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Open-ended Intergovernmental Expert Group on the Standard Minimum Rules for the Treatment of Prisoners

Brasília, Brazil, 28-31 January 2014

Working paper prepared by the Secretariat

1. Background

The United Nations Commission on Crime Prevention and Criminal Justice (“the Commission”) established the open-ended intergovernmental expert group (“the Expert Group”) at the request of the General Assembly¹ to exchange information on best practices, as well as national legislation and existing international law, and on the revision of the existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional science and best practices, with a view to making recommendations to the Commission on possible next steps.

The first meeting of the Expert Group was held in Vienna from 31 January to 2 February 2012 and its results, including the identification of the following nine thematic areas for possible consideration, were reported to the twenty-first session of the Commission:²

- (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;

¹ See General Assembly resolution 65/230 of 21 December 2010, entitled “Twelfth United Nations Congress on Crime Prevention and Criminal Justice”, operative paragraph 10.

² See E/CN.15/2012/18.

- (g) Complaints and independent inspection;
- (h) The replacement of outdated terminology; and
- (i) Training of relevant staff to implement the Standard Minimum Rules.

The General Assembly, in its resolution 67/188 of 20 December 2012, authorized the Expert Group to continue its work, within its mandate, and to report on its progress to the Commission at its twenty-second session in 2013.³

At the invitation of the Government of Argentina, the second meeting of the Expert Group was held in Buenos Aires, from 11 to 13 December 2012. This meeting had before it a working paper prepared by the Secretariat,⁴ which outlined proposals for the consideration of Member States on the basis of a detailed comparison of each of the nine preliminary areas and respective rules in the Standard Minimum Rules for the Treatment of Prisoners (“Standard Minimum Rules”) against a comprehensive variety of international and regional instruments, standards and norms, guidelines, observations and other relevant publications and tools; a full list of which was contained in the reference list annexed to that working paper.

The results of the meeting, including the identification of specific rules and issues for the revision of the Standard Minimum Rules, were reported to the twenty-second session of the Commission.⁵ The General Assembly (GA), in its resolution entitled “Standard Minimum Rules for the Treatment of Prisoners” (A/C.3/68/L.7), authorized the Expert Group to continue its work within its mandate with a view to reporting to the Commission at its twenty-third session in 2014.⁶

The third meeting of the Expert Group is being held at the kind invitation of the Government of Brazil, in Brasília, from 28 to 31 January 2014.

2. Introduction

The present working paper has been prepared by the Secretariat pursuant to operative paragraphs 5, 8 and 9 of GA resolution A/C.3/68/L.7, which, *inter alia*, took into consideration the recommendations of the second Expert Group, invited Member States to continue to be engaged in the revision process by submitting to the Secretariat, by 30 September 2013, proposals for revision in the nine areas identified, and invited civil society and relevant United Nations bodies to contribute to the process. Accordingly, the present working paper consists of the current version of the Standard Minimum Rules, into which all submissions received from Member States have been incorporated alongside the issues and the rules identified for revision by the second meeting of the Expert Group.

At the time of issuance of the paper, the Secretariat had received 31 individual and joint responses from 39 Member States, which provided concrete drafting and revision proposals; comments on the recommendations of the earlier Expert Group meetings; substantive suggestions for new rules to be included; and reference to

³ See General Assembly resolution 67/188 of 20 December 2012, entitled “Standard Minimum Rules for the Treatment of Prisoners”, operative paragraph 8.

⁴ See UNODC/CCPCJ/EG.6/2012/2.

⁵ See E/CN.15/2013/23.

⁶ See General Assembly resolution A/C.3/68/L.7 of 30 September 2013, entitled “Standard Minimum Rules for the Treatment of Prisoners”, operative paragraph 6.

national laws, regulations and good practice. All substantive submissions received by the Secretariat were posted on the UNODC official website.⁷

It should be borne in mind that the General Assembly reiterated that any changes to the Standard Minimum Rules for the Treatment of Prisoners Rules should not lower any of the existing standards but should improve them so that they reflect the recent advances in correctional science and good practices, so as to promote safety, security and humane conditions for prisoners.⁸ The Assembly further recalled its resolution 67/166 of 20 December 2012 on human rights in the administration of justice, in which it recognized the importance of the principle that, except for those lawful limitations that are demonstrably necessitated by the fact of incarceration, persons deprived of their liberty shall retain their non-derogable human rights and all other human rights and fundamental freedoms.⁹ The Assembly also recognized the need for the Expert Group to take into account the social, legal and cultural specificities of Member States.¹⁰

⁷ See <http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings6.html>.

⁸ See General Assembly resolution A/C.3/68/L.7 of 30 September, entitled "Standard Minimum Rules for the Treatment of Prisoners", operative paragraph 10.

⁹ Ibid., preambular paragraphs 10.

¹⁰ Ibid., operative paragraph 4.

Standard Minimum Rules for the Treatment of Prisoners

Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

PREAMBLE – RECOMMENDATIONS FROM MEMBER STATES:

- Norway: to include a new preamble as per the revision proposed by the Experts at the University of Essex¹¹, while avoiding citation of instruments that set out standards which fall short of subsequently adopted instruments, as recommended by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹²;
- Switzerland: to introduce a preamble referring to the Universal Declaration of Human Rights, relevant human rights treaties and optional protocols as well as political commitments related to human rights in the administration of justice.

[PREAMBLE ('Essex paper' supported by Norway)

[Considering *the alternatives to imprisonment as provided for in the Tokyo Rules, and the consequent need to give priority to applying non-custodial measures to persons who have come into contact with the criminal justice system;*

Taking into consideration *also the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, in which Member States declared, inter alia, that comprehensive crime prevention strategies at the international, national, regional and local levels must address the root causes and risk factors related to crime and victimization through social, economic, health, educational and justice policies;*

Bearing in mind *Principle 5 of the UN Basic Principles for the Treatment of Prisoners, which states that '[E]xcept for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants'.*

Recognizing *the developments on the treatment of detainees in international law through international and regional treaties, national, regional and international jurisprudence and instruments, guidelines and standards since the Standard Minimum Rules for the Treatment of Prisoners were first adopted, such as,*

- *The UN Code of Conduct for Law Enforcement Officials, 1979;*
- *The UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982;*

¹¹ Expert Meeting at the University of Essex on the Standard Minimum Rules for the Treatment of Prisoners, 3-4 October 2012, as submitted for consideration by the inter-governmental expert group, UNODC/CCPCJ/EG.6/2012/NGO.1 ('Essex paper').

¹² Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, 9 August 2013 (A/68/295), as submitted for consideration by the inter-governmental expert group, UNODC/CCPCJ/EG.6/2013/INF/2 ('Special Rapporteur on Torture').

- *The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985;*
- *The UN Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”), 1985;*
- *The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988;*
- *The UN Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, 1989;*
- *The UN Basic Principles for the Treatment of Prisoners, 1990;*
- *The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990;*
- *The UN Guidelines for the Prevention of Juvenile Delinquency (“the Riyadh Guidelines”), 1990;*
- *The UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990;*
- *The United Nations Standard Minimum Rules for Non-custodial Measures (“the Tokyo Rules”), 1990;*
- *The UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health-Care, 1991;*
- *The UN Guidelines for Action on Children in the Criminal Justice System, 1997;*
- *The UN Principles on the Effective Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2000;*
- *The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“the Bangkok Rules”), 2011;*
- *UNHCR, “Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the detention of Asylum Seekers and Alternatives to Detention”, 2012; and the*
- *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012.*

The present revisions to the Standard Minimum Rules for the Treatment of Prisoners are inspired by these developments and are aimed at ensuring the consistency of the Rules with provisions of existing international law but do not replace these and all relevant provisions contained in these instruments continue to apply.]

PRELIMINARY OBSERVATIONS

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, [grounded in respect for human rights and fundamental freedoms ([Joint Proposal](#)¹³)], to set out what is generally accepted as being good principle and practice in the treatment of prisoners [person deprived of liberty/person in prison (replacement suggested by [Mexico](#) throughout the SMRs)¹⁴] [imprisoned persons (replacement suggested by [Brazil](#) throughout the SMRs, including its title)] and the management of institutions.

[1 bis ([Joint Proposal](#))

The Standard Minimum Rules for the Treatment of Prisoners are inspired by the principles proclaimed in the Charter of the United Nations and in various United Nations conventions and declarations, recognizing that the dignity and worth of the human person is fundamental to the establishment of conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, and to

¹³ The “Joint Proposal” refers to the joint submission from the Governments of Argentina, Brazil, South Africa, United States of America, Uruguay and Venezuela (Bolivarian Republic of), circulated in a conference room paper at the twenty-second session of the Commission on Crime Prevention and Criminal Justice (E/CN.15/2013/CRP.6).

¹⁴ The Secretariat would like to point out that this proposal primarily aims to ensure equal consideration of men and women throughout the SMRs. It stems from the fact that the term “recluso” (“prisoner”) in Spanish language is not gender-neutral.

promote social progress and better standards of life. These rules are addressed to prison authorities, including senior management, administrative and professional corrections staff and health-care staff; and to professionals throughout the criminal justice system whose actions have impact on prisoners or their families, including policymakers, legislators, prosecutors, defence counsel, legal aid practitioners, the judiciary, probation services, counsellors and social services providers.]

2. In view of [*Despite* (replacement suggested by Brazil)] **the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.**

[2 *bis* (Joint Proposal)

These Rules are based on the consideration that every person deprived of liberty, who is subject to the jurisdiction of any of the Member States of the United Nations, must be treated with humanity, with full respect for their inherent dignity, their fundamental rights and guarantees, and in strict adherence to international human rights instruments. [In their role of guarantor, States must ensure to every person deprived of liberty their respect for life and personal integrity, minimum conditions compatible with their dignity, and the prohibition, without exception, of any acts of torture and other cruel, inhuman or degrading treatment or punishment. (Argentina, Brazil, Uruguay, Venezuela)] The international obligations undertaken by Member States are to be fully respected and implemented.]

[2 *ter* (Joint Proposal)

States shall take into account that the present Rules are supplemented by the following specific Rules: the UN Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”), 1985; the UN Standard Minimum Rules for Non-custodial Measures (“the Tokyo Rules”), 1990; the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“the Bangkok Rules”), 2011; [the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; UN General Assembly resolution 67/166 of 20 December 2012 entitled “Human rights in the administration of justice”; the Convention on the Rights of Persons with Disabilities, 2006; (Brazil)] and any other international instrument applicable to the matter.]

