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

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**THE REVISION OF THE STANDARD MINIMUM RULES FOR THE
TREATMENT OF PRISONERS: PRISON SAFETY AND THE
CHILDREN OF IMPRISONED PARENTS¹**

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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.



FRIENDS WORLD COMMITTEE FOR CONSULTATION (QUAKERS) NGO in General Consultative Status with the Economic and Social Council of the United Nations

Prison Safety

The Open-Ended Intergovernmental Expert Group Meeting (IEGM) on revising the United Nations Standard Minimum Rules for the Treatment of Prisoners in Buenos Aires, 11-13 December, 2012 identified “respect for prisoners’ inherent dignity and value as human beings” as a specific area for revision.

1. The IEGM agreed to include further principles of general application, among which were “conditions of imprisonment and treatment of prisoners to protect the personal safety of prisoners.”¹
2. The Friends World Committee for Consultation (Quakers) together with Penal Reform International provided a written submission prior to the IEGM in Buenos Aires, advocating a new Standard Minimum Rule requiring prison authorities to maintain safety². FWCC appreciates the opportunity to expand on this proposal.

¹ UNODC/CCPCJ/EG.6/2012/4: Report on the Meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Buenos Aires from 11 to 13 December 2012, paragraph 8(c)

² UNODC/CCPCJ/EG.6/2012/NGO/2: The Revision of the Standard Minimum Rules for the Treatment of Prisoners: Prison Safety

3. Personal safety is a universal right. In places of detention, the duty of the State to protect persons from violence and abuse takes on particular importance. The deprivation of liberty places a person in a vulnerable situation, which restricts options for securing their personal welfare. In effect, the State undertakes the role of guarantor of the dignity and personal integrity of everyone subject to detention. Safety is a minimum condition for dignity.

4. This paper examines instruments intended to secure safety in prison³. Knowledge about the causes of prison violence, effective measures, and evolving best practice suggest practical steps that prison authorities can take to prevent violence.⁴

5. The UN Office of the High Commissioner of Human Rights expanded on the obligation of prison authorities:

“Prison authorities have a responsibility to ensure the physical safety of prisoners, staff and visitors. ... No one in prison should fear for his or her physical safety.”⁵

6. The European Prison Rules⁶ (2006) state that prisons should have processes “to reduce to a minimum the risk of violence and other events that might threaten safety” (Rule 52.2). Relevant steps are not specified, except for the need to assess each prisoner’s potential risk to others (or themselves) soon after admission (52.1).

7. “Other events that might threaten safety” are not defined. Yet, other forms of victimisation undermine safety and increase the risk of

³ Safety is used here to refer from freedom from assault, verbal abuse, intimidation, theft, exploitation, and other forms of victimisation. Prison authorities should employ different approaches to prevent self harm. States may wish to consider further Standard Minimum Rules to prevent self harm.

⁴ See Appendix.

⁵ Office of the UN High Commissioner for Human Rights (2005) Manual on Human Rights Training for Prison Officials.

⁶ Council of Europe, Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules (2006)

violence. A prison environment where there is a high risk of verbal abuse, harassment on racist or tribal grounds, theft, or exploitation is one in which prisoners might be tempted to use force to defend their interests. Staff should be trained to recognise that protecting prisoners from all forms of victimisation can prevent violence.

8. The American Correctional Association's standards define a broad aim (a goal statement); and an outcome measure links each aim to practices⁷. Accordingly, the goal statement reads that correctional facilities should:

Provide a safe environment for the community, staff, volunteers, contractors, and inmates.

9. The outcome measure, or performance standard, is:

“Protection from Harm:

The community, staff, contractors, volunteers, and inmates are protected from harm. Events that pose risk of harm are prevented. The number and severity of events are minimized.”

10. The extent to which prison authorities are successful in this aim implies a task of gathering data. Thus, the Standard Minimum Rules might include:

In every place where persons are imprisoned there shall be kept a permanent record of all assaults on prisoners, staff, and visitors.

