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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

**SUBMISSION OF THE OFFICE OF THE UNITED NATIONS HIGH
COMMISSIONER FOR HUMAN RIGHTS CONCERNING THE
REVISION OF THE UNITED NATIONS STANDARD MINIMUM
RULES FOR THE TREATMENT OF PRISONERS¹**

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**Submission of the Office of the United Nations High Commissioner for Human Rights
concerning the revision of the United Nations Standard Minimum Rules for the
Treatment of Prisoners**

**Open-ended Intergovernmental Expert Group on the Standard Minimum Rules for the
Treatment of Prisoners**

Vienna, 25-28 March 2014

Introduction

This document indicates the views of the Office of the United Nations High Commissioner for Human Rights (OHCHR) with regard the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners. For ease of use by States and other participants at the third meeting of the Expert Group, these views are organized with reference to the rule by rule approach used in the Working paper prepared by the Secretariat (UNODC/CCPCJ/EG.6/2014/CRP.1). OHCHR has taken note of the 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 (UNODC/CCPCJ/EG.6/2012/4), as well as the nine preliminary areas identified at the first meeting of the open-ended intergovernmental expert group (“the Expert Group”), held in Vienna from 31 January to 2 February 2012.¹

OHCHR has taken into account that several human rights mechanisms, including the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment (A/68/295), and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNODC/CCPCJ/EG.6/2014/INF/1; UNODC/CCPCJ/EG.6/2012/INF/3 & 4); the Committee against Torture (CAT/C/51/4), and Committee on the Rights of Persons with Disabilities (UNODC/CCPCJ/EG.6/2014/NGO.4) have indicated their positions on revision of the

¹ These nine preliminary areas identified are as follows: (a) Respect for prisoners' inherent dignity and value as human beings; (b) Medical and health services; (c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet; (d) Investigation of all deaths in custody, as well as any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners; (e) Protection and special needs of vulnerable groups deprived of their liberty, taking into consideration countries in difficult circumstances; (f) The right of access to legal representation; (g) Complaints and independent inspection; (h) The replacement of outdated terminology; and (i) Training of relevant staff to implement the Standard Minimum Rules.

Standard Minimum Rules. It also notes that a large number of Member States as well as WHO Europe, the Inter-American Commission on Human Rights and numerous civil society organizations have made submissions to the Secretariat of UNODC in preparation for the third meeting of the Expert Group.

In expressing support for various proposals made, OHCHR is essentially indicating that it supports the concept within the proposal that is being endorsed, recognizing that the exact language proposed may be in need of amendment and negotiation by States. In some cases, States have made multiple propositions that appear to turn essentially on specific wording, but where the overall objective to be achieved appears to be broadly similar. In this situation, OHCHR may not express a view and leave it to the States to determine the final wording of a particular concept that has been advanced. The views expressed herein are not comprehensive on all of the proposals that have been made to date, and are aimed at issues primarily of a human rights character.

Standard Minimum Rules for the Treatment of Prisoners

Preamble (proposed)

OHCHR supports the proposal by Norway and the Experts at the University of Essex to have a preamble while avoiding citations of instruments that set out standards which fall short of subsequently adopted instruments, as recommended by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (‘Special Rapporteur on Torture’).

Preliminary observations

Rule 2bis

OHCHR supports the Joint Proposal that reads as follows:

“These Rules are based on the consideration that every person deprived of liberty, who is subject to the jurisdiction of any of the Member States of the United Nations, must be treated with humanity, with full respect for their inherent dignity, their fundamental rights and guarantees, and in strict adherence to international human rights instruments.”

OHCHR supports the proposal that the Rule should be applicable to every person deprived of liberty, and notes that the Special Rapporteur on Torture and the Essex paper also supports this position. See International Covenant on Civil and Political Rights (ICCPR), Article 10.

Rule 4

OHCHR supports Rule 4 as recommended by Norway and Switzerland that the SMRs are applicable to all forms of deprivation without exception and that the SMRs should apply to both State- and privately-run places of detention, and that the State remains responsible for the adequacy of services in case certain services are outsourced. OHCHR notes that the Special Rapporteur on Torture has equally supported these positions.

