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**EXPERT GROUP MEETING ON THE STANDARD
MINIMUM RULES FOR THE TREATMENT OF PRISONERS
BUENOS AIRES, 11 – 13 December 2012**
Item 6 of the agenda

**Draft Report on the meeting of the Expert Group
on the Standard Minimum Rules for the Treatment of Prisoners
held in Buenos Aires from 11 to 13 December 2012**

1. 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 (resolution 65/230 of 21 December 2010). Its 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 twenty-first session of the Commission on Crime Prevention and Criminal Justice (E/CN.15/2012/18). Subsequently, the General Assembly¹ authorized the Expert Group to continue its work, within its mandate, with a view to reporting on its progress to the Commission on Crime Prevention and Criminal Justice at its twenty-second session in 2013. At the invitation of the Government of Argentina, the second meeting of the Expert Group was held in Buenos Aires, Argentina, from 11 to 13 December 2012.

2. At its 2nd meeting, the Expert Group considered the following preliminary areas, which were identified for possible consideration 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;
- (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- (h) The replacement of outdated terminology; and
- (i) Training of relevant staff to implement the Standard Minimum Rules.

II. Recommendations

The Expert Group recommends to the twenty-second session of the Commission on Crime Prevention and Criminal Justice to consider whether to extend its mandate to continue its work, or to refer the matter to a drafting group of Member States.

It further recommends to the Commission to reiterate that any changes to the Rules should not lower any of the existing standards.

The Expert Group also recommends to the twenty-second session of the Commission on Crime Prevention and Criminal Justice to request the Secretariat to prepare a consolidated rolling text of the Rules for further discussion at a further meeting to continue the revision process, drawing on the submission by Argentina, Brazil, South Africa, United States of America, Uruguay and Venezuela, the issues and Rules identified by the Expert Group under each preliminary area, as well as additional submissions and comments by Member States.

The Expert Group expresses its gratitude to the Government of Argentina for its generosity in hosting this second meeting, and thanks the Government of Brazil for its kind offer to host a third meeting to continue the revision process.

¹ The General Assembly at its 67th session.

In commending the Working paper prepared by the Secretariat, the Expert Group recognizes that, to a large extent, it has captured the issues and identified the Rules to be considered for a comprehensive revision under each area.

The Expert Group welcomes the 47 contributions received from Member States on the continued exchange of best practice as well as on the revision of the Standard Minimum Rules.

The Expert Group takes note of the contribution received from the UN Sub-Committee on Torture, and further received other submissions for its consideration, including the Summary of an Expert Meeting at the University of Essex on the Standard Minimum Rules for the Treatment of Prisoners Review.

The Expert Group also takes note of General Assembly resolution A/C.3/67/L.34/Rev.1, entitled Human rights in the administration of justice.

The Expert Group identified for consideration the following issues and Rules for the revision of the Standard Minimum Rules:

Area (a): Respect for prisoner' inherent dignity and value as human beings

Rules 6(1), Rules 57-59, Rule 60(1)

- 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
- to re-allocate Rules 57-59 and Rule 60(1) of the SMRs to become principles of general application in an amended Rule 6 (*Basic Principles*)
- to add further principles of general application, which are recognized in other international standards and norms, to an amended Rule 6 or elsewhere in the document, including the treatment of prisoners with respect for the inherent dignity and value of the human person; the prohibition of torture and other cruel, inhuman or degrading treatment or punishment; the retention of prisoners' human rights and fundamental freedoms except for those limitations demonstrably necessitated by the fact of incarceration; conditions of imprisonment and treatment of prisoners to protect the personal safety of prisoners; and allocation of prisoners to prisons close to their homes or places of social rehabilitation, to the extent possible

Area (b): Medical and Health Services

Rules 22-26, Rule 52, Rule 62, Rule 71(2)

