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Use and application of United Nations standards and norms in crime prevention and criminal justice

Work of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners

Report of the Secretariat

I. Introduction

1. The open-ended intergovernmental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners was established by the Commission on Crime Prevention and Criminal Justice at the request of the General Assembly in its resolution 65/230. The Expert Group's first meeting was held in Vienna from 31 January to 2 February 2012, and the Secretariat reported on the work of the Expert Group to the Commission on Crime Prevention and Criminal Justice at its twenty-first session (E/CN.15/2012/18).

2. Pursuant to Economic and Social Council resolution 2012/13, the second meeting of the Expert Group was held in Buenos Aires from 11 to 13 December 2012, hosted by the Government of Argentina. The meeting was opened by Julio César Alak, Minister of Justice and Human Rights of Argentina.

3. The Expert Group considered the following preliminary areas, which had been identified at its first meeting:

- (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;

* E/CN.15/2013/1.



(d) Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment 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(h) The replacement of outdated terminology;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 for the Treatment of Prisoners.

4. The meeting was attended by 76 participants from 28 States: Angola, Argentina, Brazil, Canada, China, Cuba, Egypt, France, Georgia, Germany, Hungary, Japan, Namibia, Netherlands, Paraguay, Philippines, Poland, Qatar, Russian Federation, Saudi Arabia, South Africa, Switzerland, Thailand, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela (Bolivarian Republic of).

5. The Office of the United Nations High Commissioner for Human Rights and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were represented at the meeting.

6. The following institutes of the United Nations crime prevention and criminal justice programme network were represented at the meeting: the Latin American Institute for the Prevention of Crime and the Treatment of Offenders and the International Scientific and Professional Advisory Council.

7. The Conference of Ministers of Justice of Ibero-American Countries, the Council of Europe and the International Committee of the Red Cross were represented at the meeting.

8. Thirteen non-governmental organizations in consultative status with the Economic and Social Council were represented at the meeting.

9. One expert from the University of Essex and one expert from the University of Nottingham, of the United Kingdom; one independent expert; and one expert from the National University of Rosario of Argentina also attended the meeting.

10. Victor Abramovich (Argentina) was elected Chair, Lucky Mthethwa (South Africa), Virginia Prugh (United States) and Maria Grochulska (Poland) were elected Vice-Chairs, and Vongthep Arthakaivalvatee (Thailand) was elected Rapporteur.

II. Recommendations

11. The Expert Group recommended¹ that the Commission on Crime Prevention and Criminal Justice, at its twenty-second session, should consider whether to

¹ The recommendations of the Expert Group contained in the present section should be considered in the context of the deliberations of the meeting of the Expert Group, which are reflected in the report on the meeting (UNODC/CCPCJ/EG.6/2012/4).

extend the Expert Group's mandate so that it could continue its work, or refer the matter to a drafting group of Member States.

12. It also recommended that the Commission reiterate that any changes to the Standard Minimum Rules for the Treatment of Prisoners should not lower any of the existing standards.

13. The Expert Group further recommended that the Commission request the Secretariat to prepare an ongoing consolidated proposed revised text of the Rules, for discussion at a further meeting to continue the revision process, drawing on the joint submission by Argentina, Brazil, South Africa, United States, Uruguay and Venezuela (Bolivarian Republic of) and summarizing the issues and rules identified by the Expert Group in each preliminary area, as well as additional submissions and comments by Member States.

14. The Expert Group commended the working paper prepared by the Secretariat examining the preliminary areas for possible consideration (UNODC/CCPCJ/EG.6/2012/2) and recognized that, to a large extent, the paper had captured the issues and identified the rules of the Standard Minimum Rules to be considered for a comprehensive revision under each preliminary area.

15. The Expert Group identified for consideration the following issues and rules for the revision of the Standard Minimum Rules for the Treatment of Prisoners:

Area (a): Respect for prisoners' inherent dignity and value as human beings (rules 6, para. 1; 57-59; and 60, para. 11)

16. In the area of respect for prisoners' inherent dignity and value as human beings, the Expert Group identified the following issues for revision:

(a) To extend the grounds on which discrimination should be prohibited, such as age, ethnic origin, cultural beliefs and practices, disability, gender identity and sexual orientation;

(b) To relocate rules 57-59 and rule 60, paragraph 1, to make them principles of general application in an amended rule 6, whose title is to read "Basic principles".