3. On the other hand, (deletion suggested by Joint Proposal) [T]he rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always (deletion suggested by Brazil) be justifiable for the central prison administration to authorize departures from the rules in this spirit [, provided the human rights and fundamental freedoms of prisoners are respected. (Joint Proposal)]

[3 *bis* (Joint Proposal)

States acknowledge that the excessive increase of prison populations and overcrowding constitute a challenge for the effective application of these minimum rules.]

RULE 4 – RECOMMENDATIONS FROM MEMBER STATES:

- Norway and Switzerland: to render explicit that the SMRs are applicable to all forms of deprivation of liberty without exception and regardless of the legal status of the imprisoned person; to further clarify that the SMRs should apply to both State- and privately-run places of detention, and that the State remains responsible for the adequacy of services in case certain services are outsourced;

- United States of America: to recall that the SMRs are applicable only in the context of the administration of justice, and do not encompass forms of detention unrelated to crime prevention and criminal justice, e.g. pursuant to the law of armed conflict.

4. (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, [persons under any form of detention or imprisonment, be it (replacement suggested by the Essex paper and supported by Norway)] **criminal or civil, untried or convicted, including prisoners subject to "security measures", or corrective measures ordered by the judge [including all forms of detention as set out in Rule 95. (replacement suggested by the Essex paper and supported by Norway)]**

(2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

5. (1) The rules do not seek to regulate the management of institutions set aside for young persons [offenders (replacement suggested by Brazil)] **such as Borstal institutions** [juvenile detention centres (replacement suggested by 2nd IEGM, as supported by Joint Proposal)] **or correctional schools** [education institutions (replacement suggested by Brazil)], **but in general part I would be equally applicable in such institutions.** [For specific guidance applicable to juvenile offenders, see the United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines"), 1990; and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules"), 1985. (Joint Proposal)]

(2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

[5 bis (Joint Proposal)]

The provisions of the Rules should not be interpreted as a limitation, suspension or restriction of the rights and guarantees of persons subject to these rules, recognized in national and international law. If there are two possible interpretations, the one that provides the greatest protection should be applied.]

Part I RULES OF GENERAL APPLICATION

RULE 6 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- 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;

[China does not support reference to sexual orientation in order to respect the practices and provisions of certain Member States in this regard]

[Norway supports this recommendation, and further encourages the consideration of discrimination based on health status as well as labelling on grounds of psychological profiles or criminal past]

[Switzerland supports this recommendation, and further encourages the consideration of multiple or aggravated forms of discrimination]

- To relocate Rules 57 – 59 and Rule 60(1) to make them part of an amended Rule 6, whose title is to read 'Basic Principles';

[Finland suggests to further relocate Rules 61, 63 and 64 into the rules of general application]

[New Zealand supports this recommendation]

- To add further principles of general application that are recognized in other international standards and norms, 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 the allocation of prisoners to prisons close to their homes or places of social rehabilitation, to the extent possible;

[Austria suggests to further add a rule addressing the respect for prisoners' freedom of thought and religion]

[Norway supports this recommendation and the respective proposals of the Special Rapporteur on Torture, including: (i) to explicitly recognize the absolute prohibition and criminalization of all forms of torture and other cruel, inhuman or degrading treatment or punishment, whether conducted by public officials, other persons acting on behalf of the State or private actors; (ii) to urge Member States to allocate the resources necessary to ensure humane treatment of persons deprived of their liberty; and (iii) to recognize all prisoners as subjects of rights and duties as opposed to objects of treatment and correction, including a reconsideration of concepts such as 'rehabilitation', 're-education', and 'corrective' or 'correctional' measures]

[Norway and Switzerland further support the proposals of the Special Rapporteur on Torture to add two new rules which would: (i) allow all persons deprived of liberty to expeditiously challenge the lawfulness of their detention; and (ii) oblige prison administrations to ensure that persons deprived of their liberty are held in officially recognized and accessible places of detention]

- To add a paragraph 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.

[China does not support reference to prisoners belonging to ethnic minorities, foreign national prisoners and lesbian, gay bisexual and transgender prisoners]

[France does not support reference to ethnic and racial minorities and indigenous peoples]

[Lebanon and South Africa support this recommendation, in principle; The Philippines encourage to further include prisoners charged with terrorism, prisoners of conflict and political prisoners]

[New Zealand prefers a shorter list of groups, and to re-phrase this recommendation as an obligation of prison administrations to address the welfare needs of prisoners, particularly vulnerable prisoners]

[Norway supports the respective proposal of the Special Rapporteur on Torture, i.e. to refer to the need of protecting the rights of disadvantaged groups of prisoners while at the same time ensuring that segregating members of these groups does not further marginalize them from the rest of the community]

Basic principle

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, [sexual orientation, disability, ethnic origin (Mexico)] political or other opinion, national or social origin, property, birth [gender, pregnancy, sexual orientation, age, disability,

conscience, belief and culture (South Africa) [economic, social, legal condition (El Salvador)] [on grounds of crime or crimes committed (The Philippines)] [membership of a national minority (Austria)] [level of education (Turkmenistan)] **or other status**. [Prisoners shall be treated in a manner that ensures their humanity and dignity. (Morocco)]

[6. (1) re-drafted (Finland)

Prisoners shall be treated with justice and with respect for their human dignity. There shall be no discrimination, without a justifiable reason¹⁵, on the grounds of race, national or ethnic origin, colour, language, sex, age, family status, sexual orientation, state of health, disability, religion, political opinion, political or professional activity or other reason relating to the prisoner.]

(2) On the other hand, it is necessary to respect the religious beliefs [, ways and customs (Mexico)] **and moral precepts of the group to which a prisoner belongs**. [Steps taken in good faith to assist disadvantaged groups through positive discrimination do not constitute prohibited discrimination. (New Zealand)]

[6. re-drafted (Joint Proposal)

(1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, age, ethnic origin, cultural traditions, disability, gender identity and sexual orientation or other status. States should develop policies to protect those vulnerable groups.

(2) It is important to recognize that the principle underlying Rule 6(1) means that no prisoner should be treated in a disadvantageous manner in respect of any of the listed criteria. This does not imply, however, that there is a prohibition against different treatment of prisoners for specific reasons and in line with their special needs.

(3) In the application of these rules, the religious beliefs and moral precepts of the group to which a prisoner belongs are to be respected.

(4) All persons subject to these rules shall be treated with respect for their inherent dignity. Torture and other cruel, inhuman or degrading treatment or punishment are prohibited.

(5) It is the responsibility of the correctional system to provide penitentiary conditions in a safe, secure, humane and transparent manner with the goal of an eventual release of prisoners upon the completion of their sentence and their successful reintegration into society. In this regard, an effective prison management programme should take into consideration the needs of prisoners with respect to education, meaningful work, health care, exercise and cultural activities.]

[6. re-drafted (Switzerland)

(1) States shall treat all categories of prisoners with respect due to their inherent human dignity and to their human rights without discrimination of any kind.

(2) The following rules are to be understood as applying to all individuals, without discrimination of any kind, including on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(3) No prisoner shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment and no exceptional circumstances whatsoever, including the state or threat of war, internal political instability or any other public emergency, may be invoked as justification for torture. The obligation of States to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with, or at the behest of the State party.

(4) The religion, belief and moral precepts of the group to which a prisoner belongs shall be respected.

¹⁵ The Secretariat would like to point out that this proposal would risk lowering the existing standard in Rule 6(1) of the SMRs.

(5) States shall commit to the personal, physical and psychological safety and security of prisoners from exploitation, abuse and violence.

(6) Prisoners shall be assigned to the extent possible to prisons close to their home or place of social rehabilitation, taking into account considerations such as prisoner's role as sole or primary carer for minor children or other dependents, as well as each individual prisoner's preference and availability of appropriate programmes and services.

(7) [add text of Rules 57 and 60 of the SMRs]

(8) Given the adverse impact of overcrowding in places of detention on conditions of detention, which can result in conditions that amount to cruel, inhuman or degrading treatment or punishment, or even torture, States should take all measures to prevent overcrowding in prisons.]

[6. bis (Argentina, Brazil, Uruguay, Venezuela)

Imprisoned persons shall be protected against all kinds of threats and acts of torture and other cruel, inhuman or degrading treatment or punishment, execution, forced disappearance, sexual violence, corporal punishment, collective punishment, forced or coerced treatment intervention and methods intended to obliterate the personality or decrease the physical or mental capacity of the person.]

[6. ter (Brazil)

The special needs of imprisoned persons belonging to vulnerable groups deprived of their liberty shall be respected and such persons shall be afforded protection, in particular: women; children; older imprisoned persons; imprisoned persons with disabilities; imprisoned persons with mental health-care needs; sick imprisoned persons, in particular patients with AIDS, tuberculosis patients and imprisoned persons with terminal illness; drug-dependent imprisoned persons; ethnic and racial minorities and indigenous peoples; imprisoned persons who are foreign nationals; lesbian, gay, bisexual and transgender imprisoned persons; imprisoned persons under sentence of death; and people in other situations of vulnerability.]

Register

[Record Keeping / Prisoner file management system (2nd IEGM)] [Register Management (Brazil)]

RULE 7 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To require that information on the circumstances and causes of death and 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;

[Norway supports this recommendation and the respective proposals of the Special Rapporteur on Torture, including the duty to have in place a comprehensive and accessible record of all persons deprived of liberty including (i) information regarding time/place of arrest as well as identity of the arresting officials; (ii) an individual's health state upon arrival; (iii) records of when the next of kin and a lawyer were contacted and visited the detainee; and (iv) information about the custody and whereabouts of a person, including transfers, available to the detainee as well as relatives or counsel]

- To include the need to establish information systems on prison capacity/occupancy rate by prison;
- To reflect technological advance in information management systems.

