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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 FRANCE¹
TO NOTE VERBALE CU 2013/129/DO/JS**

¹ This document was received in the French language and has been officially translated.

Preparation for the third meeting of the Open-ended intergovernmental Expert Group (the Expert Group) on the Standard Minimum Rules for the Treatment of Prisoners

Following the first meeting of the Expert Group which was held in Vienna from 31 January to 2 February 2012, nine areas from the Standard Minimum Rules for the Treatment of Prisoners were identified to be revised.

These areas were the subject of an in-depth study by the UNODC Secretariat, which put a working document online on the proposed revisions that were discussed at the Expert Group meeting held in Buenos Aires from 11 to 13 December 2012.

The Expert Group then produced recommendations on those nine areas (document UNODC/CCPCJ/EG.6/2012/4).

Following on from this, the Commission on Crime Prevention and Criminal Justice prepared a draft resolution to extend the Expert Group's mandate so that it could continue its work and invite Member States to submit their suggested revisions to the Commission Secretariat.

In this respect, the latest recommendations from the Expert Group mostly conform to the observations produced by the DAP during the preparation of the second meeting of the Expert Group held in December 2012.

France does, however, have reservations on a number of points.

(1) Respect for prisoners' inherent dignity and value as human beings

(a) Non-discrimination

The Expert Group recommends extending the grounds on which discrimination should be prohibited.

This proposal does not pose any particular problem.

(b) Principles of general application

The recommendations to relocate certain existing rules to make them principles of general application and to add further general principles to the existing rule 6 do not pose any problem.

(2) Medical and health services

The Expert Group's recommendations do not pose any particular problem.

(3) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet

(a) Mediation

The Expert Group recommends adding a paragraph to rule 27 encouraging the establishment of, and resort to, mediation mechanisms to solve conflicts.

France has no particular reservation concerning this recommendation because it is recommendatory rather than mandatory. Mediation programmes are tested locally (e.g. Arles prison). However, it must be noted that mediation is not enshrined in the French legal and regulatory framework for the resolution of disciplinary incidents and has not been introduced nationwide.

It will be necessary to ensure when revising rule 27 that the provision on mediation does not become mandatory but remains recommendatory.

(b) Searches of prisoners

The Expert Group recommends adapting rule 29 so that the principles and procedures governing searches be determined by law or by regulation of the competent administrative authority.

This is already the case in French law (art. 57 of the Prisons Act).

This recommendation does not pose any problem.

(c) Searches of prisoners

The Expert Group recommends adding a new rule 29 bis that would provide 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.

The Expert Group's recommendations under points (b) and (c) conform to the spirit of article 57 of the Prisons Act, which stipulates:

“Searches must be justified by the presumption of a crime or by the risks that the prisoners' behaviour presents to the safety of persons and maintenance of order in the institution. Their nature and frequency must strictly respond to these needs and to the character of the prisoner in question. Full body searches are only permitted if frisking and searches using electronic devices are insufficient.

Internal bodily searches are forbidden unless there are special grounds to justify them. They may only be carried out by a physician from outside the correctional institution who has been requested to this end by the judicial authorities.”

(d) Practices prohibited as punishments for disciplinary offences

The Expert Group recommends modifying rule 31 to add “the reduction of diet and 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.

Prohibiting the reduction of diet and drinking water does not feature among the possible punishments for disciplinary offences under French law. The prohibition of collective punishments is based on the general principle of administrative law that punishments should be individual and not collective, reaffirmed in article R. 57-7-49 of the Code of Criminal Procedure regarding punishments for disciplinary offences. This prohibition is reiterated in Memorandum JUSK1140024C of 9 June 2011 on disciplinary measures for adult prisoners.

The prohibition on reducing diet and drinking water and the prohibition on collective punishments have our categorical approval.

France does, however, have major reservations on two points:

- **The prohibition on prolonged and indefinite solitary confinement:**

With regard to the United Nations Rules, close or solitary confinement involves “confining a prisoner in a closed cell on his or her own”.

In this respect, and regardless of the terms used to describe them, the punishment of being placed in a punishment cell and of being confined alone in an ordinary cell constitutes “solitary confinement” according to the Rules.

In French law, article 726 of the Code of Criminal Procedure limits the length of these two punishments to 20 days, which can be extended to 30 days if the actions being punished include physical violence against another person.

This period of time, although relatively short, is still longer than what the United Nations Special Rapporteur on torture has described as a “prolonged” period, namely 15 days.

France is therefore opposed to revising rule 31, in the form envisaged.

An acceptable solution would be the prohibition of indefinite solitary confinement as a punishment for disciplinary offences.