OHCHR supports Rule 4(1) with the suggested amendments by the Essex paper and supported by Norway.

Rule 5(1)

OHCHR supports Rule 5(1) as set out in the Joint Proposal.

Rule 5 bis

OHCHR supports Rule 5 bis as set out in the Joint Proposal.

Part 1: Rules of General Application

Rule 6

In principle, OHCHR supports the issues identified by the second Expert Group. It would suggest adding the term “belief” so that the text read “religion or belief”, which parallels the language of Article 18 of the ICCPR. Alternatively one could use the terms “religion or conviction” if one wanted to use the language of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).

The utility of making reference to “cultural beliefs” is questioned if the more general term “belief” is added. Moreover the reference to “cultural practices” may be problematic as there are practices associated with other rights such as the right to religion and belief, and conceivably that there might also be some cultural practices that are subject to limitations just as there are some limitations on the practice of religion and belief. See article 18, para. 3, ICCPR. Conceptually, it might be preferable to either drop the reference to practices with the understanding that some practices normally are incidental to particular religions or beliefs.

OHCHR notes that the grounds for discrimination set out in existing Rule 6(1) are identical to those found in the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). However, more recent international conventions have added additional grounds. For example, the ICRMW, adopted in 1990, additional grounds of discrimination that were added include: “religion or conviction, ...national, *ethnic* or social origin,...,age,... marital status,... economic position”

(additional grounds in italics). The Convention on the Rights of Persons with Disabilities (CPRD) adds the term “*disability*” to prohibited discrimination in international human rights law. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted in 2012, had the following additional grounds:

“*age, ...gender, ...citizenship or domicile, ...education, ...social status*”. (Principle 6).

Concerning “sexual orientation” as a prohibited grounds for discrimination, the Human Rights Committee in the communication *Toonen v. Australia* determined that the reference to the term “sex” in Article 2 of the ICCPR included sexual orientation, thereby making sexual orientation a prohibited grounds of discrimination under the ICCPR.

(CCPR/C/50/D/488/1992). Other human rights committees have made similar findings. See Committee on Economic, Social and Cultural Rights, General Comment No. 20 (E/C.12/GC/20), para. 32; Committee on the Rights of the Child, General Comment No. 13 (CRC/C/GC/13), paras. 60 & 72(g); Committee Against Torture, General Comment No. 2, (CAT/C/GC/2), para. 21; Committee on the Elimination of Discrimination against Women, General Comment No. 28 (CEDAW/C/GC/2), para. 21.

“Gender identity” has also been interpreted by several human rights committees as a prohibited form of discrimination, as well as in a report of the High Commissioner for Human Rights. See Committee on Economic, Social and Cultural Rights, General Comment No. 20 (E/C.12/GC/20), para. 32; Committee Against Torture, General Comment No. 2, (CAT/C/GC/2), para. 21; Committee on the Elimination of Discrimination against Women, General Comment No. 28 (CEDAW/C/GC/2), para. 21; *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*: Report of the High Commissioner for Human Rights (A/HRC/19/41), para. 5.

The High Commissioner for Human Rights (A/HRC/19/41), paras. 34 & 36, the Special Rapporteur against Torture (A/68/295), para. 67, and the Committee Against Torture (CAT/C/CRI/CO/2, para. 18), have expressed concern about reports of torture, sexual abuse and physical violence against lesbian, gay, bisexual and transgender (LGBT) prisoners.

Re-location of Rules 61, 63 and 64 into rules of general application

OHCHR supports the propositions made by Finland and New Zealand.

Rule 6bis

OHCHR supports the proposition made for a Rule 6 bis by Argentina, Brazil, Uruguay and Venezuela.

Rule 6 (new proposal by OHCHR)

OHCHR would suggest to have a general principle on the obligation to hold any person, including prison guards and officials, prisoners or others, accountable for acts in prison or

other places of detention that constitute criminal offences and to ensure that a climate of impunity is not created in penitentiary establishments or other places of detention. It could read as follows:

“Any act or omission committed in a prison or place of detention by any person, be it a prison official, a prisoner or any other person, that may constitute a criminal act shall be promptly reported to the authorities for a prompt, independent and effective investigation.”