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book [secure permanent record (replacement suggested by New Zealand)] with numbered pages [or electronic databases (Czech Republic)] in which shall be entered in respect of each prisoner received: [record, which may be a

hard-copy system or an electronic system of records, that registers every person admitted to, held or released from the facility and the system. Sufficient procedures shall be in place to prevent unauthorized access or modification of any information contained in these registries. With respect to each prisoner received, the record will include, among others: (Joint Proposal)]

- (a) Information concerning his [or her (2nd IEGM, as supported by Brazil and Mexico, to be applied throughout the SMRs)] identity;
- (b) The reasons for his commitment and the authority therefor;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

[7. (3) (Spain)]

A person who has been imprisoned, and his or her legitimate heirs, shall be entitled to obtain from the prison administration a document certifying the period for which he or she was deprived of liberty, in what place and on what grounds.]

[7. redrafted (Finland)]

(1) No person shall be admitted to or held in a prison as a prisoner without a written commitment order in accordance with national law.

(2) At admission the following details shall be recorded immediately concerning each prisoner:

- a. information on the identity of the prisoner;
- b. the reasons for commitment and the authority for it;
- c. the day and hour of admission;
- d. an inventory of the personal property of the prisoner;
- e. any visible injuries and complaints about prior ill-treatment; and
- f. information about the prisoner's health, causes of death and serious injuries of the prisoner.]

[7. bis (Joint Proposal)]

(1) Consistent with good case management, in addition to the information provided in Rule 7(1)(a)-(c), records should be maintained on non-routine events affecting a prisoner; for example, transfers, medical interventions [by health-care personnel (replacement suggested by Brazil)], infractions, injuries, claims, disciplinary measures, achievements, complaints, requests and deaths, [torture and other cruel, inhuman or degrading treatment or punishment, serious injury, cause of death, deaths and the destination of remains. (replacement suggested by Brazil)]

(2) All such records shall be kept confidential and made available only to those whose professional responsibilities require access to such records.

(3) Prisoners should be provided with copies of the records pertaining to them, upon request.

[(4) Information systems should contain data on prison capacity and occupancy rate per prison. (Brazil)]

Separation of categories

8. [(1) (Spain)] The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, [gender identity (replacement suggested by Joint Proposal)] criminal record, the legal reason for their detention, [other relevant categories (Joint Proposal)] and the necessities of their treatment. Thus,

- (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
- (b) Untried prisoners shall be kept separate from convicted prisoners;
- (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- (d) Young prisoners shall be kept separate from adults.

[8. (2) (Spain)]

Without prejudice to the provisions of the previous paragraph, and in exceptional circumstances, mixed centres or departments may be established, in which both men and women may be housed in order to conduct specific treatment programmes or to avoid family breakdown.]

Accommodation

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room [*Occupancy of cells by two or more prisoners is acceptable if (a) each prisoner is thoroughly assessed to determine whether they can be placed in shared accommodation without undue risk to their safety; (b) the dimension and facilities of the cell are adequate for the health and comfort of the number of occupants; (c) a reasonable degree of privacy can be provided, particularly with respect to the use of a toilet (replacement suggested by New Zealand)*].

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

[(c) There shall be natural light at all times in order to prevent infectious illnesses. (Brazil)]

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard [of their personal hygiene according to their needs (replacement suggested by Joint Proposal)], and men shall be enabled to shave regularly.

Clothing and bedding

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Food

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health [, taking into account any special needs, (Brazil)] and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

Exercise and sport

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

Medical services

[Health-care services (2nd IEGM as supported by Brazil and South Africa, to be applied throughout the SMRs)]

RULE 22 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To add a reference 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;

[El Salvador suggests to add reference to the specialized care for terminally ill prisoners as well as to physical therapy, when necessary]

[Guatemala and Morocco support adding reference to the need to have in place prevention services for epidemics/communicable diseases and HIV, respectively]

[Lebanon, Morocco and Switzerland support to address the need for preparing and maintaining accurate, up-to-date and confidential medical files of all prisoners]

[Lebanon, Norway and Switzerland support to add a reference to the principle of equivalence of health care; in order to achieve this principle, Lebanon strongly supports reference to the need of integrating penitentiary health policy into, or at least rendering it compatible with, national health policy]

[New Zealand suggests to clarify that the services of a medical practitioner must be available to all prisoners, as required, including in case of medical emergencies; reference to HIV, tuberculosis and drug dependence treatment is not supported as other important diseases and health services are not mentioned]

[Norway suggests to add a right of all persons deprived of liberty to adequate health care, which should include adequate medical, psychiatric and dental care and medication; similarly, Austria suggests to add a new rule which would require an adequate supply of medicine in prisons]

[The Philippines prefers the free provision of health care services in prison settings to be optional, e.g. if means are available and/or for serious diseases requiring surgical operations¹⁶; the need for drug dependence treatment programmes should be limited to prisons of a significant size]

[Turkmenistan suggests to clarify the term ‘support services’ in this recommendation]

- To replace the text “treatment of states of mental abnormality” (paragraph 1), the term “qualified dental officer (paragraph 3), and the term “medical officer” throughout the document.

[Brazil, Croatia, Finland, the Joint Proposal and Morocco support this recommendation]

[22. (0) (Joint Proposal)]

The provisions of health care services for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care as are available in the community, and should have access to the health services without discrimination on the grounds of their legal status or their ability to pay.^{17]}

[22. (0) (New Zealand)]

Necessary prison health care services are to be provided free of charge.^{18]}

¹⁶ The Secretariat would like to point out that this proposal would risk lowering existing standards. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES/43/173) specifies that medical care and treatment shall be provided free of charge (Principle 24).

¹⁷ As per footnote 16 as far as the dotted part in this proposal is concerned.

¹⁸ As per footnote 16 as far as the dotted part in this proposal is concerned.

22. (1) At every institution there shall be available the services of at least one qualified medical officer [*health-care professional* (replacement suggested by Croatia and South Africa, to be applied throughout the SMRs)] [*physician*. (replacement suggested by Joint Proposal)] [*physician and one male nurse*. (replacement suggested by Brazil)] **who should have some knowledge of psychiatry** [*in addition to medical assistants* (replacement suggested by Morocco)]. **The medical services should be organized in close relationship to the general health administration of the community or nation** [*integrated under the Ministry of Health* (replacement suggested by Norway)]. **They shall include a psychiatric service for the diagnosis** [*service for psychiatric care in order to diagnose* (replacement suggested by Morocco)] **and, in proper cases, the treatment of states of mental abnormality** [*the treatment of states of mental disorders* (replacement suggested by Croatia)] [*the treatment of states of mental or psychosocial illness and disability* (replacement suggested by Joint Proposal)] [*the treatment of states of mental illness* (replacement suggested by South Africa)] [*treat difficult psychiatric states* (replacement suggested by Morocco)].

[22. (1) redrafted (Finland)

Prison authorities shall safeguard the health of all prisoners in their care. Medical services in prison shall be organized in close relation with the general health administration of the community or nation. Prisoners shall have access to the health services available in the country. All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner.]

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals, [*when such treatment is not available in prison. (Finland)*] **Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.** [*Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment. (replacement suggested by (Finland))*]

(3) The services of a qualified dental officer [*a qualified dental professional / a qualified dentist* (replacement suggested by Croatia)] [*dental health* (replacement suggested by (Finland))] **shall be available to every prisoner.**

[22. (4) (Spain)

Prisoners shall, in accordance with the national legislation of each country, have the same rights to confidentiality of health data as those of free citizens. Prison doctors shall respect this right in the use and treatment of their patients' health information.]

[22. (4) (New Zealand – only if explicit reference to gender-specific health services is considered necessary)

Services for gender-specific health issues are available to all prisoners.]

[22. (4), (5) (Joint Proposal)

(4) For the special needs of women, Rule 6 of the Bangkok Rules supplements Rules 22 to 26 of the Standard Minimum Rules for the Treatment of Prisoners.

(5) Appropriate health services, consistent with community standards, should be provided to prisoners who have problems with substance abuse.]

RULE 23 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To clarify, in 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 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders;

[Guatemala and Lebanon support this recommendation, including the requirement that the distinct health-care needs of prisoners of both sexes should be fully catered for; New Zealand prefers reference to gender-specific health care in Rule 22, if considered necessary]

- To add text to paragraph 2 which would support the need to provide on-going health-care services to children living with their mothers in prison.

[Austria suggests to clarify that such children are not be treated as prisoners, and that their best interests are always to be taken into account; South Africa recommends a regular review of such a child's continued stay in prison, and living conditions which resemble as closely as possible those of a child outside of prison]

[El Salvador supports this recommendation and suggests to add the need for adequate health-care services for children with special needs; the term 'children' in Spanish language should be rendered gender-neutral]

[Guatemala suggests to require that such children should be provided with specialized paediatric care as well as with clothing, meals, education and health care in an expeditious, effective and efficient manner]

[Switzerland suggests to ensure that the impact of custody on children accompanying a detained person, living with an imprisoned person or living outside a place of detention is duly addressed]

[The Philippines support this recommendation, in principle, and suggest adding an age limit for children who are allowed to live with their mothers in prison (e.g. two years)]

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate [, and the identity of the child shall be kept confidential (Mexico)].

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers. [It is important to promote conditions of confinement that are aimed at ensuring the welfare of and strengthening the bond between mother and child in an enclosed area so that confinement is not harmful to the psychosocial development of the children of women deprived of their liberty. (Mexico)]

[23. (2) redrafted (New Zealand)

Where children are permitted to reside in prison with a prisoner who is their parent or guardian, provisions shall be made for on-going access to health care services and the safe care of that child at any time when the prisoner is unable to provide such care.]

[23. (3) (Brazil)

The institution shall provide permanent health-care services for children living with their mothers.]

[23. redrafted (Finland)

(1) A pregnant prisoner shall, under the necessary supervision, be transferred to a hospital or another operational health-care unit outside the prison in sufficient time for the confinement. Where a child is born in prison, the authorities shall provide all necessary support and facilities.

(2) Infants may stay in prison with a parent only when it is considered to be in the best interest of the infants concerned. Prisoners' children shall not be treated as prisoners. Where such infants are allowed to stay in prison with a parent, special provisions shall be made for a nursery, staffed by qualified persons. Special accommodation shall be set aside to protect the welfare of such infants.]

