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**OPEN-ENDED INTERGOVERNMENTAL EXPERT GROUP  
ON THE STANDARD MINIMUM RULES FOR THE  
TREATMENT OF PRISONERS**

**VIENNA, AUSTRIA, 25 – 28 March 2014**

**RESPONSE OF THE GOVERNMENT OF NORWAY<sup>1</sup>  
TO NOTE VERBALE CU 2013/129/DO/JS**

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Norway would like to thank the United Nations Office on Drugs and Crime for the invitation to submit drafting proposals for revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR).

Further, Norway would like to commend the Expert Group and the Secretariat on their work so far.

Norway would also like to express its gratitude to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; as well as the Experts at the meeting at the University of Essex for their involvement in the process. Their respective reports are valuable contributions to this process. Norway shares their views and opinions on most of the relevant issues, and the Norwegian submission is to a large extent built on these. Norway has proposals to the following areas; identified for revision:

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

Firstly, Norway will, however, present a couple of comments regarding the inclusion of a preamble and the scope of the Rules:

**Inclusion of a preamble**

Norway fully endorses the proposal by the Experts at the University of Essex to include a new preamble that would include a list of the fundamental principles contained in already adopted

treaties and guidelines regarding treatment in detention (see Rule 3 and E/CN.15/2012/CRP.2, sect. 4), and simultaneously agrees with the Special Rapporteur that instruments that set out standards that fall short of those recognised in subsequent Instruments should not be cited in the Rules. At a minimum, the preamble should recognise the developments in international law since the adoption of the SMR, including the range of international and regional instruments, standards and guidelines on treatment in detention.

### **Scope of the Rules**

Norway agrees with the Special Rapporteur that it be made explicit that the Rules are applicable to all forms of deprivation of liberty, without exception and regardless of the legal status of the imprisoned person.

Notwithstanding, Norway does recall that the Experts at the University of Essex righteously pointed out that Rule 95 reflects a later addition to the SMR; which was adopted to clarify the scope of Rule 4(1) and the Rules as a whole as extending to all forms of deprivation of liberty. Hence, Norway supports their recommended revision of Rule 4 (1).

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

It is Norway's view that the Rules (Rule 6 (1)) should be applied to all arrangements for the custody and treatment of persons subjected to any form of arrest, detention on imprisonment, with no discrimination, on grounds of international law, for example on grounds of age, national, ethnic or social origin, cultural beliefs and practices, birth or other status, including health status, disability, gender or other identity and sexual orientation (see Human Rights Council resolution 17/19 and Human Rights Committee general comment No. 18, para. 7), as well as labelling on grounds of psychological profile or criminal past.

In line with general comment No. 2 of the Committee against Torture, the Rules should apply irrespective of whether the detention facilities are run by State or private companies (paras. 15 and 17). Authorities should ensure that the Rules and the principles stipulated therein are observed in all institutions and establishments within their jurisdiction where persons are deprived of liberty. The Rules should ensure that, in cases where certain services are outsourced, the State remains responsible for the adequacy of those services.

Norway also agrees with the Special Rapporteur that it is crucial to recognise explicitly the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment in all circumstances, and that such an explicit recognition should be included both in the preamble and, through a revision, in Rule 6, dealing with respect for prisoners' inherent dignity and value as human beings. As a widely recognised set of rules addressing the administration of penal institutions, the Rules should explicitly condemn torture and ill-treatment, including participation, complicity, incitement and attempts, and certain conduct that amounts to ill-treatment, whether committed by public officials, by other persons acting on behalf of the State or by private persons (Convention against Torture, art. 4). It should also be declared that these are non-derogable rights and that offenders will be subject to prosecution.

As stated by the Special Rapporteur, the principle of humane treatment of persons deprived of liberty constitutes the starting point for any consideration of prison conditions and the design of prison regimes. It complements and overlaps the principle on the prohibition of torture and

other ill-treatment by requiring States (and consequently the prison authorities) to take positive measures to ensure minimum guarantees of humane treatment for persons in their custodial care (see Human Rights Committee general comment No. 21, para. 3). Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule, the application of which, at a minimum, cannot be dependent on the material resources available in the State party to the International Covenant on Civil and Political Rights (para. 4).