11. The Inter-American Commission on Human Rights is more prescriptive⁸. Under the principle of combating violence, the IACHR calls on prison authorities to adopt the following measures:

⁷ Performance-Based Standards for Adult Local Detention Facilities, Fourth Edition (2004) at <http://www.bia.gov/cs/groups/public/documents/text/idc012203.pdf>

⁸ Inter-American Human Rights Committee, *Principles and Best Practices on the Protection of People Deprived of Liberty in the Americas*, at <http://www.cidh.org/basicos/english/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>

- a. Separate the different categories of persons deprived of liberty in conformity with the criteria set down in the present document⁹;
- b. Provide periodic and appropriate instruction and training for the personnel;
- c. Increase the number of personnel in charge of internal security and surveillance, and set up continuous internal surveillance patterns;
- d. Effectively prevent the presence of weapons, drugs, alcohol, and other substances and objects forbidden by law, by means of regular searches and inspections, and by using technological and other appropriate methods, including searches to personnel;
- e. Set up early warning mechanisms to prevent crises or emergencies;
- f. Promote mediation and the peaceful resolution of internal conflicts;
- g. Prevent and combat all types of abuse of authority and corruption;
- h. Eradicate impunity by investigating and punishing all acts of violence and corruption in accordance with the law.”

12. Echoing (f) the Permanent Committee of Latin America General Report, Rule 24.2 states:

“As far as possible, prison authorities should have recourse to mechanisms of a restorative nature to settle disputes with persons deprived of liberty, and such quarrels as may arise among them¹⁰.”

The PCLA explained that better results for safety are achieved with approaches that bring ‘the contending parties together in a process that involves dialogue’.

⁹ For example: “arrangements shall be made to separate men and women; children and adults; the elderly; accused and convicted; persons deprived of liberty for civil reasons and those deprived of liberty on criminal charges.”

¹⁰ Permanent Committee of Latin American on the Revision and Updating of the UN Standard Minimum Rules for the Treatment of Prisoners (2009): General Report.

13. Building on these sources, FWCC recommends, for the revision of the Standard Minimum Rules, the following set of rules on prison safety:

14. Prison Safety

1. “States shall ensure the safety and personal security of prisoners from exploitation, abuse and violence.”
2. “Prison authorities shall take steps to minimise the frequency and severity of harmful behaviour.”
3. “In every place where persons are imprisoned there shall be kept a permanent record of all assaults.”
4. “Prison authorities shall investigate all serious acts of violence and use the findings to improve safety.”
5. “Prison staff shall receive periodic training specific to the prevention of violence.”
6. “As appropriate, prison authorities shall facilitate and promote conflict resolution.”

15. The reasons for each provision follow:

- (1) Updates the SMR by establishing that safety is an essential aspect of prison management and that the state bears responsibility for maintaining safety¹¹.

¹¹ This wording follows the proposed revision for Rule 6 paragraph (5) in the Summary of the Expert Meeting at the University of Essex on the Standard Minimum Rules for the Treatment of Prisoners Review, UNODC/CCPCJ/EG.6/2012/NGO/1

(2) Specifies processes to enhance safety, maintaining an environment in which victimisation is not tolerated. Safety is not solely protection from assault, but also from theft, intimidation, exploitation, and abuse.

(3) Emphasises the importance of data; data can show when strategies for achieving safety are working; and help to target measures to improve safety.

(4) Follows the IACHR's recommendation that states should investigate all acts of violence; improving strategies for preventing violence depends on knowledge gained from recognising patterns and identifying common factors in violent incidents.

(5) Draws attention to the benefits of training specifically on the causes of, and solutions for, prison violence. Such training will ensure that prison staff are more effective in promoting safety.

(6) Exemplifies emerging good practice, as facilitating the resolution of conflicts can prevent the escalation of disputes into violence.