RULE 24 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To add a paragraph 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;

[Lebanon supports this recommendation; similarly, Norway suggests to guarantee the availability of prompt, impartial, adequate and consensual medical and psychological examinations: (i) upon the admission of each detainee; (ii) when a prisoner is taken out of the place of detention for any investigative activity, upon transfer or release; and (iii) in response to allegations or suspicion of torture or other ill-treatment]

[Brazil supports this proposal; similarly, Switzerland is supportive of an obligation of medical personnel to detect, treat, properly document and refer to the responsible investigative authorities and signs, allegations or reasonable grounds to believe that torture or ill-treatment may have occurred prior to admission or in the course of detention or imprisonment]

[Switzerland further suggests to clarify that every prisoner should be medically examined upon admission, with special attention to issues which concern women prisoners]

24. [(1) (Spain)] The medical [health-care (replacement suggested by Brazil)] officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoner suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation [limit everyday activities, (replacement suggested by Brazil)] and the determination of the physical capacity of every prisoner for work.

[24. (2) (Spain)]

In order to safeguard the supreme value of human life, which the prison administration is duty bound to protect, the medical officer, together with a psychologist and a social worker, if any, shall, at the time of admission and at any time that the circumstances or behaviour of the prisoner may suggest that it is advisable, assess a prisoner's suicide risk. Risk profiles based on criminological and situational variables shall be used to this end and the director shall take reasonable steps to prevent a possible suicide.]

[24. (2), (3) (Norway)]

(2) Medical examinations shall be conducted in a setting that is free of any surveillance and in full confidentiality, except for when the presence of prison staff is requested by the medical personnel.

(3) Health personnel must be free from any interference, pressure, intimidation or order from detention authorities.]

[24. redrafted (Finland)]

The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.¹⁹

¹⁹ The Secretariat would like to point out that the dotted part of this proposal would risk lowering the existing standard in Rule 24 of the SMRs, which requires medical examinations of every prisoner as soon as possible after his or her admission.

When examining a prisoner a medical practitioner shall pay particular attention to:

- (a) diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;
- (b) recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;
- (c) dealing with withdrawal symptoms resulting from use of drugs, medication or alcohol;
- (d) identifying any psychological or other stress brought on by the fact of deprivation of liberty;
- (e) isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;
- (f) ensuring that prisoners carrying the HIV virus are not isolated for that reason alone; and
- (g) determining the fitness of each prisoner to work and to exercise.]

[24. bis (Brazil)]

(1) Physicians and nurses in prisons shall 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 imprisoned persons any time thereafter, using the necessary procedural safeguards.

(2) They shall report any 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.]

RULE 25 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

➤ To elaborate, in 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.

[Austria supports reference to the principles of informed consent in the doctor-patient relationship and the autonomy of patients with regard to their own health; it further suggests to add a rule on hunger strikers in prison settings]

[Guatemala supports reference to the confidentiality of medical information, in principle, but proposes to only partially apply this principle in the case of HIV diagnosis²⁰]

[Lebanon supports this recommendation, in particular an elaboration on the primary duties and obligations of health-care staff and reference to the core principle of medical ethics]

²⁰ The Secretariat would like to point out that this proposal would risk lowering existing standards. The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (A/C.3/65/L.5) specify that the right of women prisoners to medical confidentiality, including specifically the right not to share information, should be respected at all times (Rule 8).

[25. (0) (Joint Proposal)]

The relationship between the physician or health-care practitioner and prisoner is governed by the same ethical principles as those between the physician or health-care practitioner and any other patient. The primary duty of medical and (deletions suggested by Brazil) health care staff in prison is to treat prisoners as patients, to base health-care decisions on clinical grounds and to act in line with the normal principles of their profession.]

25. (1) The medical officer [*physician and other health practitioners* (replacement suggested by Brazil)] [*medical practitioner* (replacement suggested by Finland)] [*physician or health care practitioner* (replacement suggested by Joint Proposal)] **shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.** [*Prison health staff must provide services in accordance with the scopes of practice and codes of ethics applicable to their profession. (New Zealand)*]

[25. (1) redrafted (Finland)]

The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, with a frequency consistent with health care standards in the community, all sick prisoners and all who report illness or injury.²¹ The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner if requested at release, and shall otherwise examine prisoners whenever necessary.]

[25. (1) bis (Japan)]

The medical information of prisoners shall not be disclosed to others except in cases where there is a risk of endangering the prisoner's life or infecting his or her disease to others. This shall not, however, apply in the case where the prisoner gives his or her consent.]

(2) The medical officer [*physician or health care practitioner* (replacement suggested by Joint Proposal)] **shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.**

[25. (2) redrafted (Finland)]

The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.]

[25. (3) (Joint Proposal)]

The confidentiality of medical information shall be respected, unless doing so would result in a real imminent threat of harm to the patient or to others.]

[25. (4), (5) (Brazil)]

(4) The health staff shall have exclusive responsibility for the preparation and maintenance of accurate, up-to-date and confidential medical files of all imprisoned persons.

(5) The health staff shall 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 and other cruel, inhuman or degrading treatment or punishment.]

²¹ The Secretariat would like to point out that the dotted part of this proposal would risk lowering the existing standard in Rule 25(1) of the SMRs, which requests the medical officer to see all sick prisoners on a daily basis and to further see prisoners to whom his or her attention is specially directed.

RULE 26 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To allow, in a new rule 26 bis, for the participation of prisoners in clinical trials accessible in the community and to other health research only when 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.

[Guatemala does not support this recommendation]

[Morocco supports the prohibition of medical and scientific experimentation on prisoners]

[New Zealand suggests to move the content of Rule 26 to Rule 55 ('Inspection') and to redraft Rule 26(1) so as to request prison administration to put in place systems which would ensure healthy environments in prisons (e.g. as related to sanitation, hygiene and food safety) and remedy any identified deficiencies]

[South Africa suggests to amend Rule 26 in order to reflect the fact that some or all of the functions described in the rule are not exclusively fulfilled by medical officers]

26. (1) The medical officer [health-care personnel (replacement suggested by Brazil)] **shall regularly inspect and advise the director upon:**

- (a) **The quantity, quality, preparation and service of food;**
- (b) **The hygiene and cleanliness of the institution and the prisoners;**
- (c) **The sanitation, heating, lighting and ventilation of the institution;**
- (d) **The suitability and cleanliness of the prisoners clothing and bedding;**
- (e) **The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.**

(2) The director shall take into consideration the reports and advice that the medical officer [health-care personnel (replacement suggested by Brazil)] **submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.**

[26. bis (2nd IEGM amended by Brazil and New Zealand)

(1) *Prisoners shall be allowed to participate in clinical trials and other health research accessible in the community only in case it is expected to produce a direct and significant benefit to their health* [likely to have significant health benefits for the prisoner or a wider group of which the prisoner is a member (replacement suggested by New Zealand)].

(2) *Procedural safeguards shall be in place to ensure a prisoner's free and informed consent, complemented by external review* (deletion suggested by Brazil), *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.*]

Discipline and punishment

RULE 27 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To add a paragraph encouraging the establishment of / resort to mediation mechanisms to solve conflicts.

[France supports this recommendation as long as resort to mediation does not become mandatory]

[New Zealand supports this recommendation; similarly Lebanon is supportive while also pointing to the need for specialized staff training in conflict management; The Philippines further suggest the consideration of alternative dispute resolution principles as well as of restorative justice programmes in prisons]

[Norway supports the respective proposals of the Special Rapporteur on Torture, including to: (i) put an obligation on prison administrations to use disciplinary measures on an exceptional basis only, when the use of mediation / other dissuasive methods to resolve disputes proves to be inadequate to maintain proper order; and to (ii) ensure proportionality between disciplinary punishment and the offence for which it is established]

[Turkey supports this recommendation, in principle, but suggests to limit it to exceptional circumstances, e.g. where the life and health of prisoners are at risk]

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

[27. redrafted (Finland)

The maintenance of discipline in prison shall be based on firmness and fairness and on the use of dynamic security with no more restrictions than is necessary to ensure good order in prison and safety of the prisoners and staff.]

[27. bis (Brazil)

The prison staff shall establish and resort to mediation mechanisms to solve conflicts, with the possibility of defence.]

28. (1) No prisoner shall be employed, in the service of the institution, in [any work of a painful or exploitative nature or in (Morocco)] any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

[28. (3) (Spain)

In addition, under the management and supervision of the administration, inmates may form groups with a view to the settlement of conflicts through the use of mediation, dialogue and responsible compromise on the part of the inmates themselves.]

RULE 29 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To require that the principles and procedures governing searches be included in this rule that are to be determined by law or by regulation of the competent administrative authority;
- 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.

[Austria supports this recommendation, in principle, and proposes to also consider the challenge associated with searches of persons who are suspected to smuggle drugs in their bodies]

[El Salvador supports this recommendation, but questions whether searches of visitors should be addressed in Rule 29, which forms part of the section on ‘Discipline and Punishment’; similarly, New Zealand would prefer to add such rule under a new heading entitled ‘Searches’, including the following principles: (i) The only purpose for which searches may be carried out is to locate prohibited items; (ii) Searches should be no more frequent or intrusive than reasonably necessary to achieve that purpose; (iii) The person being searched is to be afforded as much privacy and dignity as is consistent with achieving the purpose of the search; (iv) Strip searches or other intrusive searches must only be carried out by, and in sight of, a person of the same sex as the person being searched, unless the regulations provide otherwise in exceptional circumstances (e.g. in case of transgender prisoners); (v) Where strip searches or other intrusive searches of prisoners are discretionary, the reason for conducting them must be recorded. ²²]

[Guatemala suggests to consider special procedures governing intimate body searches carried out on visitors and prisoners in line with international standards]

[Lebanon supports this recommendation, in principle, as long as it does not limit the authority of the prison administration to ensure security in its facilities]

[Norway supports the respective proposal of the Special Rapporteur on Torture, including: (i) searches to be subject to the principles of legality, necessity and proportionality; (ii) searches to be conducted by trained personnel of the same sex as the prisoner, including health professionals from outside the detention facility, as appropriate; and (iii) alternative screening methods to replace strip searches and body cavity searches]

29. The following shall always be determined by the law or by the regulation of the competent administrative (deletion suggested by Brazil) authority:

- (a) **Conduct constituting a disciplinary offence;**
- (b) **The types and duration of punishment which may be inflicted;**
- (c) **The authority competent to impose such punishment,** [; and
- (d) **Access to the appellate process** (Finland)]

[29. bis (Brazil)

The law or regulation of the competent authority relating to searches of imprisoned persons and visitors shall be based on international standards and norms and on the principles of legality, necessity and proportionality.]