- **The prohibition on the suspension of family and intimate visits:**

In French law, the suspension of family and intimate visits is not in itself a punishment for disciplinary offences.

Nevertheless, confinement to a punishment cell implies a restriction on the right to receive family and intimate visits. Under the provisions of paragraph 5 of the decree contained in article 726, and R. 57-7-45 of the Code of Criminal Procedure, this right is limited to one visit per week. Other visits are suspended for the duration of the punishment.

Furthermore, article 35 of the Prisons Act No. 2009-1436 of 24 November 2009 provides for the withdrawal or suspension of the visiting permit issued to a family member or other person, specifically in order to keep good order. Committing a crime while visiting a prisoner qualifies as sufficient grounds for the withdrawal or suspension of a visitor’s visiting permit.

As it stands, the Expert Group’s recommendation could come into conflict with French law.

France opposes such a restrictive proposal, which it considers should be reformulated. An acceptable proposal could involve prohibiting the indefinite suspension of family visits.

- (e) *Categories exempt from solitary confinement*

The Expert Group recommends prohibiting the use of solitary confinement:

- For juveniles, pregnant women, women with infants, breastfeeding mothers and prisoners with mental disabilities, as a disciplinary punishment.

Here again, this prohibition relates to being placed in a punishment cell or being confined alone in an ordinary cell and, accordingly, gives rise to reservations on France’s part.

On juveniles:

Article 726 of the Code of Criminal Procedure prohibits juveniles under the age of 16 from being placed in punishment cells. This option is, however, possible in relation to juveniles over the age of 16, for whom it is limited to seven days.

In accordance with the provisions under paragraph 6 of the decree contained in article R. 57-7-35, and under article R. 57-7-42 of the Code of Criminal Procedure, the disciplinary punishment of being confined alone in an ordinary cell is only permitted for juveniles between the ages of 13 and 16 for the most serious disciplinary offences (in which case it is limited to three days). It is permitted for juveniles over the age of 16 (for a period of between three and seven days according to the gravity of the offences being punished).

France opposes the Expert Group's proposal because it is too restrictive. A more general proposal showing that a juvenile's age and level of discernment have been taken into account when solitary confinement is imposed, or merely acknowledging that such a punishment for a juvenile is exceptional, could be accepted. A provision on lowering the maximum period of time for solitary confinement for juveniles, or even merely setting a maximum duration of solitary confinement for juveniles, could also be proposed.

Pregnant women, women with infants and breastfeeding mothers:

French law does not formally exclude the possibility of imposing a punishment cell or solitary confinement in an ordinary cell in the case of pregnant women, women with infants or breastfeeding mothers.

However, article R. 57-7-49 of the Code of Criminal Procedure stipulates that punishments must not only be proportional to the nature and gravity of the acts committed but also adapted to the individual who committed them.

France does not, therefore, have any serious reservations on this recommendation.

Prisoners with mental disabilities

The term "mental disabilities" is not really apposite and does not truly reflect the issues in question.

Many prisoners suffer from behavioural or psychological problems without these being considered an obstacle to their continued imprisonment.

In French law, the individual's personality is taken into consideration under article R. 57-7-49 of the Code of Criminal Procedure without the mental disorders from which a prisoner may suffer automatically being deemed an impediment to confinement in a punishment cell or solitary confinement in an ordinary cell.

In practice, a distinction has to be made between the imposition of a punishment and its execution.

With regard to the imposition of a punishment, a mental disorder is not considered grounds for non-responsibility unless the acts committed resulted from serious medical impairment that prevented the perpetrator being deemed responsible for the acts at the time of commission (State Council, 8 November 1995, Tourcoing, No. 89492).

With regard to the execution of the punishment, article R. 57-7-31 of the Code of Criminal Procedure stipulates that a punishment shall be suspended if a physician states that its execution would compromise the health of the individual.

Ultimately, the mental disorders from which prisoners suffer must be weighed against the danger that those prisoners pose to others. With this in mind, the European Court of Human Rights (ECHR) ruled that placing a prisoner in a punishment cell for 45 days even though he suffered from exceptionally serious psychiatric disorders did not constitute an inhuman or degrading punishment or treatment and did not violate article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms

(ECHR, 3 November 2011, *Cocaign v. France*, No. 32010/07). The Court noted that this individual was particularly dangerous and had, at that time, to be isolated from others. The ECHR also took into account the fact that this individual had been monitored and given specialized care and did not pose a danger to himself.

The Expert Group's recommendation on this point is, therefore, far too restrictive. It takes into consideration neither the diversity of mental disorders nor the need to maintain order and safety within correctional institutions. Furthermore, rule 32 guarantees sufficient protection for the prisoner.

