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**OPEN-ENDED INTERGOVERNMENTAL GROUP
OF EXPERTS ON THE STANDARD MINIMUM RULES
FOR THE TREATMENT OF PRISONERS
BUENOS AIRES, ARGENTINA, 11 – 13 December 2012**

**BRIEFING DOCUMENT¹ ON SOUTH AFRICA'S PRELIMINARY
VIEWS ON THE REVISION OF THE STANDARD MINIMUM
RULES FOR THE TREATMENT OF PRISONERS²**

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**BRIEFING DOCUMENT ON SOUTH AFRICA'S
PRELIMINARY VIEWS ON THE REVISION OF
THE UNITED NATIONS STANDARD MINIMUM
RULES FOR THE TREATMENT OF PRISONERS**

DATE: SEPTEMBER 2012

1 BACKGROUND AND MANDATE

- 1.1 General Assembly resolution 65/230, on the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, provides as follows in paragraph 49:

“We invite the Commission on Crime Prevention and Criminal Justice to consider convening an open-ended intergovernmental expert group to exchange information on best practices, as well as national legislation and existing international law, and on the revision of existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional services and best practices, with a view to making recommendations to the Commission on possible next steps”.

- 1.2 The focus of the Expert Group meeting , convened from 31 January to 2 February 2012, and therefore it was based on the revision of the existing United Nations standard minimum rules for the treatment of prisoners (hereinafter referred to as “the Rules”) in order to reflect recent advances in correctional services and best practices.

- 1.3 Pursuant to the Expert Group on the review of the United Nation Standard Minimum Rules as mentioned above, an Economic and Social Council meeting held on July 2012 where it was resolved that some areas of the SMRs from the Treatment of Prisoners could be reviewed in order to reflect the latest advances in correctional science and good practices provided that any changes to the Rules would not lower any existing standards per resolution 2012/13 of 27 July 2012. The Economic and Social Council also noted that the Expert Group on its first meeting held in Vienna, from 31 January - 2 February 2012, it had identified some preliminary areas for possible consideration, and they are as follows:

- Respect for prisoners’ inherent dignity and value as human beings;
- Medical and health services;
- Disciplinary action and punishment, including the role of medical staff, solitary confinement, and reduction of diet;
- Investigation of all death in custody, as well as any signs or allegations of torture or inhumane or degrading treatment against prisoners;
- Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances;
- The right of access to legal representation;
- Complaints and independent inspection;
- The replacement of outdated terminology; and
- Training of relevant staff to implement the SMR's.

- 1.4 It is reported in the United Nations Background note to the meeting that the Secretariat received an input during 2011 from South Africa as to national legislation and best practices on the treatment of prisoners. [Although South Africa no longer utilise the terminology “prisoner” or “prisons” it will be used in this document for ease of reference in relation to the United Nations terminology]. It is noted that South Africa, amongst a large number of countries, reported that our national legislation on the treatment of prisoners was based on and had greatly been influenced by the Rules.
- 1.5 The purpose of this note is to summarise South Africa’s preliminary position towards the extent of revision required and the nature of such revision. Inputs have been formulated here in reference to the South African Constitution, Correctional Services Act, 1998 (Act no 111 of 1998), the White Paper on Corrections (2005) and the draft White Paper on Remand Detention. Inputs have also taken into account standards set in various regional African documents on prison conditions in the past two decades. Agreed upon inputs from the African Regional Preparatory meeting, for the 11th UN Congress, held in 2004 are also reflected below.

2. EXTENT OF REVISION

- 2.1 It is necessary to state upfront that the majority of the Rules adopted in 1957 are still applicable today in setting the minimum standards for the treatment of prisoners.
- 2.2 It needs to be mentioned that the Expert Group agreed on focusing on the identified areas as reflected on paragraph 1.3 above, after a thorough consideration of the following four approaches highlighted below which emerged during preparatory meetings:

- a) Instead of focusing on the Rules there is a need to develop a legally binding convention on the treatment of prisoners.

Discussion: The development of a convention could take years (and be costly) and it is not clear what level of support there will be amongst United Nations member states for such a treaty. The Rules on the other hand is accepted internationally as setting the benchmark for the minimum standards applicable to the treatment of prisoners. It must be noted that the Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa (2002) supported the development of a United Nations Charter on Basic Rights of Prisoners.

- b) A complete revision of all the Rules.

Discussion: As indicated above, the majority of the Rules are still applicable more than fifty years later. Apart from changes in terminology and the acknowledgement that more vulnerable groups should be protected within a prison environment in comparison with the limited groups identified in the Rules, most Rules are still applicable today. From a reading of the background discussion documents it would appear that most stakeholders have expressed concerns about a complete revision of the Rules since it could be met with negotiation challenges amongst member states that could delay the process whilst increasing costs and even the risk of lowering certain accepted standards.

- c) No revision of the Rules, but rather develop a commentary to accompany the text so as to clarify and expand thereon.