Area (b): Medical and health services (rules 22-26; 52; 62; and 71, para. 2)

17. In the area of medical and health services, the Expert Group identified the following issues for revision:

(a) To add a reference in rule 22 to the principle of equivalence of health care; to clarify that health-care services in prison settings are to be provided free of charge without discrimination; to refer to the need to have in place evidence-based HIV, tuberculosis and other disease prevention, treatment, care and support services as well as refer to drug dependence treatment programmes in prison settings that are complementary to and compatible with those in the community; to add that health policy in prisons shall be integrated with, or at least be compatible with, national health policy; to address the need to prepare and maintain accurate, up-to-date and confidential medical files of all prisoners, under the exclusive responsibility of the health centre/health staff; to refer to a global and comprehensive approach to

preventive and curative health care, taking into account health determinants such as hygiene; and to add the need to organize the continuity of treatment and care;

(b) To clarify, in rule 23, paragraph 1, that beyond prenatal and postnatal care, a broad range of gender-specific health-care services should be available to women prisoners, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (General Assembly resolution 65/229, annex);

(c) To add text to rule 23, paragraph 2, which would provide for the need to provide ongoing health-care services to children living with their mothers in prison;

(d) To add a paragraph to rule 24 which would confirm the ethical obligation of physicians and nurses in prisons to record all signs of torture and other cruel, inhuman or degrading treatment or punishment of which they may become aware in the context of medical examinations upon admission, or when providing medical care to prisoners any time thereafter, using the necessary procedural safeguards, and to report such cases to the competent medical, administrative or judicial authority, after having obtained the explicit consent of the patient concerned, and in exceptional circumstances, without the explicit consent of the patient concerned in case he or she is unable to express himself or herself freely, and without putting the life and safety of the patient and/or associated persons at risk;

(e) To elaborate, in rule 25, paragraph 1, on the primary duties and obligations of health-care staff in prison settings, in particular to act in line with the core principles of medical ethics; to provide patients, in a professionally independent manner, with protection of their physical and mental health, and to not be involved in any relationship with prisoners the purpose of which is not solely to evaluate, protect or improve their health; to respect the principle of informed consent in the doctor-patient relationship and the autonomy of patients with regard to their own health, including in the case of HIV-testing and the screening of a prisoner's reproductive health history; to respect the confidentiality of medical information, unless doing so would result in a real and imminent threat of harm to the patient or to others; and to abstain, under all circumstances, from engaging, actively or passively, in acts which may constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment;

(f) To allow, in rule 26 bis, for the participation of prisoners in clinical trials accessible in the community and to other health research only in case it is expected to produce a direct and significant benefit to their health, and include a requirement for procedural safeguards to ensure free and informed consent, complemented by external review; and to prohibit a detained or imprisoned person, even with his or her consent, from being subjected to any form of medical or scientific experimentation which may be detrimental to his or her health.

Area (c): Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet (rules 27, 29, 31 and 32)

18. In the area of disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet, the Expert Group identified the following issues for revision:

(a) To add a paragraph to rule 27 encouraging the establishment of, and resort to, mediation mechanisms to solve conflicts;

(b) To require that the principles and procedures governing searches be included in the areas in rule 29 that are to be determined by law or by regulation of the competent administrative authority;

(c) To add a new rule 29 bis providing overall principles governing searches of prisoners and visitors in line with international standards and norms, including reference to the principles of legality, necessity and proportionality;

(d) To add, in rule 31, the reduction of diet and of drinking water, prolonged and indefinite solitary confinement, collective punishment and the suspension of family and intimate visits to the practices completely prohibited as punishments for disciplinary offences;

(e) To add, in rule 31, a prohibition on imposing solitary confinement for juveniles, pregnant women, women with infants, breastfeeding mothers and prisoners with mental disabilities, as a disciplinary punishment; for life-sentenced prisoners and prisoners sentenced to death, by virtue of their sentence; and for pretrial detainees, as an extortion technique;

(f) To limit, in rule 32, paragraph 1, the imposition of punishment by solitary confinement to a disposition of last resort to be authorized by the competent authority, to be applied in exceptional circumstances only and for as short a time as possible, to encourage efforts to increase the level of meaningful social contact for prisoners while in solitary confinement; and to provide for such punishment to be properly recorded;

(g) To delete, in rule 32, the reference to reduction of diet as a punishment, and reference to the medical officer examining prisoners and certifying them fit for punishment.