Rule 6 and 6 bis

OHCHR supports the new proposals put forth in the Essex II paper calling for, respectively, the obligation of prison authorities to maintain meaningful and effective control over all parts of a prison at all times, and to act with the heightened diligence that is due by the State to protect the safety and physical integrity of prisoners against all risks, including for example, those relating to the safety of the infrastructure, fire hazards, risks associated with flooding or natural disasters, in addition to the more commonly identified risks such as unauthorised or disproportionate use of force against prisoners, inter-prisoner violence, and torture and other forms of ill treatment. This obligation is based on the heightened duty of the State to protect the physical integrity and safety of an individual when in a custodial setting; the prohibition of torture and other forms of ill treatment, and the duty to protect life, including through preventative measures. See Articles 9, 7 & 6, ICCPR.

Rule 7

OHCHR supports the recommendation identified by the second meeting of the Expert Group with the additional recommendations made by Norway and the Special Rapporteur on Torture.

Rule 8 (2)

OHCHR questions whether the proposal by Spain for mixed centres or departments in which both men and women may be housed, even given the limitations indicated and the exceptional character, would not lower existing standards for the protection of women.

Rule 8 (new proposal by OHCHR)

“Decisions regarding the placement and protection of transgender and intersex persons should be taken in consultation with the person concerned, taking into account their gender identity or intersex status. Transgender and intersex persons should not be automatically placed in the male or female detention facility on the basis of their sex assigned at birth.”

Rule 22

OHCHR supports the issues for revision identified by the second meeting of the Expert Group.

Rule 23

OHCHR supports the issues for revision identified by the second meeting of the Expert Group.

Rule 24

OHCHR supports the issues for revision identified by the second meeting of the Expert Group and supported by Lebanon and Brazil. OHCHR supports the additional proposals by Norway and Switzerland. OHCHR notes that while medical personnel may be capable of identifying injuries or marks on the body during an examination, there may be a need to consult health care personnel who specialize in the identification of the likely type(s) of torture or ill treatment inflicted on victims. Such specialists can deduce the specific type of torture or ill treatment by the injuries or marks inflicted on a given person that other doctors or other health care specialists may not be able to identify.

Prisoners may have injuries or marks visible on the body on admission that do not necessarily arise as a result of torture or other cruel, inhuman or degrading treatment or punishment, and the nature of these injuries or marks should be recorded, as well as any medical treatment, including types of medication, that is needed to maintain and protect a prisoner's health.

OHCHR supports the proposals made by Spain regarding the need for a medical assessment at the time of admission to examine, *inter alia*, a person's risk for suicide to safeguard the supreme value of life. Suicides are a significant percentage of deaths of persons who are in detention or imprisoned.

OHCHR supports the proposal of Finland, with the exception of the underlined phrase "unless this is obviously unnecessary." OHCHR would possibly suggest that 24(c) be expanded to ensure that persons who were drug injecting users prior to imprisonment, and who may illicitly may continue to access drugs in prison, have access to harm reduction and health care services. Failure to do so could result in high rates of transmission of blood borne diseases such as HIV and hepatitis C in prison. This is a significant public health issue and has been an important health problem in prisons in a number of States.

24(c) could be reformulated to read "dealing with health issues relating to the use of drugs, medication or alcohol, and initiating or continuing appropriate health care treatment, including where indicated, harm reduction programmes."

OHCHR also supports the proposal of Brazil regarding its suggestion for Rule 24 (1) as it is a broad formulation.

Rule 25

OHCHR supports the issues for revision identified by the second meeting of the Expert Group. It notes, however, that health care is not limited to sickness but may also encompass treatment in the case of injuries that do not result from sickness such as torture or ill treatment, accidents or fights, or other medically indicated treatment, including treatment begun prior to detention. The concept and obligation of preventive care could usefully be integrated into the language of the proposed rule.