The Rules should therefore incorporate a provision urging authorities to adopt specific measures aimed at resolving the structural shortcomings of places of deprivation of liberty and allocate the resources necessary to cover basic needs and work and educational programmes. Furthermore, the Rules should set out concrete measures to be taken to ensure minimum guarantees of humane treatment for persons in custodial care, including securing a prompt and effective judicial control of detention; providing adequate, accessible and appropriate health care; ensuring the availability of appropriate judicial resources and effective complaint systems; and allowing contact with the outside world and access to other activities, including for those awaiting trial.

As a rule of general application, the Rules should refrain from placing prisoners in a distant facility (see the Body of Principles, principle 20). Instead they should, to the extent possible, be allocated to prisons close to their home or place of social rehabilitation. Neither should prisoners be transferred to a facility with much worse conditions as a form of punishment and from placing heavy restrictions on prisoners' contact with the outside world, except as incidental to justifiable segregation or the maintenance of discipline (see Rules 57 and 60).

Although the Rules highlight the importance for prisoners under sentence of maintaining contact with the outside world, this principle should be of general application for all persons deprived of liberty, including death row inmates, to mitigate the level of suffering that is inherent to the condition of persons sentenced to death and to ensure that the penitentiary system comprises treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation (International Covenant on Civil and Political Rights, art. 10 (3)).

As a principle of general application, the Rules should explicitly consider all prisoners as subjects of rights and duties and not objects of treatment or correction. Given that mental ill-treatment may be inflicted under the name of remedial, educational, moral, spiritual and other forces and forms of assistance, the review process offers an opportunity to revisit Rule 59 in order to limit the applicable methods to those respectful of the prisoners' inherent dignity and value as human beings. In this respect, there is a need to revisit the concepts of "rehabilitation" and "re-education", as well as of "corrective" and "correctional", among others, in order to protect persons deprived of liberty from arbitrary intervention or treatment that may amount to torture or other ill-treatment.

Norway further shares the Special Rapporteur's concern regarding the importance of introducing a rule allowing all who are deprived of their liberty to challenge expeditiously the lawfulness of the detention, e.g. through habeas corpus or amparo, as a safeguard for ensuring protection against torture or other ill-treatment. In all circumstances, the person deprived of liberty should have the right to inform his or her family of the arrest (Rules 44 (3) and 92) and place of detention within 18 hours (E/CN.4/2003/68, paras. 26 (g) and (i)).

Furthermore, given that safeguards are particularly undermined when the detained persons are held in incommunicado or secret detention, the Rules should place an obligation on prison

authorities to ensure that persons deprived of liberty are held in officially recognised and accessible places of detention. Police station chiefs and investigating officers should be held criminally accountable for any unacknowledged custody in cases where their responsibility, including command responsibility, has been established.

The maintenance of an official registry has been and remains one of the fundamental safeguards against torture or other ill-treatment. Although Rule 7 provides for an obligation to ensure proper registration, it lacks a provision obliging strict adherence to registration from the very moment of apprehension and transfer to police custody; the duty to have a comprehensive and accessible record of everyone deprived of liberty (International Convention for the Protection of All Persons from Enforced Disappearance, art. 17 (3)); information regarding the time and place of arrest as well as the identity of the arresting officials; the state of health upon arrival at the detention centre; and records of when the next of kin and a lawyer were contacted and visited the detainee. It also lacks a provision requiring accurate information about the custody and whereabouts of persons, including transfers, available promptly to the detainee, his or her relatives and his or her counsel (Body of Principles, principle 12), as well as registration of information on the circumstances of death of prisoners and the location of their remains (International Convention on Enforced Disappearance, art. 17 (3) (g)). Furthermore, Rule 7 (2), which obliges prison authorities to not receive a person in an institution without a valid commitment order, should be revised. The detainee should be admitted into a lawful place of detention and the person in charge of that institution is responsible for admitting the person concerned and immediately notifying a judge.