Discussion: A commentary including references to other international and regional human rights treaties as well as national legislation and best practices will enhance the implementation of the Rules. Such a commentary will however not address the outdated terminology and specific shortcomings within the text of the Rules. It will not modernise the Rules, but will merely contextualise it.

- d) Targeted amendments to the Rules

Discussion: By proposing targeted amendments as opposed to an overall revision, it is acknowledged that most of the Rules are still applicable today, but that only certain limited amendments (linked to terminology) are needed together with a few additions, to protect additional vulnerable groups for instance. Such an approach will provide the United Nations with a revised and up to date text without running the risk of re-negotiating the entire text.

- 2.4 It is proposed that South Africa support an approach focussing on targeted amendments of the Rules. It is therefore proposed that South Africa supports option (d) above.

- 2.5 It is also necessary to note that South Africa cannot support a revision plan that will include expanding the definition of “prisoner” to include all persons in detention. Such a proposal is apparent from some of the background documents distributed for this meeting of Experts. The context of the current Rules is limited to prisoners incarcerated for criminal offences. Even though mention is made of police cells with regard to awaiting trial prisoners the majority of the provisions relate to the administration of prisons and cannot be applied *mero motu* to other persons in places of detention. The Department of Correctional Services will have to seek inputs from the South African Police Service as well as the

Department of Home Affairs should such a proposal be entertained. It must also be noted that there are other UN rules applicable to persons deprived of their liberty in circumstances that are not limited to prisons.

3. INPUTS: REVISIONING OF THE STANDARD MINIMUM RULES

Specific proposals are outlined below. In general there seems to be consensus that the Rules must be revised in as far as terminology is concerned to make it applicable to women as well as men and to delete certain outdated terminology such as referring to mentally ill prisoners as “mentally abnormal”.

| RULE | PROPOSAL |
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| 6(1): Prohibition of discrimination | The grounds on which discrimination is prohibited in this rule is outdated and does not provide protection to some of the most vulnerable groups within prisons such as gays or lesbians who need protection against discrimination on the grounds of sexual orientation. Consider including the following grounds: Gender, pregnancy, sexual orientation, age, disability, conscience, belief and culture. (Reference: Section 9(3) of Constitution; UN Conventions on rights of persons with disabilities and on the elimination of racial discrimination.) |
| 9(1): Accommodation | Observation rather than a proposal: During the revision of the Rules, has an audit been conducted of member states’ compliance with this provision? After more than fifty years, do we have information as to compliance with this “minimum standard”? It would appear that this standard is closer to the measurement of an ideal model for the treatment of prisoners that does not acknowledge, amongst others, the following: <ul style="list-style-type: none"> • problems of overcrowding faced in most countries; • costs relating to the provisioning of individual cells or rooms; • New generation facilities that provide for double bunk cells |
| 22 to 26: Medical Services | The heading “medical services” to be changed to “Health Care Services” which is broader and all-encompassing of prisoners’ needs. Amend the rule to refer to “health care services” and “health |

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| | care professionals” instead of “medical services” and “medical practitioner”. |
| 26: Medical officer to inspect and advise regarding nutrition, hygiene, sanitation. | <p>What is the position in other countries is this role fulfilled exclusively by medical officers?</p> <p>In South Africa inspections regarding environmental health conditions and health related issues must be performed by medical officers, environmental health officers or registered nurses at least once a month. They must report problems in this regard to the Commissioner.</p> <p>Inspections regarding the other issues referred to in this Rule form part of the mandate of the Independent Inspecting Judge of Prisons. In addition, correctional officials are bound by the provisions of the Occupational Health and Safety Act, 85 of 1993.</p> <p>If there is consensus that internationally this role is not fulfilled exclusively by medical officers then the Rule should be amended accordingly.</p> |
| 37 – 39: Contact with the outside world | Currently access to legal representatives is only stipulated for untried prisoners (Rule 93). A general rule that entitles any inmate to consult on any legal matter with a legal practitioner of his or her choice at his or her own expense (should free legal aid not be provided) should be included. |
| 53: In institutions for both men and women, the female part shall be under the authority of women officers. In such cases male officers shall be accompanied by women officers. | <p>Due to gender equality this provision is not strictly adhered to in South Africa. Male officials do work within female prisons and vice versa. This rule may be outdated.</p> <p>The principle in this rule should be applied in relation to searches, but not as a general prohibition to men working in female prisons.</p> |
| 55: Inspections | The mandate of inspectors should be broadened to focus also on the “treatment of inmates in prisons and the conditions in such prisons”. |
| 82: Insane and mentally abnormal prisoners | Terminology such as “insane” and “mentally abnormal” prisoners is outdated and should be replaced with terminology such as “mentally ill”. |
| 85: Separation of untried | This rule should provide that untried female prisoners must be kept separate from untried male |