Appendix – Good practice in the Prevention of Violence

Prison authorities should consider a range of measures, conditions and skills, each of which makes a distinct contribution to preventing situations from escalating to the point of serious injury. This list illustrates, but does not exhaust, examples of good practice:

- Mechanisms, such as mediation, exist for resolving conflicts among prisoners
- Prisoners are protected from victimisation
- Small to medium size facilities enable authorities to influence criminal culture
- Through dynamic security, staff recognise signs of trouble early
- Cultural change makes violence unacceptable
- Prisoners' basic human needs are met
- Racial and ethnic tensions are managed
- Prisoners' skills in managing conflict are developed
- Prisoners are consulted about how to reduce violence
- Staff are trained in the prevention of violence, interaction with prisoners, and conflict resolution
- Staff model a problem-solving response to conflict and aim for alternatives to the use of force
- Intelligence on dangerous prisoners is gathered and analysed
- Regular prisoner surveys about victimisation provide knowledge about factors leading to violence
- Rules against drugs, weapons, and other contraband are rigorously enforced
- Withdrawal of access to social interaction is exceptional and only for brief periods
- Meaningful activities are provided for most prisoners
- Family contact is valued and facilitated
- 'High-crime' areas within the prison are identified and supervised
- Good relationships are fostered throughout the prison
- Non-violent behaviour is recognised and rewarded

Children of Imprisoned Parents

1. Relationships with others are an essential element of our humanity¹². Although the law imposes custody on individual men, women and children, most prisoners have a web of significant relations outside. Families are also affected by imprisonment; and in turn, families have a significant impact on the person's reintegration following custody.

2. There is no reliable measure of the number of children globally who are affected by the imprisonment of a parent. However, it is estimated that millions of children have a parent in prison, and tens of thousands are living in prison with a parent. These children are often very vulnerable, as their rights and welfare can be gravely affected at each stage of criminal proceedings.

3. They can face emotional harm through the separation from a parent, stigma, and added economic hardship:

“Children with incarcerated parents have been referred to as the ‘forgotten victims’ of crime..., the ‘orphans of justice’ ...and the ‘unseen victims of the prison boom’ ... They can experience multiple emotional and social difficulties during their parent's incarceration, which may develop into a range of adjustment problems in the long term.¹³”

4. Yet, prison authorities may believe that the impact on the child is separate from their responsibilities to the detained person. In addition, higher prison populations make it harder for them to fund proper facilities to provide visits and family contact.

¹² “A person is a person because of other people” Jeremy Cronin, *Inside and Out*, 14 (1999).

¹³ Murray, J, Farrington, David P, and Sekol, I (2012) “Children's Antisocial Behavior, Mental Health, Drug Use, and Educational Performance After Parental Incarceration: A Systematic Review and Meta-Analysis,” *Psychological Bulletin*, Vol 138, No 2, 175-210, page 175.

5. The COPING project¹⁴ investigated the needs of children affected by parental imprisonment in four European countries. Its final report¹⁵ focused on the impact of parental imprisonment and how children can become more resilient through support and protective factors. The COPING study found that maintaining contact with the imprisoned parent is, for most, beneficial to the child's mental health. The quality of visiting arrangements is important in supporting the child. But so is the availability of more regular contact, including phone calls. The study also found that children missed their fathers in prison as much as their mothers (albeit in different ways). This finding supports the guidance, in the Bangkok Rules Preliminary Observations¹⁶, that new rules aimed at women prisoners have implications for SMRs for male prisoners who are fathers.

