family ties. In others, it was possible for men and women to be detained together if it was deemed to be beneficial for their social reintegration. Some experts also provided information on the practices in their countries with regard to mothers being detained with their small children. The parental rights of fathers in prison were also mentioned, as well as the need to revise some provisions of the Standard Minimum Rules in order to align them with the recently adopted United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

30. Several experts observed that, at times of financial crisis, prison issues tended not to receive enough political attention and funding. However, a number of positive experiences with regard to inexpensive rehabilitation projects were shared by the experts (e.g. theatre plays, dance productions and film festivals in prisons; and involvement of volunteers in educational or recreational programmes). Open institutions offered better opportunities for successful resocialization. In some countries, prisoners in such institutions had access to various means of communication, including the Internet.

31. The beneficial role of education, religion, vocational training and work for the rehabilitation of prisoners was highlighted by most experts, who reported on various programmes taking place in their respective countries, ranging from education programmes to university courses, and from work on farms and in fisheries to e-learning programmes.

32. Other experts presented promising programmes addressing specific problems underlying the criminal conduct of certain prisoners, such as violent behaviour and drug and alcohol abuse. Pre-release and post-release programmes were the focus of some of the successful examples presented. The possibility of furlough and early release were considered to be strong incentives for the rehabilitation and reintegration of prisoners. It was observed that the first six months after release were the most dangerous time for relapse and that efforts should be made to provide proper support (such as identity papers, housing, employment opportunities, plans to pay off debts and proper health care) to former prisoners in this delicate phase.

33. Various experts elaborated on recent developments that had proved beneficial in the training of prison staff, such as mandatory modules on international human rights standards, and on the importance of sharing information among staff.

34. Finally, a few speakers drew the attention of the Expert Group to the particular challenges facing prison management in post-conflict and post-disaster phases. In that context, the representatives of the Department of Peacekeeping Operations made a presentation illustrating rule of law indicators.

## **B. Revision of the Standard Minimum Rules for the Treatment of Prisoners**

35. The conference room paper prepared by the Secretariat for the meeting contained four main options for the possible revision of the Standard Minimum Rules. The first option was to draft a binding instrument whereby States parties would be under the obligation to ensure certain standards in places of detention. The second option would result in a complete restructuring and substantive redrafting of the Rules to reflect the numerous developments since their adoption in 1955. The third option acknowledged the complexity involved in a complete revision of the Rules and the risk of lowering some of the standards enshrined in the Rules. Thus, it suggested restricting the substantive redrafting to an essential minimum, identifying changes which were thought to be the most essential. The fourth option recognized the validity of the Rules and proposed the addition of a preamble referring to relevant human rights and criminal justice instruments, with a commentary to the Rules that would highlight major implications in terms of modern thinking and good practice, as well as renewed efforts to more effectively implement the Rules and to monitor their application.

36. The discussion took place around these four options which, to some extent, were not mutually exclusive and could be usefully pursued jointly.

37. While some experts stressed that a new convention would reinforce implementation, owing to the obligation to abide to its provisions by States parties, others noted that creating such an instrument could be a long and expensive process. In that connection, it was acknowledged that the proposal for a convention on the treatment of prisoners and their rights dated back until at least 1970. Although the potential benefits of such a convention were recognized, with some participants expressing their support for a binding instrument, others concluded that there was not yet consensus for such an initiative at the present juncture.

38. All participants stressed the enormous value of the Standard Minimum Rules in inspiring not only prison reform, but also legislation, policies and practices. Moreover, they were being extensively used as a reference point by different human rights treaty bodies. Accordingly, before making any major changes to their structure and content, which could also require considerable time and resources, the utmost caution should be exercised. In other words, a complete restructuring and substantive redrafting of the Rules should not be undertaken.

39. In view of the above, most of the participants expressed their preference and support for the third and fourth options.