RULE 30 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To provide 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).

²² The Secretariat would like to point out that the dotted parts of this proposal would risk lowering existing standards. The Basic Principles for the Treatment of Prisoners (A/RES/45/111) specify that all prisoners shall be treated with respect due to their inherent dignity as human beings (Principle 1). Furthermore, the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (A/RES/65/229) provide that: (i) alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches (Rule 20); and that (ii) searches are only conducted by staff trained in appropriate searching methods and in accordance with established procedures (Rule 19).

[Austria suggests to add a rule on procedural safeguards for prisoners charged with disciplinary offences, including the right to (i) be provided with information on the accusation(s); (ii) have sufficient time to prepare a defence; (iii) request the hearing/attendance of witnesses; and to (iv) appeal against disciplinary punishment to an independent higher authority; similarly, South Africa emphasizes that prisoners should be (i) informed, in writing, of the allegations against them; (ii) provided with the right to defend themselves, including through a legal representative of their choice and at their own expense; and (iii) given reasons for a decision on disciplinary matters which affect them; penalties may only be imposed after the disciplinary process has been concluded, and never as preventive measure or as a threat for further action]

[Croatia supports this recommendation, and suggests it be reflected in Rule 30(3)]

[The United Kingdom prefers to render a qualified right to legal advice in the context of disciplinary proceedings subject to a means and merits testing as opposed to automatic access to publicly funded legal representation]

30. (1) No prisoner shall be punished except in accordance with [due process and (Joint Proposal)] the terms of such law or regulation, and never twice for the same offence [act (replacement suggested by Finland)].

[30. (1) bis (Finland)

Any allegation of infringement of the disciplinary rules by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.]

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case. (deletion suggested by Joint Proposal)

[30. (2) redrafted (Finland)

Prisoners shall be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them and have adequate time and facilities for the preparation of their defence.]

[30. (2) bis, (2) ter (Joint Proposal)

(2) bis. *The competent authority shall conduct a thorough examination of the case.*

(2) ter. *The prisoner shall have the opportunity to seek judicial review.]*

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

[30. (3) redrafted (Finland)

Prisoners shall be allowed to defend themselves in person or through legal assistance, when the interests of justice so require, and have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing.]

[30 (3) bis (Brazil)

The imprisoned person shall have the conditional right to legal advice in the context of disciplinary proceedings.]

RULE 31 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To add 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;

[Australia cautions that prohibiting the suspension of family and intimate visits may restrict the capacity of a prison administration to effectively respond to misconduct or to incentivize good behaviour; New Zealand shares this view, and suggests to restrict the suspension of family and intimate visits to exceptional circumstances ²³]

[El Salvador suggests to clarify that the proposal would not bar the suspension of family or intimate visits for visitors who have committed administrative offences]

[France does not support prohibiting 'prolonged' solitary confinement as defined by the UN Special Rapporteur on Torture; only the indefinite suspension of family and intimate visits should be prohibited]

[Guatemala does not support excluding the reduction of diet, the suspension of family and intimate visits and collective punishment from the practices completely prohibited as disciplinary punishment]

[Norway and Switzerland support this recommendation and the respective proposals of the Special Rapporteur on Torture, i.e. to expand the prohibition to encompass: (i) indefinite solitary confinement as part of a judicially imposed sentence; (ii) prolonged solitary confinement, including through frequently renewed imposition; the imposition of solitary confinement in general should further be subject to independent review]

- To add 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 pre-trial detainees, as an extortion technique.

[Australia does not object to this recommendation, in principle, as long as it does not undermine the authority of prison administrations to reduce or bar, as a measure of last resort, prisoners' physical contacts with other prisoners, i.e. if considered necessary for their safety, the safety of others, or in order to address other risks to the correctional system]

[France does not support the exclusion of prisoners with mental disabilities per se from being subjected to solitary confinement, which is considered too restrictive; further, the term 'extortion technique' in the context of solitary confinement for pre-trial detainees would need to be clarified]

[France, Turkey and the United Kingdom do not support the exclusion of life-sentenced prisoners per se from being subjected to solitary confinement as a disciplinary punishment]

[France and Guatemala do not support the exclusion of juvenile offenders per se from being subjected to solitary confinement; rather, France suggests to render its imposition on juveniles an exceptional measure, to require consideration of the juvenile's age/level of discernment, or to lower the maximum time period for which solitary confinement may be imposed on juveniles²⁴]

[New Zealand does not support this recommendation on the grounds that it would render disciplinary provisions more complex, and arguably less fair]

[Switzerland supports this recommendation, including all groups for which solitary confinement should be prohibited, and suggests to add prisoners with psychosocial or other disabilities or health conditions]

²³ The Secretariat would like to point out that this proposal would risk lowering existing standards. The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (A/C.3/65/L.5) specify that disciplinary sanctions for women shall not include a prohibition of family contact, especially with children (Rule 23).

²⁴ The Secretariat would like to point out that this proposal would risk lowering existing standards. The UN Rules for the Protection of Juveniles Deprived of their Liberty (A/RES/45/113) specify that closed or solitary confinement shall be strictly prohibited in case of juveniles (Rule 67).

31. Corporal punishment, punishment by placing in a dark cell, [isolation, reduction of diet and water [, collective punishment (Brazil)] (Joint Proposal)] [dietary penalties and prolonged and indefinite solitary confinement (New Zealand)] and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences [deletion suggested by (Joint Proposal)].

[31. redrafted (Finland)]

(1) Collective and corporal punishments, including confinement or reduction of diet, punishment by placing in a dark cell and all other forms of inhuman or degrading punishment shall be prohibited. Punishment shall not include a total prohibition on family contact.

(2) Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible. Solitary confinement of children, of pregnant women, parents with infants and breastfeeding mothers in prison and of persons with mental illnesses shall be prohibited.]

[31. bis (Joint Proposal)]

Restrictions on visitation as a punishment should only be used in exceptional circumstances [shall not be used as a punishment. (replacement suggested by Brazil)]]

RULE 32 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To limit in 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;

[New Zealand prefers to limit solitary confinement to the most serious breaches of prison discipline]

[Switzerland supports this recommendation, and suggests to further refer to the need to: (i) put in place respective safeguards; (ii) receive prior authorization by the competent authority; and (iii) have the imposition of solitary confinement be subject to independent review]

- To delete the reference to reduction of diet as a punishment, and reference to the medical officer examining prisoners and certifying them fit for punishment.

[Norway supports this recommendation and the respective proposal of the Special Rapporteur on Torture, i.e. to exclude any involvement of health-care personnel in disciplinary or security-related matters while at the same time ensuring that health-care staff closely monitors the mental and physical health of inmates undergoing punishment and to visit them as deemed medically necessary or upon the request of the inmates]

32. (1) Punishment by close confinement or reduction of diet (deletion suggested by Guatemala and Morocco) **shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.**

[32. (1) redrafted (Argentina, Brazil, Uruguay, Venezuela)]

Confinement constitutes an exceptional measure applied only for severe cases and only to preserve the life and integrity of prisoners, and shall be applied when the health-care staff, after examining the person, has certified in writing that he or she is fit to sustain it.]

[32. (1) bis (New Zealand)]

The imposition of solitary confinement should be limited to the most serious breaches of prison discipline. The suspension of family and intimate visits should only be imposed in exceptional circumstances.]

[32. (1) bis (Brazil)

Solitary confinement as a disciplinary measure shall never be imposed on juveniles, pregnant women or women with infants, breastfeeding mothers or imprisoned persons with mental disabilities; on imprisoned persons sentenced to life imprisonment or death, by virtue of their sentence; or on pre-trial detainees, as an extortion technique.]

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

[32. (1), (2) redrafted (Finland)

(1) The requirements regarding accommodation, personal hygiene, access to open air, light, to medical care, water and adequate nutrition and the right to exercise continue to apply where prisoners are undergoing punishment.

(2) The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff. The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by any condition of imprisonment, including conditions of solitary confinement.]

(3) The medical officer [health care staff (replacement suggested by Argentina, Brazil, Uruguay, Venezuela)] **shall visit daily** [twice a week and as often as the physician considers necessary (replacement suggested by France²⁵)] **prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.**

[32. (4) (Argentina, Brazil, Uruguay, Venezuela)

Confinement orders shall be authorized by competent authority and shall be subject to judicial review.]

[32. bis (Brazil, South Africa, United States of America)

(1) The use of restricted living conditions and privileges shall be limited to situations of serious rule infractions, violent behaviour and cases of personal protection of self or others. It shall never be used as punishment for a particular crime or discrimination in violation of Rule 6. All conditions associated with restricted living conditions shall comply with the standards for other prisoners, such as light, ventilation, heating, sanitation, water, and adequate personal space, including bedding and linens. At no time shall restricted living conditions involve isolation from human contact or interaction, including staff during any shift.

(2) Admission to restricted living conditions shall only be imposed through a transparent administrative process and should be applied to ensure the safety, security and orderly operation of the facility or to protect the public.

(3) Extended periods of restricted living conditions²⁶ shall be regularly reviewed through an administrative process that includes an evaluation of the prisoner's medical and mental conditions, current behaviour, original reason for admission and other factors that may be relevant. The decisions of the administrative committee shall

²⁵ The Secretariat would like to point out that this proposal would risk lowering the standard in Rule 32(3) of the SMRs.

²⁶ The Secretariat would like to point out that a definition of the term 'restricted living conditions' and whether it differs from solitary confinement may be required. Subject to such definition, 'extended periods of restricted living conditions' may risk lowering existing standard. The Basic Principles for the Treatment of Prisoners (A/RES/45/111) specify that efforts addressed to the abolition of solitary confinement as a punishment or to the restriction of its use should be undertaken and encouraged (Principle 7).

be reviewed by the appropriate higher authority. A reduction in diet shall never be inflicted. Absent security justifications, visitation shall not be restricted. (deletion suggested by Brazil)

(4) The physician or health care practitioner shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health. (deletion suggested by Brazil)

[Use of force and (Norway)] **Instruments of restraint**

[33. (1) (Norway)

The use of force and instruments of restraint should be a measure of last resort that may be used only in exceptional circumstances, when strictly necessary as specified by law, for the shortest possible time and in a manner that complies with the principle of proportionality.]