France therefore opposes the Expert Group's recommendations on this point.

- For life-sentenced prisoners and prisoners sentenced to death, by virtue of their sentence;

France does not have the penalty of capital punishment, but does have provision for rigorous imprisonment for life.

The disciplinary punishments of being placed in a punishment cell or confined alone in an ordinary cell, as well as solitary confinement as a protection and safety measure but not as a disciplinary punishment, apply equally to prisoners sentenced to rigorous imprisonment for life and to other prisoners.

These measures are ordered following an individual examination and are accompanied by medical surveillance.

Punishments must be proportional to the nature and gravity of the acts and must be adapted to the perpetrator's character. They are suspended when their execution would endanger the health of the prisoner in question.

Solitary confinement as a protective and safety measure is ordered following an investigation taking into consideration the personality, vulnerability and health of the prisoner and the degree of danger he or she presents. Physicians providing medical surveillance of prisoners in solitary confinement issue an opinion on the appropriate time to end confinement whenever they believe it is in the interests of prisoners' health.

This recommendation should be opposed. An amendment to article 32 to make this rule applicable not only to "solitary confinement" as a form of punishment but also when it is a protection or safety measure would be sufficient to guarantee the protection of prisoners.

- For pretrial detainees, as an extortion technique;

The term "extortion technique" should be more clearly defined.

In French law, judicial authorities can order a person under investigation to be placed in solitary confinement in the interest of public information (article 145-4-1 of the Code of Criminal Procedure).

They can also prescribe detention incommunicado for 10 days, renewable once, which restricts prisoners from all contact with anyone except the prison staff and their lawyer (article 145-4 of the Code of Criminal Procedure).

It will be necessary to make sure when this recommendation is formulated that the Expert Group clarifies the term "extortion technique".

- (f) *Limiting the imposition of punishment by solitary confinement*

The Expert Group recommends stipulating in rule 32, paragraph 1 that the imposition of punishment by solitary confinement must be limited “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”.

Solitary confinement here is meant as a punishment.

Cases of resorting to solitary confinement:

French disciplinary procedure provides quite a broad range of disciplinary punishments. That said, isolation punishments and punishment cells are nonetheless very frequently used.

Solitary confinement of limited length is sometimes the only way to guarantee order and safety inside institutions.

France has reservations regarding the overly general formulation of this recommendation, which does not take into consideration the need to maintain order and safety.

Maintaining social contact:

The use of punishment cells has been adapted to allow prisoners to receive one visit and make one telephone call a week. Solitary confinement does not imply any restriction on the right to receive visits or make telephone calls. Prisoners who are being punished can also receive visits from various authorities, public service partners and health-care personnel.

On this point, France has no particular comment on the Expert Group’s recommendation.

Proper recording of punishments

Disciplinary punishments are already recorded in a register belonging to the prison governor (R. 57-7-30 of the Code of Criminal Procedure).

On this point, France has no particular comment on the Expert Group’s recommendation.

(g) France has no objection to the proposal to delete, in rule 32, the reference to the medical officer examining prisoners and certifying them fit for punishment.

Regarding the proposed rewriting of rule 32(3), the provisions under article 57-7-31 of the Code of Criminal Procedure are of relevance:

“The list of people confined alone in an ordinary cell and those in the punishment wing is sent to the medical team daily. Physicians visit and examine every prisoner at least twice a week and as often as they deem necessary. The punishment is suspended if a physician states that carrying it out would constitute a danger to the health of the individual in question.”

During the Expert Group’s discussion on the rewriting of rule 32(3), France would suggest not completely eliminating the idea of the frequency of visits from medical staff but replacing the existing reference (a daily visit) with a lower frequency (weekly), in accordance with French prison practice.

(4) Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners

- (a) *Recording the causes of serious injuries and deaths, and cases of torture, confinement and punishments in custody*

The Expert Group recommends including in the prisoner file information on the circumstances and the causes of death or of serious injuries of a prisoner, as well as the destination of the remains, and information concerning cases of torture, confinement and punishments.

There is no comment on this proposal, which takes into consideration the observations previously put forward in the Expert Group's review.

- (b) *Establishing information systems on prison capacity and occupancy rate by prison*

This recommendation should not pose a problem.

- (c) *Investigating death in custody*

The Expert Group recommends adding a new rule 44 bis obliging prison administrations to initiate and facilitate prompt, thorough and impartial investigations of [all incidents of death in custody] [all incidents of unnatural, violent or unknown death] or of all death shortly following release, including with independent forensic or post-mortem examinations, as appropriate.