OHCHR supports the proposal of Finland with respect to Rule 25(2), and Brazil with respect to Rule 25(4) & (5).

Rule 26

OHCHR supports the issues for revision identified by the second meeting of the Expert Group, with some qualifications. It agrees with the principle articulated as long as the participation of prisoners in clinical trials can only take place when it is expected to produce a direct and significant benefit to their health and that there are procedural safeguards to ensure free and informed consent. All other forms of medical or scientific experimentation should be prohibited given the inherently coercive character of detention or imprisonment and the limited opportunities to earn money in prison (participation in clinical trials is sometimes compensated). The formulation of the issues identified by the second expert group is somewhat ambiguous because the prohibition appears to be limited only to such forms of experimentation that may be detrimental to the health of the prisoner. In OHCHR's view, all experimentation that may not produce a direct and significant benefit to the health of the prisoner should be prohibited. OHCHR underlines that even when experimentation may produce a direct and significant benefit to the health of a prisoner, it should only be undertaken with the free and informed consent of the individual concerned.

Rule 27

OHCHR supports the issues for revision identified by the second meeting of the Expert Group.

Rule 29

OHCHR supports the issues for revision identified by the second meeting of the Expert Group, which appears to be reflected in the proposal of Brazil in its suggestion 29 bis.

Rule 30

OHCHR supports the issues for revision identified by the second meeting of the Expert Group, as well as the suggestions of Austria and Finland.

Rule 31 (first issues for revision as presented in the secretariat's working paper)

OHCHR supports the issues for revision identified by the second meeting of the Expert Group, and the proposal of Finland. It would note that in different communications to the Human Rights Committee, the Committee has determined that prolonged solitary confinement can amount to cruel and inhuman treatment, and in some cases torture.

Rule 31 (second issues for revision as presented in the secretariat's working paper)

OHCHR supports the issues for revision identified by the second meeting of the Expert Group, although it notes that the qualification sought by Australia is interesting.

Rule 32

OHCHR supports the issues for revision identified by the second meeting of the Expert Group. In particular, it strongly supports the elimination of reduction of diet as a punishment, and notes that the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has also advocated for this position. OHCHR also strongly supports the prohibition of prolonged or indefinite solitary confinement and collective punishment. While it supports that health care staff closely monitor the mental or physical health of inmates undergoing punishment for disciplinary offences, as suggested by Norway, and to terminate or alter such sanctions based on health considerations as reflected in existing Rule 32(3), there is also a need to determine the threshold issue of whether a given prisoner could support a given punishment prior to it being implemented as reflected in existing Rule 32(2). To remove this protection potentially could be considered to be a lowering of existing standards. The concept of making a threshold determination of whether a prisoner is fit to sustain disciplinary sanctions appears to be reflected in the re-drafted proposal for Rule 32(1) by Argentina, Brazil, Uruguay and Venezuela.

Elements of both the proposal by New Zealand and the joint proposal of Argentina, Brazil, Uruguay and Venezuela have merit. OHCHR would underline that solitary confinement should only be used as a last resort and that the duration of solitary confinement should be as short as possible; moreover that solitary confinement in excess of a relatively short period of time should create a presumption of cruel, inhuman and degrading treatment or, depending on the circumstances of the case, torture. Solitary confinement should only be imposed by the competent authority after a full and fair hearing where the person has the right to present an effective defence, and should be subject to independent review.

OHCHR notes that some categories of prisoners may be placed in solitary confinement as a measure of protection. For example, the Special Rapporteur on Torture has observed that lesbian, gay, bisexual and transgender individuals are often subject to solitary confinement for their protection. See A/66/268, para. 69. Although segregating detainees in situations of

vulnerability for protective purposes can be legitimate, it should be undertaken only after consultation with the detainee, follow a clear protocol, not constitute punishment or lead to limitations on accessing activities beneficial to prisoners (e.g. access to recreation, reading materials, legal counsel or health care), and should be only undertaken for as short a time as possible.

Rule 33

OHCHR supports the observations that the Special Rapporteur of Torture, the Committee against Torture and the Essex paper that the use of physical restraints such as electro-shock stun belts and restraint chairs should be prohibited.