Legal context

6. Article 3.1 of the United Nations Convention on the Rights of the Child¹⁷ provides the principal guidance for decisions about how the treatment of a parent should take into account a prisoner's children:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

7. The UN Committee on the Rights of the Child held a day of general discussion on the children of imprisoned parents in November

¹⁴ An EU-funded FP7 Framework research study Children of Prisoners: Interventions and Mitigations to Strengthen Mental Health (COPING); at <http://www.eurochips.org/images/1374138579.pdf>

¹⁵ <http://www.eurochips.org/newsstory/2000146/final-report-from-coping-research-launched-9-july>

¹⁶ UN General Assembly, Third Committee, A/C.3/65/L5 (6 October, 2010) United Nations Rules for the Treatment of Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules) Preliminary Observations, "12. Some of these rules address issues applicable to both men and women, including those relating to parental responsibilities . . ."

¹⁷ http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf

2011. In its report, the Committee recommended that decisions regarding the treatment of children who are imprisoned with their parents should always be made on an individual basis, taking into account the child's best interests. The Committee added that such decisions should include the option for regular judicial review.

8. The Human Rights Committee adopted a resolution in 2012, focused on the duty of states to eliminate violence against children¹⁸. The resolution drew attention to the rights of children whose parents have been incarcerated. The resolution reaffirmed the right of children to express their views freely in all matters affecting them; and called upon states to:

- Give priority to non-custodial measures, when sentencing or imposing pre-trial measures on a child's sole or primary care-giver;
- Ensure that decisions about how long a dependent child should remain with her or his imprisoned parent should have the child's best interests as a primary consideration;
- Provide children with access to imprisoned parents throughout a period of detention, including regular and private meetings;
- Recognise, promote and protect the rights of children affected by parental imprisonment; in particular, the right not to be discriminated against because of the actions or alleged actions of a parent;
- Keep children informed of the location of their imprisoned parent(s) as well as the progress of petitions for early release;
- Ensure that children whose parents are on death row receive adequate information, sufficiently in advance of a pending execution, to enable the child to have a last visit or communication with the convicted person, unless this is not in the child's best interests.

¹⁸ Human Rights Council, A/HRC/RES/19/37 Rights of the Child, at: http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/A-HRC-RES-19-37_ENG.pdf

Recommendations for a new Standard Minimum Rule:

9. Friends World Committee for Consultation (Quakers) proposes the following set of rules about states' responses to the needs of children whose parents have been imprisoned:

1. General principles

1.1 Judicial decisions regarding pre-trial arrangements and sentencing should take into account the impact of imprisonment on families and dependent children.

1.2 Decisions by criminal justice authorities that affect the children of prisoners should be based on the best interests of the child.

1.3 The treatment of persons in prison should not add to the harm their children experience by the fact of the parent's imprisonment; children should not be discriminated against because of the actions or alleged actions of a parent.

1.4 Children should be consulted about how the prison and wider society can best meet their needs arising from the imprisonment of a parent.

2. Children who accompany their parents into prison:

2.1 Decisions to allow children to stay with an imprisoned parent in prison shall be based on the best interests of the child, taking into account individual circumstances and shall be reviewed regularly to take account of the changes and developments in the child and other circumstances.

2.2 The environment provided for such children's upbringing shall resemble as closely as possible that of a child outside prison.

2.3 Children who accompany their parents into prison shall:

(a) have access to health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health-care, at least equivalent to that in the community shall be provided

(b) be provided with ongoing healthcare services and their development shall be monitored by specialists, in collaboration with appropriate community services

(c) never be treated as prisoners and should be free to leave the prison at any time. The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.

2.4 Prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.

3. Children not in prison who have an imprisoned parent

3.1 Prisoners' contact with their families, including their children, their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by prisoners detained in institutions located far from their homes.

3.2 Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between parent and child. Visits involving extended contact with children should be encouraged, where possible.

3.3 Children should be regularly informed by prison authorities about their parent, subject to their best interests. Basic information prison authorities should provide includes: the length of time the parent will

be in custody; their parent's location; reasons for decisions that will affect the child (such as any reduction in contact); and the parent's progress toward release.

3.4 Children should be consulted, well in advance of the release date, about the possible impact which the reintegration of their parent will have on them.

Friends World Committee for Consultation (Quakers)

Submission to the Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners

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