The question of an investigation into the causes of death does not pose any problem as it complies with French prison practices set out in article D. 282 of the Code of Criminal Procedure, which stipulates:

“In the event of the death of a prisoner, the prisoner governor shall give notification under article D. 280

If there has been a suicide or violent death, or if the cause of death is unknown or suspicious, the provisions of article 74 shall apply.¹

In any event, the death shall be reported to an officer of the civil registry in accordance with the provisions under article 84 of the Civil Code.²

The place of death need only be described in the civil status certificate by the street name and building number.”

¹ Article 74 of the Code of Criminal Procedure: When a body is discovered, whether or not there has been a violent death, and the cause of death is unknown or suspicious, the law-enforcement officer who is notified shall inform the public prosecutor immediately and go directly to the scene and begin the first inquiries. The public prosecutor shall go to the scene if he or she deems it necessary and shall be assisted by those persons capable of appraising the nature of the circumstances surrounding the death. He or she may also delegate this to a law-enforcement officer of his or her choice.

Unless they are included on a list prescribed under article 157, those persons shall take an oath in writing to assist the course of justice in all honour and conscience.

Following the instruction of the public prosecutor, an inquiry into establishing the cause of death shall be opened. In this context and to this end, the actions foreseen in articles 56 to 62 may be carried out under the conditions prescribed therein.

Eight days after the public prosecutor's instructions, the inquiries may continue as a preliminary investigation. The public prosecutor may also request information to establish the cause of death.

The measures in the first four paragraphs shall also be applicable to cases when a person is discovered seriously injured and the causes of the injuries are unknown or suspicious.

² Article 84 of the Civil Code: In the event of a death in prison, detention centre or custody, the warder or officer in charge shall immediately inform an officer of the civil registry, who shall go to the scene as stated under article 80 and produce the death certificate.

In French law, however, the prison service does not have any criminal investigation authority and may not undertake forensic or post-mortem examinations.

The recommendation should therefore be reworded in order to establish this requirement for prison services “or other competent bodies, as appropriate”.

Furthermore, the compulsory nature of such an inquiry seems disproportionate. The death of a prisoner from a known illness does not necessarily require a forensic examination.

As such the requirement to investigate should be limited to cases of suicide or violent death, or when the cause of death is unknown or suspicious.

The reference to death shortly after release seems surprising. A free person is governed by common law.

A proposal might therefore be made to delete this reference.

(d) Disclosing the findings of the investigation

Here, France supports the Expert Group’s recommendation.

(e) Investigations when there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed

Adding a new rule 54 bis establishing the principles to be respected in preventing and punishing acts of torture and other abuse does not pose any particular comment.

(f) Organizing burials

The Expert Group recommends adding a paragraph to rule 44 stipulating that prison services must [provide for] [facilitate] culturally appropriate burials whenever a prisoner dies in custody.

According to the provisions of the last paragraph of article 44 of the Prisons Act, “When a prisoner dies, the prison services shall immediately inform his or her family or friends of the circumstances of the death and, at the latter’s request, shall facilitate whatever arrangements they may choose to make.

In drafting this recommendation care should therefore be taken to retain wording such as [facilitate whatever arrangements].

(5) The protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances

The proposal, in rule 6, to expand the principle of non-discrimination to take into account special characteristics making certain groups vulnerable and to enable the introduction of measures designed specifically to protect such groups does not pose a problem.

This is in line with article 22 of the Prisons Act, which allows for detention restrictions to be adapted according to prisoners’ character, age, health or disability.

However, the reference to “ethnic and racial minorities and indigenous peoples” is problematic because in French law provisions based on an individual’s race or ethnic origin are not acceptable (article 1 of the Constitution of 4 October 1958). The same applies to the ambiguous term “indigenous peoples”.

It is vital, therefore, that these concepts do not appear in the revised rule 6.

(6) The right of access to legal representation

(a) Information on the right of prisoners to access legal advice (rule 35, para. 1)

This guarantee already exists in French law and is invoked in article 24 of the Prisons Act:

“All prisoners must be informed of their rights and, accordingly, be able to access free legal aid mechanisms in place in every institution.”

France supports this recommendation.

(b) The right to legal advice in the context of disciplinary proceedings

Regarding the inclusion in rule 30 of the right to legal advice for disciplinary proceedings, French law already provides for such a right. Under paragraph 4 of the decree contained in article 726 of the Code of Criminal Procedure, a prisoner may be assisted by a chosen or officially appointed lawyer with the help, where necessary, of State support in appointing this lawyer. Article R. 57-7-16 of the Code of Criminal Procedure stipulates that this assistance is compulsory in cases involving juvenile prisoners.