It is equally important that interrogation rules, instructions, methods and practices be kept under systematic review with a view to preventing cases of torture and other ill-treatment (Convention against Torture, art. 11). Counsel must be present during all interview interrogations, in their entirety. The duration of interrogations and the intervals between interrogations must be recorded and the identity of the officials conducting the interrogation should be registered (Body of Principles, principle 23).

The fundamental role of authorities to exercise effective control over places of deprivation of liberty and ensure the personal safety of prisoners from physical, sexual or emotional abuse should be further strengthened as one of the most important obligations (see the United Nations Standard Minimum Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, para. 9, and the European Prison Rules, rule 52.2). To this end, over-crowding should be avoided. Preventive measures include increasing the number of personnel sufficiently trained in using non-violent means of resolving conflicts (see CAT/C/BGR/CO/4-5, para. 23 (c), and A/HRC/7/3/Add.3, para. 90 (t)); promptly and efficiently investigating all reports of inter-prisoner violence and prosecuting and punishing those responsible; and offering protective custody to vulnerable individuals without marginalizing them from the prison population more than is required for their protection. Given the intrusive nature of internal surveillance devices as a control and early warning mechanism, such devices should be administered by specialized security personnel trained to strike a balance between exercising security functions and treating persons with respect for their dignity, including by demonstrating respect for and being sensitive to cultural and religious diversity.

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

The State must provide adequate medical care, which is a minimum and indispensable material requirement for ensuring the humane treatment of persons in its custody. The carrying out of a prompt, independent and consensual medical examination upon a person's admission to a place of detention and after every transfer between facilities, and thereafter on a routine basis, constitutes one of the basic safeguards against ill-treatment (see Human Rights Council resolution 10/24, paras. 4 and 9, and A/52/40 (vol. I), para. 109).

The revision of the Rules offers a good opportunity to insist on the obligation of authorities to ensure free, fair and transparent access to a facility's medical services by providing a sufficient number of qualified, independent physicians in all facilities. The Rules should insist on the obligation to guarantee the availability of prompt, impartial, adequate and consensual medical and psychological examination upon the admission of each detainee. Medical examinations should also be provided when a prisoner is taken out of the place of detention for any investigative activity, upon transfer or release and in response to allegations or suspicion of torture or other ill-treatment. Likewise, medical examinations must take place if a victim makes a complaint or upon his or her lawyer's motion, subject to judicial review in the event of delay or refusal. It is essential that medical examinations 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. Health personnel must be free from any interference, pressure, intimidation or orders from detention authorities.

The Rules must include a provision obliging authorities to ensure that medical examinations are not conducted in a superficial manner and to act diligently so as to ascertain the condition of the person examined, allowing that person to freely communicate with the physician (see CAT/OP/MEX/1, paras. 132, 133, 135, 172 and 173). Medical examinations should be thorough enough to detect any psychological consequences of torture or propensity to commit suicide.

In addition, the Rules should include an express recognition that persons deprived of liberty must always have access to adequate health care, including adequate medical, psychiatric and dental care and medication. Persons deprived of liberty should have access to a level of health care that is equivalent to that available to the general population. Currently, Rule 22 (1) already stipulates that prison health services should be organised in close cooperation with the general health administration of the community or nation, and the World Health Organization (WHO) has stated that prison health policies must be integrated into national health policies. To achieve this, prison health-care services should be integrated under the Ministry of Health.

The Rules should allow the prison administration to facilitate the compassionate release of terminally ill persons on the ground of their health status.

### **(c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet (Rules 27, 29, 31 and 32)**

As pointed out by the Special Rapporteur, the Rules lack provisions and guidance on how discipline and order should be maintained in order to strike a balance between maintaining security and respecting human dignity. In this context, it is essential that the Rules provide for an obligation for prison authorities to use disciplinary measures on an exceptional basis and only when the use of mediation and other dissuasive methods to resolve disputes proves to be inadequate to maintain proper order. It is also important that punishment always be

proportional to the offence for which it is established; doing otherwise would be tantamount to improperly making the nature of the deprivation of liberty harsher. Any act that may amount to a crime should be dealt with by the authorities of justice administration and not by prison staff. All punishments shall be duly recorded.