- to add reference, in Rules 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 of having in place evidence-based HIV, tuberculosis and other disease prevention, treatment, care and support services as well as to drug dependence treatment programmes in prison settings which are complementary to and compatible with those in the community; to add that health policy in prisons shall be integrated or at least compatible with, national health policy; to address the need to prepare and maintain accurate, up-to-date and confidential medical files of all prisoners, and under the exclusive responsibility of the health centre/health staff; to refer to a global and comprehensive approach of health care, preventive and curative, taking into accounts health determinants such as hygiene; and to add the need to organize the continuity of treatment and care
- to clarify, in Rule 23(1), that beyond pre- and post-natal care, a broad range of gender-specific health care services should be available to women prisoners in line with the Bangkok Rules

- to add text to Rule 23(2) which would provide for the need to provide on-going healthcare services to children living with their mothers in prison
- 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 ; 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
- to elaborate, in Rule 25(1), on the primary duties and obligations of health care staff in prison settings, in particular to act in line with medical ethics core principles; 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 regards to their own health, including in the case of HIV testing, the screening of a prisoner's reproductive health history, etc; 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
- to allow, in Rule 26bis, 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; 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

Rule 27, 29, Rule 31, Rule 32

- to add a paragraph to Rule 27 encouraging the establishment of, and resort to, mediation mechanisms to solve conflicts
- to require that the principles and procedures governing searches be included into the areas in Rule 29, which are to be determined by law or by regulation of the competent administrative authority
- to add a new Rule 29bis. 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
- to add, in Rule 31, the reduction of diet and of drinking water, prolonged and indefinite solitary confinement, collective punishment, suspension of family and intimate visits to the practices completely prohibited as punishments for disciplinary offences
- to add, in Rule 31, a prohibition on imposing solitary confinement as a disciplinary punishment for juveniles, pregnant women, women with infants, breastfeeding mothers, prisoners with mental

disabilities; for life-sentenced prisoners and prisoners sentenced to death by virtue of their sentence; or to pre-trial detainees as an extortion technique

- to limit, in Rule 32(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 a 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
- to delete, in Rule 32, the reference to reduction of diet as a punishment as well as 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

Rule 7, Rule 44bis., Rule 54bis.

- to require, in Rule 7, that information on the circumstances and causes of death/and of serious injuries of a prisoner; the destination of remains be included in the respective prisoner file (management system), as well as cases of torture, confinement and punishments.
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- to include, into Rule 7, the need to establish information systems on prison capacity and occupancy rate by prison
- to add a new Rule 44bis. 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
- to clarify, in a separate paragraph of Rule 44bis., 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
- to add a new Rule 54bis. including on 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
- to add a new paragraph to Rule 44 addressing the need of prison administration 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

Rule 6, Rule 7

- 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 AIDS patients, tuberculosis patients, or terminal illness; drug dependent prisoners; ethnic and racial minorities and indigenous peoples; foreign national prisoners; lesbian, gay, bisexual and transgender (LGBT) prisoners; prisoners under sentence of death and people in other situations of vulnerability .

Area (f): The right of access to legal representation

Rule 30, Rule35(1), Rule 37, Rule 93

- to add, in Rule 35(1), the right to access legal advice to the information with which every prisoner should be provided upon admission
- 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)
- to grant, in Rule 37, the right to meet and consult with a legal advisor of own choice to all prisoners, 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 pre- and post-trial stages, in line with international standards and norms
- to grant, in Rules 37, those prisoners who do not speak the local language access to an interpreter in the course of correspondence or meetings with legal advisors
- to replicate, in Rule 93, 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

Rule 36, Rule 55

- to delete, in Rule 36, the restriction of prisoners' right to make requests and complaints only during 'each work day', as well as the possibility to not promptly deal with, or reply to, requests or complaints which are 'evidently frivolous or groundless'
- to add a sub-paragraph to Rule 36 on the need to have in place safeguards which would ensure that avenues are available for prisoners to make requests or complaints in a safe, direct and confidential manner, and without any risk of retaliation or other negative consequences
- to add a sub-paragraph to Rule 36 which would address 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
- to replace, in Rule 36(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, by "freely and in full confidentiality"
- to extend, in Rule 36(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 persons who has knowledge of the case in equal conditions before the law
- 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 result in a prompt and impartial investigation conducted by an independent national authority as per Rule 54bis.
- 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