Area (d): Investigations of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners (rules 7, 44 bis and 54 bis)

19. In the area of investigations of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners, the Expert Group identified the following issues for revision:

(a) To require, in rule 7, that information on the circumstances and causes of death and of serious injuries of a prisoner, as well as the destination of the remains, be included in the respective prisoner file (management system), as well as cases of torture, confinement and punishments;

(b) To include, in rule 7, the need to establish information systems on prison capacity and occupancy rate by prison;

(c) To add a new rule 44 bis including an obligation of prison administrations to initiate and facilitate prompt, thorough and impartial investigations of [all incidents of death in custody] [incidents of unnatural, violent or unknown death], or shortly following release, including with independent forensic or post-mortem examinations, as appropriate;

(d) To clarify, in a separate paragraph of rule 44 bis, that the findings of the investigation should be disclosed to competent authorities and selected control bodies, whereas further disclosure should respect the need to protect personal data as per national law;

(e) To add a new rule 54 bis to include an obligation of prison administrations or other competent bodies, as appropriate, to initiate prompt and impartial investigations whenever there are reasonable grounds to believe that an act of torture or other inhuman or degrading treatment or punishment has been committed in prison settings, irrespective of whether a complaint has been received;

(f) To add a new paragraph to rule 44 addressing the need of prison administrations to [provide for] [facilitate] culturally appropriate burials in case of custodial deaths.

Area (e): Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances (rules 6 and 7)

20. In the area of protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances, the Expert Group identified the following issue for revision: to add a paragraph to rule 6 addressing prisoners with special needs, including women; children; older prisoners; prisoners with disabilities; prisoners with mental health-care needs; sick prisoners, in particular patients with AIDS, tuberculosis patients and prisoners with terminal illness; drug-dependent prisoners; ethnic and racial minorities and indigenous peoples; foreign national prisoners; lesbian, gay, bisexual and transgender prisoners; prisoners under sentence of death; and people in other situations of vulnerability.

Area (f): The right of access to legal representation (rules 30; 35, para. 1; 37; and 93)

21. In the area of the right of access to legal representation, the Expert Group identified the following issues for revision:

(a) To add, in rule 35, paragraph 1, the right of prisoners to access legal advice to the information with which every prisoner should be provided upon admission;

(b) To provide, in rule 30, for a qualified right to legal advice in the context of disciplinary proceedings, i.e., as far as breaches of discipline are prosecuted as crimes (or in serious disciplinary cases involving heavy penalties or complicated points of law);

(c) To grant to all prisoners, in rule 37, the right to meet and consult with a legal advisor of their own choice and at their own expense, on any legal matter and under similar conditions as established in rule 93, to be complemented by access of imprisoned persons to legal aid mechanisms to the maximum extent possible, including at the pretrial and post-trial stages, in line with international standards and norms;

(d) To grant, in rule 37, those prisoners who do not speak the local language access to an interpreter in the course of correspondence or meetings with legal advisors;

(e) To replicate, in rule 93, the language of more recent international standards and norms addressing the access of detainees to legal advice, including to be granted such right without delay, interception and in full confidentiality, subject to suspension or restriction only in exceptional circumstances to be specified by law or lawful regulations, when it is considered indispensable in order to maintain security and good order.

Area (g): Complaints and independent inspection (rules 36 and 55)

22. In the area of complaints and independent inspection, the Expert Group identified the following issues for revision:

(a) To delete, in rule 36, the restriction of a prisoner's right to make requests and complaints only during "each work day", and delete the reference to the possibility of not promptly dealing with, or replying to, requests or complaints that are "evidently frivolous or groundless";

(b) To add to rule 36 a subparagraph on the need to have in place safeguards that would ensure that avenues are available for prisoners to make requests or complaints in a safe, direct and confidential manner, without any risk of retaliation or other negative consequences;

(c) To add to rule 36 a subparagraph addressing the entitlement of prisoners to bring their request or complaint before a judicial or other (independent and impartial) authority in case the initial request or complaint is rejected, or in case of undue delay;

(d) To replace, in rule 36, paragraph 2, the current text related to conversations between prisoners and an inspector or any other inspecting officer, i.e. "without the director or other members of staff being present" with the text "freely and in full confidentiality";

(e) To extend, in rule 36, paragraph 3, the right to make complaints to the prisoner's legal counsel, and, in case neither the prisoner nor his or her legal counsel are able to exercise this right, to a member of the prisoner's family or any other person who has knowledge of the case in equal conditions before the law;

(f) To make explicit reference, in rule 36, to allegations of torture and other cruel, inhuman or degrading treatment or punishment, which should be dealt with immediately and should result in a prompt and impartial investigation conducted by an independent national authority as per rule 54 bis;