Thus, in Rule 33 it should be made explicit that the use of force and instruments of restraint should be a last resort that may be used only in exceptional circumstances, when strictly necessary as specified by law and in a manner that complies with the principle of proportionality and for the shortest possible time (see the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 4, 9 and 16). Rule 33 (b), which currently permits the use of restraints (including sedatives, neuroleptics or other drugs) on medical grounds, should be abolished.

Overall principles governing searches of prisoners and visitors should be in line with international standards and norms, including reference to the principles of legality, necessity and proportionality. The Rules should place an obligation on prison authorities to ensure that searches are conducted in private by trained personnel of the same sex as the prisoner, that alternate screening methods, such as scans, are developed to replace strip searches and body cavity searches and that searches are conducted by suitably trained personnel, including, where appropriate, health professionals from outside the detention facility, following authorisation from the competent authorities (see the United Nations Rules for the Treatment of Women Prisoners, rule 20, and the World Medical Association Statement on Body Searches of Prisoners (1993, as revised in 2005)).

The Rules should prohibit the use and imposition of indefinite solitary confinement either as part of a judicially imposed sentence or a disciplinary measure, and alternative disciplinary sanctions should be introduced to avoid the use of solitary confinement. The Rules should also prohibit prolonged solitary confinement and frequently renewed measures that amount to prolonged solitary confinement.

When solitary confinement is being used, there should be a parallel obligation to prevent detrimental effects; which may be caused by the isolation. The principle of proportionality should be adhered to; so that the longer the isolation lasts and the more severe it is, the more measures to avoid detrimental effects are being called upon.

All punishments shall be duly recorded and be subject to regular, substantive independent review.

It is important that the Rules exclude the involvement and role of health-care personnel in any disciplinary or security-related measures (Rule 32 (1)). Medical personnel shall, nonetheless, closely monitor the mental and physical health of inmates undergoing punishment and visit them as deemed medically necessary or upon the request of the person deprived of liberty.

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

As underscored by the Special Representative, the State bears the burden of evidentiary proof to rebut the presumption that the State is responsible for violations of the right to life and for

inhumane treatment committed against persons in its custody. Accordingly, the obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies (A/61/311, para. 54).<sup>9</sup> In this respect, the lack of a prompt, thorough and impartial investigation into allegations of torture and other ill-treatment or death in custody remains one of the major challenges in fighting impunity for such acts. The decision on whether to conduct an investigation is not discretionary, but rather an obligation irrespective of whether a complaint is filed or not. Therefore, Norway supports the revisions suggested by the Experts at the University at Essex.

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

It is essential that the Rules adopt special measures aimed at protecting the rights of other disadvantaged groups of prisoners, in accordance with well-established international standards and norms (see UNODC/CCPCJ/EG.6/2012/2, p. 21). Special care must be taken to ensure that segregating members of these groups does not further marginalise them from the rest of the community or expose them to further risk of torture or ill-treatment (see, for example, the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, principle 9 (a)).

Rules 82 and 83 should be replaced with a provision that applies to all persons with disabilities. Such a provision should state explicitly that inmates with disabilities are entitled to be eligible for all programmes and services available to others, including voluntary engagement in activities and community release programmes, and to be housed in the general prison population on an equal basis with others without discrimination. It should also provide a clear articulation of certain rights enshrined in the Convention on the Rights of Persons with Disabilities: the duty to provide reasonable accommodation (arts. 5 and 14); the duty to work towards creating an accessible environment (art. 9); the duty to ensure that persons with disabilities have access to all amenities without having to rely on assistance from fellow inmates (e.g., arts. 5, 20 and 28); the duty to respect the choices of persons with disabilities and to establish effective mechanisms to support decision-making in order to enable people with psychosocial or intellectual disabilities to exercise their legal capacity on an equal basis with others (see arts. 12 and 13).