- 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; the authority to conduct private and fully confidential interviews with persons deprived of their liberty in the course of visits
- to add text to Rule 55 to the effect of including, as much as possible, female and health-care specialists into the “qualified and experienced inspectors appointed by a competent authority”
- to require, in a new sub-paragraph 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 82-83, Rules 22-26, Rule 62, various others

- 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 SMRs in line with contemporary international standards; some delegations also expressed the wish to re-visit the term ‘prisoner’
- to replace, in preliminary observation 5(1), reference to ‘Borstal institutions’ by ‘juvenile detention centers’
- to replace the chapeau of Rule 7 from ‘Register’ to ‘Record-keeping’ and/or ‘Prisoner file management system, and to reflect technological advance in information management systems
- to replace, in Rules 82 and 83, the chapeau of ‘Insane and mentally abnormal prisoners’
- to replace, in Rule 82(1), the terms ‘insane’
- to replace, in Rule 82(2), the text ‘prisoners who suffer from other mental diseases or abnormalities’
- to replace, in Rule 22(1), the text ‘treatment of states of mental abnormality’
- to change, in Rules 22 to 26 and 62, the chapeau from ‘Medical services’ to ‘Health care services’
- to replace, in Rules 22(1), 25(2) and 26(2), ‘medical officer’
- to replace, in Rule 22(3), the term ‘qualified dental officer’
- to replace, in Rule 24, ‘The medical officer’
- to replace, in Rule 25(1), the term ‘medical officer’

- to replace, in Rule 26(1), the term 'The medical officer'
- to replace, in Rule 7(1), 17(1,3), 20(2), 24, 25(1,2), 26(2), 30(2,3), 32(1), 32(3), 35(1), 36(2), 41(2,3), 42, 43(1,2), 44, 50, 51(1), 57, 58, 61, 64, 66(1,2), 69, 76(3), 79, 80, 81(2), 88(1,2), 89, 90, 91, 92 and 93 "he" by "he or she", and "his" by "his or her".

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

Rule 47

- to acknowledge, in Rule 47, the positive impact of staff training on professionalism and sound prison management
- to add a new paragraph to Rule 47 clarifying that the training referred to in paragraphs 1 and 2 include, at a minimum, instructions in international and regional human rights instruments, UN standards and norms relevant to the treatment of prisoners, as well as 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 a 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; training oriented towards care and social inclusion
- 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
- 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

III. Organization of the meeting

A. Opening of the meeting

The meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners was held in Buenos Aires from 11 to 13 December 2012. The meeting was opened by H.E. Mr. Julio César Alak, Minister of Justice and Human Rights of Argentina.

B. Attendance

The meeting was attended by # representatives from 29 States: Angola, Argentina, Brazil, Canada, China, Cuba, Egypt, France, Germany, Georgia, 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).

The Office of the United Nations High Commissioner for Human Rights and the Sub-Committee on Prevention of Torture were represented at the meeting.

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.

The Conference of Ministers of Justice of Iberoamerican Countries, the Council of Europe and the International Committee of the Red Cross were represented.

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

One expert from the University of Essex, one expert from the University of Nottingham, one independent expert and one expert from the *Universidad Nacional de Rosario* also attended the meeting.

C. Election of officers

At its first meeting, on 11 December 2012, the Expert Group elected the following officers:

Chair: Victor Abramovich (Argentina)

Vice-Chairs (3): Lucky Mthethwa (South Africa)
Virginia P. Prugh, United States of America
Maria Grochulska (Poland)

Rapporteur: Vongthep Arthakaivalvatee (Thailand)

D. Adoption of the agenda and organization of work

At its 1st meeting, on 11 December 2012, 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. Exchange of information on best practices
5. Consideration of the preliminary areas of the existing standard minimum rules for the treatment of prisoners identified by the first Meeting of the Expert Group: areas (a) to (i)
6. Recommendations and conclusions
7. Closing of the meeting

Thirteen parallel side events on best practices were organized by the host Government throughout the Expert Group meeting.