33. [(2) (Norway)] Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer; (deletion suggested by Norway) [(b) *On medical advice to reduce the risk of self-harm;* (replacement suggested by New Zealand)]

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority [*and the judicial authority in whose jurisdiction the penal institution is located. In case force is used, its use shall be legal and limited to what is necessary to control the unruly prisoner.* (Morocco)]

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

RULE 35(1) – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To add the right of prisoners to access legal advice to the information with which every prisoner should be provided upon admission.

[Norway supports this recommendation and the respective proposal from the Special Rapporteur on Torture, i.e. to add that all information on rights and obligations of inmates must be provided in a language that the inmate understands, including the obligation to make such information available in both written and oral form, in Braille and easy-to-read formats, and in sign languages for deaf or hard-of-hearing individuals, and to display such information prominently in all places of deprivation of liberty]

[The United Kingdom is supportive if this does not imply an automatic right to publicly-funded legal advice]

Information to and complaints by prisoners

35. (1) Every prisoner on admission shall be provided with written information [*in a language which he or she understands, particularly in the case of indigenous persons* (Mexico)] **about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized**

methods of seeking information and making complaints, [*the right to access legal advice (Brazil)*] **and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution** [, *including information on motivation measures and meritorious conduct (Mexico)*].

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally. [*Consideration shall be given to the use of interpreters, including sign language interpreters, in cases of indigenous persons and persons with disabilities (Mexico)*].

[35. (3) (Morocco)

If the prisoner is a foreigner and does not speak the language of the country in which he or she is imprisoned, the information shall be translated into a language which he or she understands.]

[35. redrafted (Finland)

(1) On arrival in prison, prisoners shall be informed without delay of prison conditions as well as of their rights and obligations. The information shall be available in the most commonly used languages in accordance with the needs of the prisoners in the prison.

(2) A foreign prisoner shall be informed of his or her possibility to contact the diplomatic representation of his or her home country. A foreign prisoner shall also be provided with interpretation assistance, where possible. A prisoner who uses sign language or requires interpretation services due to a disability shall be provided the necessary interpretation and translation assistance.]

RULE 36: ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To delete 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";
[New Zealand does not support this recommendation if it implies an obligation to investigate vexatious complaints, which would risk hampering the work of internal and external complaints bodies, in particular if a small group of prisoners submits large numbers of requests which are trivial or repetitive]
- To add 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;
[Morocco does not support this recommendation as far as collective requests are concerned, which should be subject to disciplinary measures]
- To add 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;
[Italy strongly supports this recommendation]
- To replace, in 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";
- To extend in 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 do so, to a member of the prisoner's family or any other person who has knowledge of the case in equal conditions before the law;

➤ To make explicit reference 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.

[France considers the requirement of a 'prompt' investigations into all allegations of torture and other ill-treatment too restrictive/disproportionate and prefers reference to 'swiftly' instigating such investigations²⁷]

36. (1) Every prisoner shall have the opportunity each week day (deletion suggested by Brazil) of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed [, *directly or through someone acting on his behalf, (Joint Proposal)*] to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels [, *including in a safe and confidential manner (Joint Proposal)*].

(4) Unless it is evidently frivolous or groundless, [*or it contains specific threats against the safety of persons or the security of institutions (Morocco)*] every request or complaint shall be promptly dealt with and replied to without undue delay.

[36. (4) redrafted (Joint Proposal)]

Every request or complaint shall be responded to appropriately and without undue delay.]

[36. (4) bis (Brazil)]

Allegations of torture and other cruel, inhuman or degrading treatment or punishment shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority as per rule 54 bis.]

[36. (5), (6) (Joint Proposal)]

(5) Prisoners who provide information or make complaints shall be protected against retaliation by facility personnel, including staff and other inmates.

(6) For special needs of women, Rule 25 of the Bangkok Rules supplements rule 36.]

[36. redrafted (Finland)]

(1) Prisoners, individually or as a group, shall have an opportunity to make requests or complaints to the director of the prison, the central prison administration, the judicial authority or to any other competent authority. If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner.

²⁷ The Secretariat would like to point out that this proposal would risk lowering existing standards. The Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/RES/55/89) specify that complaints and reports of torture and ill-treatment should be promptly and effectively investigated by investigators who are independent of the suspected perpetrators and the agency they serve (Principle 2).

(2) *The prisoners shall have right to make requests or complaints to an inspector of prisons. The prisoner shall have the opportunity to talk to the inspector or to any other duly constituted authority entitled to visit the prison without members of the staff being present.*

(3) *Prisoners shall not be punished because of having made a request or lodged a complaint.]*

[36. *bis* (Joint Proposal)]

For the effective fulfilment of the rights of prisoners that are enshrined in these Rules, States shall inform them of their right to legal information, appeals and complaints and must ensure the same access to legal representation without delay or censorship, ensuring confidentiality.]

[36. *ter* (Brazil)]

In addition to requests made directly to the authorities by persons deprived of liberty or their representatives, States shall also permit the receipt and handling of complaints by an external body independent of the prison administration, and shall establish the means by which such complaints may be made confidentially and free of charge.]

Contact with the outside world

RULE 37 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To grant to all prisoners 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 pre-trial and post-trial stage, in line with international standards and norms;

[Lebanon supports an explicit reference to access of imprisoned persons to legal aid mechanisms]

[Norway suggests to clarify that all inmates should be provided with adequate opportunities, sufficient time and the facilities needed to communicate and consult with legal counsel, and be allowed to keep in their possession, without access by the prison administration, documents relating to legal proceedings]

[South Africa supports this recommendation; similarly, Norway and Switzerland suggest to clarify that contact with the outside world, including prompt access to legal counsel and legal aid mechanisms, when necessary, should be ensured for all persons deprived of liberty and at all stage of deprivation of liberty]

[The Philippines suggest to also consider, and allow for, electronic means of communication between a prisoner and his or her legal advisor, subject only to monitoring by the administration for security purposes]

[The United Kingdom suggests that access to legal aid should be granted ‘where such aid is available’²⁸]

- To grant to those prisoners who do not speak the local language access to an interpreter in the course of correspondence or meetings with legal advisors.

[France suggests to limit this recommendation’s scope of application to criminal procedures]

²⁸ The Secretariat would like to point out that this proposal would risk lowering existing standards. The UN Principles on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187) specify that States should ensure that anyone who is arrested, detained, suspected or charged with a crime punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process (Guidelines 5-6, Principles 2-3).

37. [(1) (New Zealand, The Philippines, Spain)] Prisoner shall be allowed under necessary supervision to communicate with their family and reputable (deletion suggested by Brazil) friends at regular intervals, both (deletion suggested by New Zealand) by correspondence [, communication by telephone (Brazil, New Zealand)] and by receiving visits.

[37. (2) (New Zealand)]

For prisoners who do not speak the local language, to facilitate access to an interpreter in the course of correspondence or meetings with legal advisors.]

[37. (2) (Spain)]

Prisoners shall have at their disposal specially adapted premises to ensure that prisoners can receive intimate visits with due regard for safety and dignity.]

[37. (2), (3), (4) (The Philippines)]

(2) Prisoners shall have 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.

(3) In jails or prison facilities which provide for electronic or digital mechanism of communication, the prisoner may opt to meet and consult with a legal advisor through such mechanism, subject only to rules and monitoring by the administrator for security purposes.

(4) Imprisoned persons shall have access to legal aid mechanisms, including paralegal services provided by paralegal officers.]

[37. redrafted (Finland)]

Prisoners shall be allowed to communicate with their family, legal advisors and all persons or representatives of organizations and to receive visits from these persons at regular intervals subject only to such restrictions and supervision as are necessary in the interests of their treatment, the security and good order of the institution. Consultations and other communications, including correspondence about legal matters between prisoners and their legal advisers, shall be confidential.]

[37 bis (Japan)]

Every prisoner shall be allowed, within the limits permitted by domestic laws and regulations, to access the defence counsel or any other legal specialist in order to seek the legal advice regarding making complaints or any legal matters in and outside of the institution.]

[37 bis (Brazil)]

Imprisoned persons shall have 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 pre-trial and post-trial stages, in line with international standards and norms. Those imprisoned persons who do not speak the local language shall be guaranteed access to an interpreter in the course of correspondence or meetings with legal advisors.]

RULE 38 – RECOMMENDATIONS FROM MEMBER STATES:

- Austria: to include an obligation for prison administrations to inform foreign national prisoners of the possibility of requesting that the enforcement of their sentence be transferred to another country.

38. (1) Prisoners who are foreign nationals shall [*automatically (Morocco)*] be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong [, *unless they bear an additional nationality other than the nationality of this State (Morocco)*].

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news [*Prisoners should have the opportunity to be informed of the news (replacement suggested by New Zealand)*] by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures, [*television (New Zealand)*] or by any similar means as authorized or controlled by the administration.

Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed [*to the extent possible, (Morocco)*²⁹] to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

Retention of prisoners' property

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.

(2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

²⁹ The Secretariat would like to point out that this proposal would risk lowering the standard in Rule 41(2) of the SMRs.

(3) Any money or effects received for a prisoner from outside shall be treated in the same way.

(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

Notification[s] *of death, illness, transfer, etc.* [and investigations (Norway)]

RULE 44 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- 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;

[Finland, France, Guatemala, New Zealand and the United Kingdom suggest to use the term 'facilitate', as the prison administration is not necessarily responsible for funeral arrangements]

[Guatemala agrees that in the event of custodial death, and in case there are no family members to take care of the required formalities or to bear the burial costs, the State shall do so]

[Switzerland suggests to clarify that the body of a deceased prisoner should be returned to his or her family]

[The Philippines suggests to make this recommendation subject to situations where the spouse, any immediate relative of the deceased or any other person fail or refuse to receive the remains, or do not have the means to provide for a decent burial of the deceased]

[The United Kingdom suggests to also consider other lawful disposal of the body in case of custodial death]

- 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;

[Austria and Switzerland suggest to emphasize that such investigations should be carried out by institutions independent from the prison administration, excluding any institutional or hierarchical connection between the investigatory body and the alleged perpetrator, if applicable]

[France and New Zealand support this recommendation, in principle, but suggests to clarify that the prison administration or other official agencies or competent bodies must carry out such investigations; in cases where another official agency is in charge, the prison administration must assist such investigations]

[France further prefers to limit the obligation to investigate custodial deaths to cases of suicide, violent death, or when the cause of death is unknown or suspicious]

[Guatemala does not support this recommendation, as the prison administration does not have the authority to conduct criminal prosecutions; China, France and Turkmenistan are not supportive of including incidents of death shortly following release on the grounds that the prison administration may no longer have jurisdiction over such cases]

- 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.