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

Prompt access to legal counsel during the initial stage of detention, if necessary through legal aid, constitutes an essential safeguard against torture and other ill-treatment (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para. 8).

The information given to the detainee/prisoner, must be in a language he or she understands.

Rule 93 does not specify that legal counsel should be granted immediately, without delay, upon apprehension. Rule 93 should ensure that all persons detained, arrested or imprisoned, suspected or accused, or convicted (including death row inmates), and at all stages of the criminal justice process, including whenever there is a complaint of torture or other ill-

treatment, are provided with prompt, independent and effective legal representation of the detainee's own choosing, if available, and otherwise at the State's expense. Such access must be granted without delay, interception or censorship and in full confidentiality (see the United Nations Principles and Guidelines on Access to Legal Aid, principles 3, 7 and 12, and the Body of Principles, principle 18).

Rule 37 should further ensure that all persons deprived of liberty are provided with adequate opportunities, sufficient time and the facilities needed to communicate and consult with legal counsel (see the Basic Principles on the Role of Lawyers, para. 8). Denial of legal representation shall be subject to independent review without delay (see the United Nations Principles and Guidelines on Access to Legal Aid, principle 9). Appropriate means, such as telephones, should be made available in all places of deprivation of liberty. Special measures should be taken to ensure meaningful access to legal representation and assistance for persons belonging to groups with particular needs and heightened vulnerability to ill-treatment (principle 10).

Detainees shall have access to and be allowed to keep in their possessions without access by the prison administration, documents relating to legal proceedings.

#### **Area (g) Complaints and independent inspection (Rules 36 and 55)**

As stated by the European Court of Human Rights in *Ciorap v. Moldova*, the onus is on the State to ensure that prisoners' rights and obligations are communicated effectively to them. All information regarding rights and obligations must be given in a language the detainee/prisoner understands. Rule 35 should provide for 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 it prominently in all places of deprivation of liberty.

The revised Rule 55 should make clear that the aforementioned inspection powers, as understood in the two-fold system; of independent monitoring of places of detention that allows for inspections to be carried out by governmental agencies and other competent authorities distinct from those directly in charge of the administration of the place of detention or imprisonment, require judicial control to be in place. In this respect, the Rules should provide for the power of independent oversight mechanisms to have unimpeded access (on a regular and an ad hoc basis), without prior notice, to all places of deprivation of liberty, including police lock-ups, vehicles, prisons, pretrial detention facilities, security service premises, administrative detention areas, psychiatric hospitals and special detention facilities. They should be entitled to inquire and access information and documentation, including registries, and have private, unsupervised and confidential interviews with detainees of their own choosing.

Further, the monitoring bodies should be able to make their findings public and follow up on the outcome (United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 74).

**(i) Training of relevant staff to implement the Standard Minimum Rules for the Treatment of Prisoners (Rule 47)**

As underlined by the Special Rapporteur, the Rules should ensure that education and information regarding the prohibition against torture or other ill-treatment are included in the training of corrections personnel, whether civilian or military, medical personnel and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Medical personnel should receive specific training on the provisions contained in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2000). Training programmes should be envisaged to sensitize personnel to permissible methods and limitations for searches and steps to prevent and remedy prison violence with techniques that do not give rise to excessive use of force. Efforts should be strengthened to ensure that personnel adopt a gender-sensitive and age-sensitive approach (see the United Nations Rules for the Treatment of Women Prisoners) and are sensitive to the particular needs of prisoners who belong to marginalised groups by, for example, providing guidance, instances and examples on principles of equality and non-discrimination, including in relation to sexual orientation and gender identity (see A/HRC/19/41, para. 75).

Provisions on the suitability, training and working conditions of qualified civilian personnel independent of police, military and criminal investigation services should be strengthened in the Rules.

As pointed out by the Experts at the University of Essex, the prison staff should receive training on a continuing basis.