(g) To refer, in rule 55, to the desirability of an inspection system comprising both governmental agencies (internal) and external inspection bodies in a complementary way, whereby external inspection bodies should be independent from the authority in charge of the administration of places of detention or imprisonment;

(h) To add a new paragraph to rule 55 addressing the powers of independent inspection mechanisms, including, but not limited to, access to all information on numbers of both persons deprived of their liberty and places of detention, including

locations, as well as to all information relevant to the treatment of persons deprived of their liberty, including conditions of detention; the power to freely choose which places of detention to visit, including unannounced visits at their own initiative, and which persons deprived of liberty to interview; and the authority to conduct private and fully confidential interviews with persons deprived of their liberty in the course of visits;

(i) To add text to rule 55 to the effect of including, as much as possible, female and health-care specialists in the “qualified and experienced inspectors appointed by a competent authority”;

(j) To require, in a new subparagraph of rule 55, that any inspection should be followed by a written report to be submitted to the competent authority, which would include an assessment of compliance of penal institutions and services with national law and relevant international standards, as well as recommended reform steps to improve compliance, and the findings of which should be made public, excluding any personal data of a prisoner without his or her express consent.

Area (h): The replacement of outdated terminology (rules 22-26, 62, 82 and 83 and various others)

23. In the area of replacement of outdated terminology, the Expert Group identified the following issues for revision:

(a) To pursue the replacement of outdated terminology with a view to eliminate discriminatory practice, to clarify and/or define unclear terminology, and to bring the language of the Standard Minimum Rules in line with contemporary international standards; some delegations also expressed the wish to revisit the term “prisoner”;

(b) To replace, in preliminary observation 5, paragraph 1, reference to “Borstal institutions” with “juvenile detention centers”;

(c) To change the heading for rule 7 from “Register” to “Record-keeping” and/or “Prisoner file management system”, and to reflect technological advance in information management systems;

(d) To replace, above rules 82 and 83, the heading “Insane and mentally abnormal prisoners”;

(e) To replace, in rule 82, paragraph 1, the term “insane”;

(f) To replace, in rule 82, paragraph 2, the text “prisoners who suffer from other mental diseases or abnormalities”;

(g) To replace, in rule 22, paragraph 1, the text “treatment of states of mental abnormality”;

(h) To change, the heading for rules 22-26 and 62 from “Medical services” to “Health-care services”;

(i) To replace the term “medical officer” in rules 22, paragraph 1; 25, paragraphs 1 and 2; and 26, paragraph 2; and the term “the medical officer” in rules 24 and 26, paragraph 1;

(j) To replace, in rule 22, paragraph 3, the term “qualified dental officer”;

(k) To replace “he” with “he or she”, and “his” with “his or her” (rules 7, para. 1; 17, paras. 1 and 3; 20, para. 2; 24; 25, paras. 1 and 2; 26, para. 2; 30, paras. 2 and 3; 32, para. 1; 32, para. 3; 35, para. 1; 36, para. 2; 41, paras. 2 and 3; 42; 43, paras. 1 and 2; 44; 50; 51, para. 1; 57; 58; 61; 64; 66, paras. 1 and 2; 69; 76, para. 3; 79; 80; 81, para. 2; 88, paras. 1 and 2; and 89-93).

Area (i): Training of relevant staff to implement the Standard Minimum Rules
(rule 47)

24. In the area of training of relevant staff to implement the Standard Minimum Rules, the Expert Group identified the following issues for revision:

(a) To acknowledge, in rule 47, the positive impact of staff training on professionalism and sound prison management;

(b) To add a new paragraph to rule 47 clarifying that the training referred to in paragraphs 1 and 2 includes, at a minimum, instructions in international and regional human rights instruments, United Nations standards and norms relevant to the treatment of prisoners and relevant regional and national legislation and codes of conduct, as applicable; the rights, duties and prohibitions of prison staff in the exercise of their functions, including respect for the human dignity of all prisoners and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; security matters, including the use of force and the management of violent offenders, with a focus on preventive and defusing techniques; and training oriented towards care and social inclusion;

(c) To include, in rule 47, reference to the need for training to be based on research results and be reflective of contemporary best practice in penal sciences;

(d) To add a new paragraph to rule 47 requesting that prison staff, including those who are assigned specialized functions, should receive specialized training, taking into account, inter alia, the special needs of prisoners in situations of vulnerability, non-discrimination and social inclusion.

25. The Expert Group noted that the General Assembly had before it for adoption at its sixty-seventh session a draft resolution entitled “Human rights in the administration of justice”.²

² The draft resolution was subsequently adopted by the Assembly as resolution 67/166.