This recommendation does not pose any problem.

(c) The right of all prisoners to access legal aid mechanisms

Article 25 of the Prisons Act guarantees that prisoners may freely communicate with their lawyer.

French law also provides for legal assistance measures in the form of free legal consultations. To this end, articles R. 57-6-21 and R. 57-6-22 of the Code of Criminal Procedure stipulate:

“Legal assistance in the form of free legal appointments or consultations known as “legal access points” are put in place within correctional institutions by legal assistance departmental boards in coordination with prison governors and the directors of prison integration and probation services.”

“These legal appointments or consultations are intended to respond to requests from a prisoner for legal information except for those requests concerning the criminal case for which he or she is imprisoned and the execution of its penalty or to which a lawyer is already appointed.”

On the inclusion in rule 30 of the right to legal advice for disciplinary proceedings, French law already provides for such a recommendation. Article R. 57-7-16 of the Code of Criminal Procedure stipulates that prisoners being considered by a disciplinary committee can ask to be assisted by a lawyer and, when necessary, benefit from legal aid. This assistance is compulsory in cases involving juvenile prisoners.

The Expert Group’s recommendations on this point do not pose any problem.

(d) The use of interpreters

The Expert Group recommends amending article 37 to grant prisoners who do not speak the local language access to an interpreter in the course of correspondence or meetings with legal advisors.

It will be necessary to reword this recommendation so that its scope of application is limited to criminal procedures.

(e) *Access to legal aid for individuals held in detention on remand*

Prohibiting communication can never be used in relation to an accused person's lawyer (article 145-4 of the Code of Criminal Procedure). No penalty or measure can remove or restrict the right of prisoners to freely communicate with their legal advisors, correspondence with whom is confidential (arts. R. 57-6-6 and R. 57-6-7 of the Code of Criminal Procedure).

The suggested inclusion, in rule 93, of the guarantees given to accused persons on their relations with their legal advisors does not pose a problem.

(7) Complaints and independent inspection

(a) *Restricting prisoners' rights to make requests and complaints*

Deleting the restrictions in paragraphs 1 and 4 of rule 36 does not pose a problem.

(b) *The anonymity and safety of prisoners who make a complaint*

Adding a subparagraph to rule 36 guaranteeing the safety and anonymity of prisoners who make a complaint does not pose a problem.

(c) *Bringing a complaint before a judicial or independent authority*

The recommendation on prisoners bringing a complaint before a judicial or independent authority does not pose a problem.

(d) *The confidentiality of conversations with inspectors*

The recommendation aims to guarantee the possibility to communicate with inspection authorities "freely and in full confidentiality" rather than "without the director or other members of staff being present".

This recommendation does not pose a problem.

(e) *Complaints made by a third party*

The recommendation aims to allow prisoners' lawyers or, in exceptional circumstances, their family members or third parties to make complaints on their behalf.

This recommendation does not pose a problem.

(f) *Investigations into allegations of torture or inhuman and degrading treatment*

The amendment relating to the duty to instigate a "prompt" investigation conducted by an independent national authority into all allegations of torture or inhuman or degrading treatment seems too restrictive and disproportionate. Reference to "swiftly" instigating such an investigation should be proposed.

(g) *Independent prison inspections and monitoring*

France has conformed to all the recommendations issued since the promulgation of Act No. 2007-1545 of 30 October 2007 establishing an Inspector-General of Places of Deprivation of Liberty. This measure was supplemented by Decree No. 2008-246 of 12 March 2008 and resulted in the appointment of Mr. Jean-Marie Delarue on 13 June 2008.

The suggested amendments and additions to rule 55 do not pose a problem.

(h) The powers of independent inspection mechanisms

The recommended amendments to rule 55 correspond to the powers of the Inspector-General of Places of Deprivation of Liberty.

This recommendation does not pose a problem.

(i) Including female specialists among the inspectors

This recommendation does not pose a problem.

(j) Making public the reports written by inspection authorities

The recommendation requires that reports written by inspection bodies be submitted to the competent authority, that they evaluate the institutions' compliance with applicable national and international norms, that they recommend reform steps and that their findings be made public, excluding any personal data of a prisoner (without his or her express consent).

The application of this recommendation to reports written by external inspection bodies does not pose a problem. Reports from the Inspector-General of Places of Deprivation of Liberty already meet these criteria.

Reports by prison service inspectors are not made public.

This recommendation must be amended so to limit its scope solely to reports from external inspection bodies.

(8) Replacing outdated terminology

The Expert Group's proposals are to be approved.

(9) Training relevant staff to implement the Standard Minimum Rules

The Expert Group's recommendations should not pose a problem.