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections [or psychosocial illness or disability (replacement suggested by Joint Proposal)], the director shall at once inform the spouse, if the prisoner is married, or the nearest relative [,

unless in the case of illness or injury the prisoner has explicitly indicated to the prison administration that such a person should not be informed. (Essex Paper supported by Norway) **and shall [I]n any event** [, the director shall at once (replacement suggested by the Essex Paper, supported by Norway) **inform any other person previously designated by the prisoner.**

[44. (1) bis (Joint Proposal)]

In the event of a death in custody [due to unnatural causes (South Africa)], an investigation by an impartial and competent authority shall be conducted and if warranted, the findings turned over to appropriate law enforcement authorities. [Investigations should establish whether the death was caused as a result of torture and other cruel, inhuman or degrading treatment or punishment. (South Africa)]]

[44. (1) bis (Brazil)]

In the event of a death (natural, violent or of unknown cause) in custody or shortly following release, a prompt and thorough investigation by an impartial and competent authority, including independent forensic or post-mortem examinations, shall be conducted and the findings disclosed to competent authorities, if warranted, and selected control bodies, whereas further disclosure should respect the need to protect personal data as per national law.]

(2) A prisoner shall be informed [*The prison administration shall inform* (replacement suggested by the Essex Paper, supported by Norway)] **at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone** (deletion suggested by Guyana³⁰). [*He or she may also be authorized to attend the funeral in case of death. (Morocco)*]

(3) Every prisoner shall have the right [, and shall be enabled] **to inform at once his family** [*and persons designated by the prisoner as contact persons* (Essex Paper supported by Norway)] **of his imprisonment or his transfer to another institution.**

[44. (4) (Croatia)]

In case of custodial deaths, the prison administration needs to provide for or facilitate culturally appropriate burials only if the prisoner has no relatives or they cannot be contacted or if they refuse to take care of the body.]

[44. (4), (5), (6), (7) (Essex Paper supported by Norway)

(4) Prison officials shall report cases of injury or death of a prisoner to their superiors and medical staff without delay.

(5) Notwithstanding internal investigations, the prison director shall report at once the injury or death to an independent investigatory body that is under a duty to initiate a prompt, impartial and effective investigation into the circumstances surrounding causes of deaths and serious injury in prison. The prison authorities are obligated to cooperate with this investigatory body and to ensure that all evidence is preserved.

(6) The body of the deceased prisoner should be transferred to the family as promptly as is reasonable or on completion of investigation, and at no cost to the family.

(7) The prison authority shall ensure that the dead are treated with respect and dignity.]

[44. redrafted (Finland)]

(1) The competent authorities as well as a near relative or another close person indicated by a prisoner shall be notified of serious injury to a prisoner or the death of the prisoner.

³⁰ The Secretariat would like to point out that this proposal would risk lowering the existing standard in Rule 44(2) of the SMRs.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative or another close person indicated by a prisoner. In these cases, a prisoner shall be granted permission to leave the prison under necessary supervision or escort for a short period of time in order to visit such a person who is seriously ill or for the funeral of such a person.

(3) Every prisoner shall have the right to inform at once a near relative or another close person designated by a prisoner of his or her reception in a prison and of his or her transfer to another institution.]

[44 bis (Joint Proposal)]

Prison authorities should institute policies provided that any person who dies in custody will have a proper burial [funeral appropriate to his or her culture (replacement suggested by Brazil)], in those cases where there is no other responsible party.]

[44 bis (Japan)]

When a prisoner is deceased, the director of an institution should immediately examine the suspicious death of the prisoner, and report to the investigation authority in the case where the prisoner is suspected to have died an unnatural death.]

Removal of prisoners

45. (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

Institutional personnel

RULE 46 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- New Zealand: to redraft Rule 46(3) with a view to refer more generally to the need for providing employment conditions which would attract and train professional staff, including suitable education and other attributes required to operate a humane prison system that promotes rehabilitation;
- Norway: to strengthen provisions on the suitability and working conditions of prison staff, who should consist of qualified civilian personnel independent of the police, military and criminal investigation services.

46. (1) The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

[46. (1) bis (Brazil)]

Prison staff should preferably be civilians.]

(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

[46. (4) (Brazil)

The State shall provide prison staff with access to mental health services.]

RULE 47 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To acknowledge the positive impact of staff training on professionalism and sound prison management;
[Brazil and Lebanon support this recommendation]
- To add a new paragraph 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;
[Norway and Switzerland support this recommendation and suggest that in line with the respective proposal of the Special Rapporteur on Torture, education on the prohibition of torture and other ill-treatment should be provided to corrections personnel, civil, or military, and to medical personnel and other persons involved in the custody, interrogation or treatment of any individual deprived of liberty; Norway further suggests to include specific training on (i) permissible methods and limitations for searches; (ii) the needs of prisoners who belong to marginalized groups; and on (iii) the content of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (medical)]
- [The Philippines support this recommendation, and suggest to further refer to training on: (i) alternative dispute resolution; (ii) restorative justice principles; and (iii) information technology in prison systems]
- To include a 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 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.
[Finland supports all of the above recommendations on Rule 47]

47. (1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals [*and aimed, inter alia, at the promotion of human rights and gender balance and the elimination of corruption (Mexico)*].

47. (3) *bis* (Brazil)

Training should be based on research results and be reflective of contemporary best practice in penal sciences.]

[47. (4), (5) (Joint Proposal)

(4) *Staff training should occur upon entry and at suitable intervals* [on an on-going basis (replacement suggested by Brazil)] *and should include relevant national and international laws and standards, and applicable codes of conduct and similar provisions which guide correctional workers in their daily work and interactions with inmates* [; it should also include the rights, duties and prohibitions of prison staff in the exercise of their functions, including respect for the human dignity of all imprisoned persons 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 (Brazil)].

(5) *Staff training should be conducted on an on-going basis and be reflective of current evidence-based correctional practices.* (deletion suggested by Brazil) *The training should be appropriate to the special needs of offenders and include information regarding first aid, health, social assistance, general social and psychological considerations, [issues relating to vulnerable groups, (Brazil)] reporting and records management designed to encourage the importance of communication between staff and inmates realizing that staff are the most important resource in good prison management.*]

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

RULE 50 – RECOMMENDATIONS FROM MEMBER STATES:

- **New Zealand:** *to replace the current obligation of the director to reside on the premises of the institution (paragraph 3) with a requirement that it must always be possible to reach the director, and that he or she must be able to get to the facility quickly in case of an emergency.*

50. (1) The director [*warden/wardress/prison administrator (The Philippines, to be applied throughout the document)*] **of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.**

(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.

(3) He shall reside on the premises of the institution or in its immediate vicinity.

(4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

RULE 52-53 – RECOMMENDATIONS FROM MEMBER STATES:

- New Zealand: to replace Rule 52 by a general requirement, in Rule 22, for the availability of health-care services to all prisoners in order to reflect that other modalities for the provision of penitentiary health care exist (e.g. including local hospitals);
- South Africa: to remove the general prohibition of male prison officers working in female prisons, and to limit the principle of female prisoners being exclusively attended/supervised by women officers to searches.³¹

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women. (deletion suggested by New Zealand³²)

RULE 54 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- 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.

[Brazil] supports this recommendation]

³¹ The Secretariat would like to point out that this proposal would risk lowering the existing standard in Rule 53 of the SMRs, the essence of which was not supplemented or otherwise modified in the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (A/RES/65/229).

³² As per footnote 31.

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

[54. bis (Brazil)

Prison administrations or other competent bodies, as appropriate, shall initiate prompt and impartial investigations whenever there are reasonable grounds to believe that an act of torture and other cruel, inhuman or degrading treatment or punishment has been committed in prison settings, irrespective of whether a complaint has been received.]

[54. bis (Mexico)

It is necessary to implement effective mechanisms for the monitoring, supervision and control of prisons with the aim of detecting irregularities in a timely manner and implementing the necessary preventive measures or improvements in order to ensure the safety and protect the dignity of persons in prison.]

Inspection

RULE 55 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To make a reference 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;

[Austria and Norway support this recommendation; Italy emphasizes the important role of the judiciary in protecting the rights of prisoners; The Philippines suggest to also consider inspections via electronic or digital surveillance systems if the means of the prison facilities allow for such inspection modality]

[Finland recalls the legally binding provisions in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and questions whether or not it is necessary to adopt a new detailed rule concerning independent inspection bodies in the SMRs]

[Guatemala does not support this recommendation as far as reference to external inspection bodies is concerned, as theses do not fall within the authority of the prison administration]

- To add a new paragraph 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;

[Croatia supports this recommendation, and suggests additional powers, including the right to access the personal files of prisoners and other relevant prison records, as required for the purpose of the inspection]

[Guatemala does not support this recommendation for the reasons outlined above]

[Lebanon and Switzerland support this recommendation]

[Norway supports this recommendation and the respective proposal of the Special Rapporteur on Torture, i.e. to clarify that places of deprivation of liberty to be visited by inspection mechanisms may include police lock-ups, vehicles, prisons, pre-trial detention facilities, security service premises, administrative detention areas, psychiatric hospitals and special detention facilities]

[South Africa suggests to broaden the mandate of inspectors to also include the treatment of prisoners and prison conditions]

- To add text 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”;

[New Zealand supports this recommendation, and further refers to the desirability of diverse backgrounds and multidisciplinary expertise within the inspectorate appointed by a competent authority]

- To require, in a new subparagraph, 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.

