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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

**APORTES PARA EL PROCESO DE REVISIÓN DE LAS REGLAS
MÍNIMAS PARA EL TRATAMIENTO DE LOS RECLUSOS¹**

Prepared by

Permanent Assembly for Human Rights (APDH) in association with the National
Prisoner Ombudsman (PPN) from Argentina²

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² The opinions expressed in this report are those of the authors and do not necessarily reflect those of the United Nations Office on Drugs and Crime.



Proposals for revision of the Standard Minimum Rules

PPN-APDH

Brasilia, 28-31 January, 2014

The Permanent Assembly for Human rights (APDH) in association with the National Prisoner Ombudsman (PPN) from Argentina, a national independent institution dedicated to the promotion and protection of human rights of people in prison, submit the following report for the third open-ended intergovernmental expert group meeting on the Standard Minimum Rules for the Treatment of Prisoners, which will take place in Brasília, from 28 to 31 January 2014 aiming to contribute to the review process set out in General Assembly resolution 65/230.

Presented below are specific recommendation on some targeted areas of review identified by the United Nations Commission on Crime Prevention and Criminal Justice:

- Medical and health services;
- Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet;
- Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners
- The right of access to legal representation;
- Complaints and independent inspection;
- Training of relevant staff to implement the SMR

Finally, is worth noting that this report is founded on the analysis of the Standard Minimum Rules for the Treatment of Prisoners (“Minimum Rules”) and of the consolidated proposed revised text of the Rules, for discussion elaborated at the end of the second meeting (“Consolidated report”).



PROPOSALS

- Medical and health services (thematic area b)

We suggest the following changes regarding Rule 22 (1) of the consolidated report:

- ✓ It should be clarify that healthcare services shall operate in full independence from the Penitentiary administration in order to ensure freedom of action in its examinations, medical reports, practitioner-patient relationship, etc.
- ✓ To add that health care services should be provided free of charge

Regarding Rule 23 it is suggested the replacement of paragraph 2 with the following wording:

- ✓ For mothers with children under 5 years of age it will be established non-custodial sentences, so that the right of every child to a healthy environment, to the enjoyment of the highest attainable standard of health, to a standard of living adequate for the child's physical, mental, spiritual, moral and social development, and the right to education, among others, will be respected.
- Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet (thematic area c)

We recommend the amendment to the following paragraph of Rule 33:

“... 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”

The National Prisoner Ombudsman has publically claimed that the use of instruments of restraint during transfers shall ensure safety, dignity and physical integrity of detainees since it constitutes a worsening of conditions of detention of people deprived of their liberty as it block and make slower and more difficult any rescue and assistance process in case of accidents putting at serious risk their physical integrity and even their lives.

- Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners (thematic area d)
- ✓ It is recommended to insert in Rule 7 bis (1) of the consolidated report the obligation to establish a Registry of cases of torture.
- ✓ We suggest the incorporation of a new Rule (44 bis) that should reflect the duty to initiate a prompt, impartial and effective investigation by the competent judicial organs into the circumstances surrounding causes of deaths in custody, as well as any signs or allegations of torture or ill treatments.
- ✓ We call on to incorporate another new rule (44 ter) that should established the application of administrative measures of separation of any prison staff accused of committing torture or ill treatment.
- The right of access to legal representation (thematic area f)



It is recommended to insert in Rule 36 of the consolidated report the following:

- ✓ 32. (1) Every prisoner shall have the right to make a request or complaint to the central prison administration **and to any other competent complaints bodies that protects detainee's human rights vested with reviewing powers.**

- Complaints and independent inspection (thematic area g)

- ✓ Replace in paragraph 2 of Rule 36 of the consolidated report 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”

- ✓ We suggest Rule 55 should specify that the monitoring body will be external and independent from penitentiary administration and will have a broad inspection mandate that will include the power to have unimpeded access 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 about the total number of people deprived of their liberty, transfers, records documents as well as information regarding conditions of detentions and the treatment they received; and have private, unsupervised and confidential interviews with detainees of their own choosing.

- ✓ To add a new Rule 55 (ter) addressing that every body belonging to the National Public Administration, legal entities or individuals, public or private, should be obliged to cooperate with the investigations or inspections of the monitoring mechanism.



- Training of relevant staff to implement the SMR (thematic area h)

- ✓ We believe “...an adequate standard of education and intelligence” referred to in Rule 47 is a very diffused concept to reflect the training prison staff should have, thus we recommend to incorporate in the current wording the need for qualified and trained personnel. It is suggested as well, to clarify that the training system should be continuous and must include 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; in particular knowledge regarding the application of those provisions. Furthermore, it should be mentioned the need of training on alternative dispute resolution; such as persuasion, negotiation and mediation.

- ✓ In paragraph 2 of the same Rule of the consolidated report we recommend to specify the need for the professionalization of the career path of prison employees.

- ✓ We recommend the incorporation of a new Rule, 47 bis, establishing the obligation to carry out a transparent and careful selection process of correctional staff which, among others, should include psychological assessments; it should be specified as well the need for regularly implementation of these evaluations along the career path of prison employees.

PROPOSED TOPIC

Given the alarming trend of creating private prisons implemented in almost a dozen countries in Africa, North America, South America, Asia-Pacific and Europe we reaffirm the non-delegable



responsibility of the State to run custodial settings, and its non delegable responsibility on everything that takes place inside its walls. Therefore, it is important to clarify that the Rules apply irrespective of whether the detention facilities are administrated by State or private companies, in the same way rules related to the monitoring bodies apply as well to every detention center.