40. Throughout the discussion, special emphasis was placed on the need for further international efforts to improve the monitoring and review of implementation of the Standard Minimum Rules. In that context, several experts commented on their respective countries' programmes to assist other Member States

in their endeavours, stressing the importance of technical cooperation. The expert from the African Institute for the Prevention of Crime and the Treatment of Offenders brought to the attention of the Expert Group a recent study by the Institute entitled *The Extent of Implementation of the UN Standard Minimum Rules by African Countries (2011)*. Reference to a full revision of the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolution 1984/47, annex) was also made by several speakers.

41. Some speakers suggested that essential updating of the language of selected provisions of the Standard Minimum Rules could deal with the following:

(a) Extension of the scope of the Rules to include all persons deprived of their liberty, be it on criminal, civil or administrative grounds (rules 4, 94 and 95);

(b) Expansion of the general principles in both paragraphs of rule 6, perhaps drawing on the Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111, annex);

(c) Amendment of the rules relating to medical and health services, including consideration of the issue of confidentiality of medical records, and the role of medical staff in relation to disciplinary action (rules 22-26, 32 and 82);

(d) Reflection of the duty to investigate all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment against prisoners in rule 44;

(e) Consideration of rules 31-33 in respect of close and solitary confinement and the unacceptability of reduction of diet as a punishment;

(f) Expansion of the provisions dealing with the protection and special requirements of vulnerable prisoners, e.g. older prisoners; foreign national prisoners; ethnic and racial minorities and indigenous people; transgender prisoners etc.;

(g) Addition of the right of access to a lawyer to all prisoners to rule 37;

(h) Inclusion of the right of access to external means of complaint in rule 36;

(i) Reinforcement of the importance of monitoring and independent inspection (rules 36 and 55);

(j) Promotion of the reintegration of offenders into society as one of the main purposes of the provisions on the treatment of persons sentenced to imprisonment (rules 65 and 66), including greater use of temporary exits from prison, parole and early release programmes;

(k) Replacement of outdated terminology, specifically in rules 82 and 83;

(l) Alignment of the paragraphs with the provisions of the Convention on the Rights of Persons with Disabilities and the Bangkok Rules to avoid inconsistencies, and extension of the provisions of the Bangkok rules on protection from violence and other non-gender-specific issues to cover all prisoners;

(m) Expansion of training to include correctional and human rights issues for all those working with prisoners in various capacities, including prosecutors, judges and evaluators (rules 46-54).



42. Further proposals raised during the discussion related to the need to better reflect the right to safety in prisons (for both staff and prisoners, from harm done by both prisoners and staff, including measures to prevent torture and self-inflicted harm and suicide); positive practices emphasizing normalization as a key issue for facilitating reintegration (contact with the outside world, family visits, mother-children contacts, relevance of detained fathers as parents); extension of civil rights to prisoners, especially the right to vote; and expansion and better formulation of the Standard Minimum Rules relating to religion and inclusion of provisions stating that all matters related to prisoners' rights should be subject to judicial review for possible redress. The role of civil society in the rehabilitation and reintegration of the offender should be further highlighted.

43. Other proposals related to the deletion of some of the Standard Minimum Rules that were considered obsolete and to consider a new protocol as a supplement to the Rules, in order to address some of the areas not fully covered, particularly in terms of human rights protection. One clear example for possible deletion was rule 94, on civil prisoners, as it was considered inconsistent with more recent human rights provisions.

44. It was also proposed that the current Spanish version of the Standard Minimum Rules required revision, in order to ensure consistency between the different language versions.

45. Another issue that was extensively discussed was the importance of providing technical assistance in line with the Standard Minimum Rules, including in the areas mentioned above, with a view to encouraging and facilitating full implementation of the Rules by all Member States.

46. Finally, many participants stressed the fact that the meeting of the Expert Group was simply the beginning of a very important process that had to be continued in order to finalize more concrete proposals for further consideration by the Commission.

## **V. Adoption of the draft report and closure of the meeting**

47. At its 6th meeting, the Expert Group adopted its draft report, including the recommendations to be submitted to the Commission at its twenty-first session, pursuant to General Assembly resolution 65/230.

48. At the end of the meeting, the expert from Argentina declared that his Government was willing to host the next meeting of the Expert Group.