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| prisoners | prisoners. No such specific reference is included in this rule. The only reference to the separation of men and women is included in Rule 8(a), which is a general rule. |
| 86: Untried prisoners to sleep singly in separate rooms | The same observation as noted above in relation to rule 9(1) applies here. It is not clear whether this is a minimum standard since it appears more to be the ideal situation. |
| 93: Access to legal advice by untried prisoners | Access to legal representatives should not only be stipulated for untried prisoners but should also be available for sentenced prisoners. See proposal above regarding rules 37 – 39. |
| NEW ADDITIONS TO THE RULES | |
| Part II: Rules applicable to special categories | Provision should be made for additional vulnerable groups, such as Disabled prisoners and Aged prisoners |
| | It should be considered to include cross-references to other UN and Regional rules and Treaties adopted on the treatment of specific groups of prisoners such as women, children and juveniles |

INPUTS: BEST PRACTICES ON THE IMPLEMENTATION OF THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

| ACTIVITY | CHALLENGES | BEST PRACTICES |
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| 9.(1): Accommodation | Overcrowding | Implementation of an 8 Pronged Strategy to down manage overcrowding: This multi-pronged strategy consists of the |

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| | | <p>following dimensions:</p> <ul style="list-style-type: none"> • Managing levels of remand detainees (RD's) through Integrated Justice System Case Management Task Team & Inter-Sectoral Committee on Child Justice; • Managing levels of sentenced inmates through improving effective & appropriate use of conversion of sentence to community correctional supervision, release on parole, & transfers between correctional centres to attempt to establish some degree of evenness of overcrowding; • Ensuring progress with DCS capital works programme to upgrade correctional facilities & to build new correctional centres that are both cost effective & rehabilitation oriented; • Encouraging debate in South Africa about reason for incarceration as a sentence & encouraging an approach to appropriate sentencing that is focused on facilitating rehabilitation; • Enhancing community correctional supervision so that it can be better utilized as an appropriate sentence for less serious crimes; • Improving correction & development programmes within DCS to ensure enhanced facilitation of rehabilitation that targets offending behaviour; • Encouraging improvement of first & second levels of correction in family & social institutions & social & economic sector government departments respectively to |
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| | | <p>decrease rate of entry into criminal justice system; and</p> <ul style="list-style-type: none">• Encouraging community involvement in social reintegration of offenders back into their community in order to assist in reducing levels of repeat offending. <p>This strategy enabled the South African Department of Correctional Services to significantly decrease the inmate population from 140% during 2008/2009 to 134% during 2011/2012.</p> |
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| <p>Part 2: Prisoners under sentence 56-64: Guiding principles; 65 & 66: Treatment; 67-69: Classification and individualization; 79-81: Social relations and after-care.</p> | <p>Rehabilitation</p> | <p>The South African Department of Correctional Services (DCS) is implementing Unit Management in all correctional centres.</p> <p>Unit Management is an approach to offender and correctional centre management designed to improve control and relationships by dividing the larger correctional centre population into smaller, more manageable groups and to improve the delivery of correctional services pertaining to care, corrections, development, security and after-care.</p> <p>Unit Management is both a management approach and a service delivery vehicle that can be utilised to enhance and support the rehabilitation mission of the Department of Correctional Services.</p> <p>Rehabilitation is facilitated from the point of entry/ admission to release and integration back into the community. During this process the focus is on correcting of offending behaviour, needs-based interventions and the development of each offender.</p> <p>To demonstrate these processes, a comprehensive Offender Rehabilitation Path (ORP) was developed. The ORP is a translation into practice of components of the mandates of the DCS. A central theme of this Path is the promotion of corrections as a societal responsibility and the development of correctional centres into institutions of rehabilitation.</p> <p>This central theme is embedded in the mandate of the Department in terms of the Constitution of the Republic of South Africa and the Correctional Services Act (Act 111 of 1998). These mandates make it clear that the Department must contribute to maintaining and protecting a just, peaceful and safe society by:</p> <ul style="list-style-type: none"> ➤ Enforcing sentences of the court ➤ Detaining all offenders in safe custody whilst ensuring their human dignity, and ➤ Promoting the social responsibility and human development of all offenders and |
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| | | <p>persons subject to community corrections.</p> <p>In essence the ORP illustrates what happens with and to an offender from the point of entering a correctional centre (admission) to the point when s/he is reintegrated into society (social reintegration).</p> <p>The Correctional Services Act, 1998 was recently amended to formalize the unit management regime that, amongst others, provides for:</p> <ul style="list-style-type: none"> (a) good communication between correctional officials and inmates, which is understood by everyone; (b) team work; (c) direct, interactive supervision of inmates; (d) assessment of sentenced offenders; (e) needs-driven programmes for sentenced offenders in a structured day and correctional sentence plan; (f) the provision of multi-skilled staff in an enabling and resourced environment; and (g) a restorative, developmental and human rights approach to sentenced offenders <p>The ORP is attached as a separate annexure</p> |
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