IV. Summary of deliberations

The Expert Group had before it a Working paper prepared by the Secretariat² looking at preliminary areas for possible consideration listed in Economic and Social Council resolution 2012/13³ (Operative paragraph 6, (a) to (i)) and examining in detail, for relevance and comparison, a comprehensive variety of international conventions, declarations, covenants, protocols and pacts; internationally recognized standards, principles, guidelines, measures, rules and codes of conduct and ethics; resolutions and decisions of international bodies; specialized reports, comments and observations, conclusions and recommendations; international statements; and a variety of toolkits, handbooks and manuals.

² UNODC/CCPCJ/EG.6/2012, available in six languages.

³ To be considered by the General Assembly at its 67th session.

The Secretariat had also prepared a conference room paper entitled Summaries of replies from Member States to the Notes verbales of 8 March 2011 and 11 September 2012⁴. A total of 47 replies from Member States providing information on national legislation and best practices on the treatment of prisoners, as well as on the revision of the Standard Minimum Rules, had been received by the Secretariat and had been posted on the Expert Group website (<http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings5.html>).

Additional documents brought to the attention of the Expert Group included a paper by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵ and a Provisional statement on the role of judicial review and due process in the prevention of torture in prisons, adopted by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁶.

The Summary of an Expert Meeting at the University of Essex on the Standard Minimum Rules for the Treatment of Prisoners Review⁷, as well as additional submissions by non-governmental organizations, were also made available to the Expert Group.

A. Exchange of information on best practices

Numerous experts provided examples of recent initiatives that had been taken in their respective prison systems. A few experts indicated that the management of prison overcrowding remained a challenge and they provided examples of strategies that had been put in place, such as the introduction of restorative justice mechanisms and alternatives to imprisonment. One country had developed a guide to understanding and assessing prison systems to be used by their consular officers abroad. Several experts referred to the efforts made in their respective countries to strengthen reintegration programmes for pre-release and released prisoners with a view to preventing recidivism. Support to educational programmes and attention to the individual needs of prisoners were areas prioritized in many of the examples shared at the Expert Group. In other countries, mental health and the improvement of conditions for prisoners with disabilities or special needs had been addressed. Other experts elaborated on their programmes catering to the needs of female prisoners in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)⁸. One expert indicated that budgetary constraints affecting prison administration had prompted a critical reconsideration of the sentencing policies in his country. As a result, electronic monitoring had been more widely used as an alternative to imprisonment.

B. Consideration of the preliminary areas of the existing standard minimum rules for the treatment of prisoners identified by the first Expert Group Meeting

The Expert Group examined the nine preliminary areas of the Rules which had been identified for possible revision at its first meeting. Each area was briefly introduced by the Secretariat to highlight the main issues to be considered for discussion. While it was recognized that the time available was not sufficient to redraft the Rules under revision, a consensus was reached on most of the issues and the Rules to be considered under each area, largely in accordance with the proposals contained in the Working paper. On this basis, the experts of Argentina, Brazil, South Africa, United States of America, Uruguay and Venezuela prepared a first consolidated and revised version of the Rules, taking into account the changes agreed upon, in principle.

⁴ UNODC/CCPCJ/EG.6/2012/CRP.1, available in English

⁵ UNODC/CCPCJ/EG.6/2012/INF/3

⁶ UNODC/CCPCJ/EG.6/2012/INF/4

⁷ Submitted by the University of Essex and Penal Reform International (UNODC/CCPCJ/EG.6/2012/NGO/1)

⁸ General Assembly resolution 65/229 of 21 December 2010.

Such draft could be consolidated by the Secretariat, taking into account other submissions by Member States and comments, so as to have a rolling text to be used as a basis for concrete discussion at a further meeting to continue the revision process, with a view to reaching an agreement among the experts.

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

South Africa wishes to express its appreciation, on behalf of the African Group in Vienna, on the recommendations of this expert group. Most of the views shared and the subsequent outcome of the Expert Group are of particular interest in maintaining the highest standards of prison reform. The Standard Minimum Rules provide African States a much needed tool in assisting them to bring about prison reform within their countries that reflect internationally accepted standards and norms. The African Group re-affirms its commitment to remain engaged with this critical process and looks forward to the finalization of the revision process of the Standard Minimum Rules.

At its 6th meeting, the Expert Group adopted its draft report, including its recommendations to be submitted to the Commission at its twenty-second session, pursuant to Economic and Social Council resolution 2012/13.