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

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**OBSERVATIONS ON THE STANDARD MINIMUM RULES FOR
THE TREATMENT OF PRISONERS¹**

Prepared by

Committee on the Rights of Persons with Disabilities

United Nations Office of the High Commissioner for Human Rights

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The ongoing revision of the standard minimum rules for the treatment of prisoners, which were first adopted by the United Nations General Assembly in 1955, is a perfect opportunity to introduce the new contents and principles of the Convention on the Rights of Persons with Disabilities to the consideration of the text. In what follows we bring to your kind attention these issues.

1. It is very important to consider, while reviewing the United Nations Standard Minimum Rules for the Treatment of Prisoners (hereinafter, SMR), the general principles that are set forth in the Convention on the Rights of Persons with Disabilities (hereinafter, CRPD). The principles are as follows: a. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; b. Non-discrimination; c. Full and effective participation and inclusion in society; d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; e. Equality of opportunity; f. Accessibility; g. Equality between men and women; h. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities (art. 3 CRPD).

These general principles are crosscutting and they should also be considered when prisoners have a disability.

2. The SMR should establish the general obligation to abolish all deprivation of liberty based on disability as set forth by article 14 of the CRPD.

3. On the issue of discrimination, Articles 2 and 5 of the CRPD establishes that the denial of reasonable accommodation should be considered a form of discrimination, it is very important that the SMR considers this normative content also in the context of detention, by establishing the denial of reasonable accommodation in custody facilities or any other detention institutions, should be considered a form of discrimination, and in some instances as a form of torture and ill treatment.

4. Likewise, no disciplinary actions should be taken on the basis of disability. The principles should explicitly refer to the prohibition of physically constraining someone because of their "*mental disability*".

5. The lack of accessibility for persons with disabilities in detention centers and prison settings should also be considered as an instance of inhuman and degrading treatment or punishment. Lack of accessibility has to consider the general provision set forth by article 9 of the CRPD, that is, not only the physical environment but also all forms of communication and technology, in order for persons with disabilities to be able to communicate with prison staff and accede, on an equal basis with others, to the services provided by the detention center or the prison.

6. On the issue of *prisoners' safety and inter – prisoner violence* special consideration must be given to the aggravated risk of violence that a person with disability might suffer at a prison or a detention center. Due to lack of resources, above all in developing countries, prison facilities recur to the help of other inmates to give support to prisoners with disabilities, without proper monitoring of these practices, they can amount to situations of helplessness, abandonment, abuse of power and violence.

Detentions conditions should never amount to creating increased suffering to inmates with disabilities. In no case should the disability entail added forms of suffering for persons under detention. To avoid this violation of law, priority should be given to the dignity of the individual and to the preservation of their autonomy in relation to the kind of disability he or she has.

7. On the issue of transfers of prisoners from one detention center to another, staff must make sure that deaf persons are not handcuffed in a way in which they cannot use sign language that prevent them from communicating with others.

8.- Prison administration should provide support for persons with disabilities, even through reasonable accommodation, in order for them to enjoy all the rights on an equal basis with others and secure a life free of violence. The lack of support in a prison environment can amount to torture or cruel and degrading treatment.

9. As to the *medical and health services* the content of article 25 CRPD must have proper consideration. That article establishes the need to provide health services for persons with disabilities on an equal basis with others, in order for them to obtain the highest attainable standard of health without discrimination on the basis of disability. Improper health conditions in prisons and detention centers can have a consequence of creating further disabilities to the already existing ones. Proper identification should be given to these conditions and adopt preventive measures to avoid progression of an existing disability or further disabilities in the prisoner.

10. On the same venue, and although rehabilitation and habilitation should not be considered solely as a medical issue, prison administration should be obliged to implement appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability and full inclusion and participation in all aspects of prison life, on an equal basis with others. Rehabilitation and habilitation programs should be put in place in order to achieve these goals.

11. Under the issue of *disciplinary action and punishment, including solitary confinement* it must be stressed the need to prohibit the forced use of neuroleptics to contain persons with psychosocial or perceived disabilities and, in general, the use of medicine and chemical containment as a way of social control. The use of medicine as social control may amount to torture or ill treatment.

12. On the issue of *solitary confinement* it should never be used on a person with disability, in particular with a psychosocial disability or if there is danger for the person's health in general.

13. On the question of the *right of access to legal representation* proper consideration should be given to articles 4 i and 13 of the CRPD in order to train public and private defenders, judges, prosecutors, and prison staff on the rights of persons with disabilities and on the diversity of disabilities so they can properly apply the relevant procedural accommodations that adequately give access to persons with disabilities, on an equal basis with others, to the general procedures provided in national legislation. Also, there needs to be an awareness of the instances in which certain practices of the criminal system against persons with disabilities should be considered as a form of torture and ill-treatment.

14. Independent bodies such as the ombudsman and other review mechanisms on the conditions of inmates should have adequate procedural accommodations and support for the expression of their will in order to allow persons with disabilities to formulate complaints. This should include awareness raising campaigns among the staff of these institutions on the multiple ways in which a person with a disability may be vulnerable to violence and power abuse. Interviews should take into account accessible formats, including sign language interpretation and other forms of communication, that enable persons with different types of disabilities to formulate complaints.



Maria Soledad Cisternas
Chairperson
Committee on the Rights of Persons with Disabilities