[Australia supports this recommendation, in principle, but suggests to clarify that the purpose and findings of the report should guide whether or not a report is made publicly available; New Zealand cautions that there may be legitimate reasons to not publish some or all of the findings of certain inspections; informing the public of the overall work of the inspectorate, including its findings, would be considered sufficient ³³]

[France suggests to limit the publication of inspection findings to reports from external inspection bodies]

[Norway supports this recommendation]

55. [(1) (Joint Proposal)] There shall be a [mechanism for (Joint Proposal)] regular inspection[s (Joint Proposal)] of penal institutions and services by qualified and experienced inspectors appointed [or assigned (Joint Proposal)] by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services. [The inspection system should ideally comprise 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. (Brazil)]

[55. (2), (3) (Joint Proposal)]

(2) Inspectors should be allowed:

- (a) Access to all information, including on numbers of persons deprived of their liberty and places and locations of detention, as well as to all information relevant to the treatment of persons deprived of their liberty, including conditions of detention;
- (b) 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;

³³ The Secretariat would like to point out that as per the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/RES/55/89), the findings of investigations which address torture and ill-treatment should be made public (Principle 2).

- (c) *Authority to conduct private and fully confidential interviews with persons deprived of their liberty in the course of visits;*
- (d) *To make recommendations to competent authorities [, including 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, the findings of which should be made public, excluding any personal data of an imprisoned person without his or her express consent (Brazil)];*
- (3) *For special needs of women with regard to inspections, Rule 25 of the Bangkok Rules supplements rule 55.]*

[55. bis (Joint Proposal)

(1) Internal systems to monitor and document adherence to applicable laws, regulations, policies and procedures governing the management and administration of such institutions shall be adopted, identifying the responsibilities of staff, and shall include procedures for reporting, investigating, and where appropriate referring to legal authorities allegations of torture, excessive use of force, or other abuses. These internal systems shall be available to inspectors.

(2) Prisoners, staff, inspectors, or others who provide information, including regarding abuses, shall be protected against retaliation by facility personnel, including staff and other inmates.]

Part II RULES APPLICABLE TO SPECIAL CATEGORIES

A. Prisoners under sentence

Guiding principles

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.

RULES 57-59 AND RULE 60(1) – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To relocate Rules 57 - 59 and Rule 60(1) to make them part of an amended Rule 6, whose title is to read ‘Basic Principles’.

[Finland supports this recommendation, and suggests to further relocate Rules 61 (social rehabilitation), Rule 63 (individualization of treatment) and Rule 64 (after-care) to become rules of general application; New Zealand supports this recommendation as far as Rules 57-59 are concerned]

57. Imprisonment and other measures which result in cutting off an offender [a person who has violated the law (replacement suggested by Brazil)] from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation. [In that context, consideration could be given to the possibility for persons deprived of liberty / persons in prison, in the cases and conditions provided for by the legislation of each country, to serve their sentences in prisons / establishments closest to their homes, in order to accord priority to the family unit and seek the reintegration of those persons into the community as a form of social reintegration. This provision shall not apply in the case of organized crime or with respect to other persons in prison who require special security measures. (Mexico)]

[57. redrafted (Finland)

Imprisonment shall mean the loss or restriction of liberty. The enforcement of imprisonment shall not restrict the rights or circumstances of the prisoner in any other manner than that provided in the law or necessary due to maintenance of safety. Restrictions placed on prisoners shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.]

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender [person (replacement suggested by Brazil)] [*prisoner* (replacement suggested by El Salvador)] is not only willing but able to lead a law-abiding and self-supporting life.

[58. redrafted (Finland)

The purpose and justification of imprisonment is to protect society against crime and support the prisoner towards a life without crime after release.]

59. To this end, the institution should utilize all the remedial, [health-related, training-based, sports-based, (replacement suggested by Mexico)] educational, moral [social, professional (replacements suggested by Brazil)], spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners [persons (replacement suggested by Brazil)].

[59. redrafted (Finland)

Prisoners should be treated individually based on their specific needs. Individual plans for the implementation of the sentence shall be prepared for each prisoner (individualization principle). Individual planning for the management of the prisoner's life shall include progressive movement through the prison system (progression principle). The purpose of work, education, rehabilitation and other activities organized in prison is to promote the prisoners' social integration into the society after release.]

60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

[60. (1) redrafted (Finland)

Prison life should be arranged so as to approximate as closely as possible to the realities of life in the community (normalization principle).]

[60. (1) bis (Spain)

Notwithstanding the provisions of rule 44 (2), a system of exit permits shall be established as a preparation for a future life at liberty for prisoners who provide guarantees of making good use of such permits.]

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

[60. bis (Brazil)

Prisoners shall be allocated to prisons close to their homes or places of social reintegration.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

62. The medical services of the institution [*/ prison (Mexico)*] shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation [*the rehabilitation of a person deprived of liberty/person in prison (Mexico)*]. All necessary medical, surgical and psychiatric services shall be provided to that end [*, provided that the health-care personnel have recommended such services and that the treatment to be provided has been explained to the patient (Brazil)*].

[62. redrafted (Finland)]

The medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer. All necessary medical, surgical and psychiatric services, including those available in the community, shall be provided to the prisoner for that purpose.

63. (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

Treatment

65. [(1) (Spain)] The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

[65. (2) (Spain)]

Depending on the conditions prevailing in each country and with a view to reducing the incidence of recidivism, steps shall be taken to establish specific treatment programmes to address behavioural disorders that lie at the

origin of a significant number of offences, such as drug dependency, gender-based violence or violation of sexual freedom.]

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, (deletion suggested by Brazil) education, vocational guidance and training, social casework, employment counselling, [*and* (replacement suggested by Brazil)] physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal [*personal* (replacements suggested by Brazil)] history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Classification and individualization

67. The purposes of classification shall be:

- a. To separate from others those prisoners who, by reason of [*according to* (replacements suggested by Brazil)] their criminal records or bad characters, are likely to exercise a bad influence [*need for protection* (replacement suggested by Brazil)];
- b. To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.
- [c. *to monitor the activities of each group.* (Brazil)]

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after [*the* (Brazil)] admission and after a study of the personality (deletion suggested by Brazil) of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

Privileges

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and co-operation of the prisoners in their treatment.

Work

71. (1) Prison labour must not be of an afflictive nature.

(2) All prisoners under sentence shall [*may* (replacement suggested by New Zealand)] be required to work, subject to their physical and mental fitness as determined by the medical officer.

[71. (2) redrafted (Finland)

When examining a prisoner, the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to determining the physical and mental fitness of each prisoner to work and to take part in other activities organized in prison.]

(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

[71. (3) redrafted (New Zealand)

As far as possible, prisoners shall be engaged in work and other constructive activities, including rehabilitation programmes, throughout a normal working day.]

(4) So far as possible the work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release.

(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.

(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

74. (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.

(2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.

75. (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.

(2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

76. (1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Education and recreation

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible [education aimed at the development of civic-mindedness (replacement suggested by Brazil)]. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, [T]he education of prisoners shall [should preferably (replacement suggested by Brazil)] be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners. [The administration shall ensure a prisoner's right to artistic and intellectual creativity. (Morocco)]

Social relations and after-care

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.

B. Insane and mentally abnormal prisoners

[Prisoners with psychological and psychiatric illnesses (replacement suggested by El Salvador)] [Persons with mental illnesses and disorders (replacement suggested by Croatia)] [Prisoners with mental illnesses (replacement suggested by Brazil and South Africa)]

RULES 82-83 – ISSUES FOR REVISION IDENTIFIED BY THE 2 ND EXPERT GROUP:

- To replace the heading “Insane and mentally abnormal prisoners” in the heading of part II.B, the term “insane” in paragraph 1, and the term “prisoners who suffer from other mental diseases or abnormalities” in paragraph 2.

[Brazil, Croatia, El Salvador and South Africa support this proposal]

[Norway supports the respective proposal of the Special Rapporteur on Torture, i.e. to replace Rules 82-83 with a provision that applies to all persons with disabilities, who should be entitled to be housed in the general prison population on an equal basis with others, and to be eligible for all programmes and services available to other inmates; further reference to rights enshrined in the Convention on the Rights of Persons with Disabilities should be added]

82. (1) Persons who are found to be insane [mentally ill (replacement suggested by South Africa)] [Persons who suffer from severe mental illnesses or disorders (replacement suggested by Croatia)] [Prisoners with mental illnesses (replacement suggested by Brazil)] shall not be detained in prisons and arrangements shall be made to remove them to mental institutions [health services (replacement suggested by Brazil)] as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities [illnesses (replacement suggested by Brazil and South Africa)] [Prisoners who suffer from other mental illnesses or disorders (replacement suggested by Croatia)] shall be observed and treated in specialized institutions under medical management [by health-care personnel (replacement suggested by Brazil)].

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer [health-care personnel until they are relocated to a suitable home (replacement suggested by Brazil)].

(4) The medical or psychiatric [health (replacement suggested by Brazil)] service of the penal institutions shall provide for the psychiatric [mental health (replacement suggested by Brazil)] treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric [mental health (replacement suggested by Brazil)] treatment after release and the provision of social-psychiatric after-care [assistance after release (replacement suggested by Brazil)].

C. Prisoners under arrest or awaiting trial

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

RULE 93 – ISSUES FOR REVISION IDENTIFIED BY THE 2ND EXPERT GROUP:

- To replicate language of more recent international standards and norms related to 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 considered indispensable to maintain security and good order.

[Brazil supports this recommendation; similarly Norway is supportive of both the recommendation and the respective proposal from the Special Rapporteur on Torture, i.e. to provide, at all stages of the criminal justice process, all persons detained, arrested, imprisoned, suspected, accused, or convicted with prompt, independent and effective legal representation of the detainee's own choosing, if available, and otherwise at the State's expense]

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

[93. re-drafted (Finland)]

Untried prisoners shall be informed explicitly of their right to legal advice. All necessary facilities shall be provided to assist untried prisoners to prepare their defence and to meet with their legal representatives. An untried prisoner shall be entitled to choose his or her legal representative and shall be allowed to apply for free legal aid where such aid is available. The untried prisoner shall be allowed to receive confidential visits from his

or her legal adviser. Visits between the prisoner and the prisoner's legal adviser may be within sight but not within hearing. A judicial authority may, in exceptional circumstances, authorize restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security. A foreign prisoner shall also be provided with interpretation assistance, where possible. A prisoner who uses sign language or requires interpretation services due to a disability shall be provided the necessary interpretation and translation assistance.]

[93. *bis* (Brazil)]

Imprisoned persons shall have access to legal assistance without delay. Communication with legal counsel shall be confidential, and shall not be intercepted.]

D. Civil prisoners

94. In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. Persons arrested or detained without charge

95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence (deletion suggested by Brazil).