Rule 35(1)

OHCHR in principle supports the issues for revision identified by the second meeting of the Expert Group. It also supports the recommendations of Norway and the respective proposals of the Special Rapporteur on Torture and the Essex paper on ensuring that all information on rights and obligations of inmates is in a language that can be understood and easily accessible, including for blind, deaf or hard of hearing individuals. It also supports the position of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that all detainees should have a right to legal representation regardless of whether their detention is pre-trial or post-conviction, and that the right to legal representation should extend to protect a person's rights relating to the detention regime and conditions. (See also Rule 93).

Rule 37

OHCHR in principle supports the issues for revision identified by the second meeting of the Expert Group. Legal aid at a minimum should be available for rights recognized in international human rights law (e.g. Article 14, ICCPR), and in those situations called for in the UN Principles and Guidelines on access to Legal Aid in the Criminal Justice System.

Rule 38

OHCHR supports the proposal of Austria.

Rule 40

When referring to instructional books, it might be useful to have some language to the effect of, "including books about a State's legal and criminal justice system and a person's constitutional and other legal rights."

Rule 44

OHCHR supports in principle the issues for revision identified by the second meeting of the Expert Group.

Regarding the first issue identified by the second meeting of the Expert Group:

OHCHR supports the proposal of the United Kingdom that the wishes of a prisoner or his or her family may involve lawful means for disposal of the body other than burial. It also supports the proposal of Finland, France, Guatemala, New Zealand and the United Kingdom to use the term ‘facilitate’ as the prison administration is not necessarily responsible for funeral arrangements in all cases; although it also supports Guatemala’s observation that there may be cases where there are no family members or friends to take care of the required formalities and then it should be the responsibility of the State to do so. These ideas are to some extent reflected in Croatia’s proposal for Rule 44(4).

Regarding the second issue identified as a new 44 bis:

OHCHR supports the observation by Austria and Switzerland that such investigations should be independent. OHCHR further proposes that such investigations should be into all incidents of death in custody, which is practiced in some States. Wherever life has been lost in circumstances potential engaging the responsibility of the State, there should be a duty to investigate. In prison or other places of detention a death may be due, for example, accident at work or elsewhere, a fire, or negligent medical care. In each of these cases, as well as in cases of violent death or when the cause of death is unknown or otherwise suspicious, the cause of death and the responsibility of those involved should be determined by a prompt, independent and impartial inquiry. The inquiry must be open to a degree of public scrutiny and the relatives of the deceased must have the opportunity to be involved. To restrict the obligation to suspicious deaths would involve a threshold administrative determination that would be critical, and possibly subject to negligent or intentional determination of an inaccurate character. To accept that such a threshold determination could be made would undercut the policy of preventing deaths in custody in the future, holding those responsible for such deaths accountable, and ensuring that there is transparency in the procedure for determining the causes of such deaths.

International human rights law provides that when a State detains or imprisons a person, it is held to a heightened level of diligence in protecting the individual’s life. When an individual dies in State custody, there is a rebuttable presumption of State responsibility whereby the State must affirmatively provide credible evidence that it lacks responsibility for the death. See *Dermit Barbato v. Uruguay*, Communication No. 84/1981, Human Rights Committee; Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions (A/61/311), paras. 53-54; Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment (A/68/295), paras. 62-63.

Rule 44(3)

OHCHR supports the proposal in the Essex Paper and supported by Norway.

Rule 44

OHCHR supports the position advocated by the Essex paper and supported by Norway that there should be an independent investigation that is prompt, impartial and effective into serious injuries of detainees or prisoners held in custody as well as into deaths.

OHCHR notes that in a Council of Europe document expressing the views of the Council's Commissioner for Human Rights, it articulated that both death and serious injuries in custody should be subject to investigation, and that the five principles applicable to those investigations should be: *independence, adequacy, promptness, public scrutiny, and victim involvement*. 12 March 2009, CommDH(2009)4 (emphasis added). In national practice, a number of States already undertake independent investigations into both death and serious injuries in custody.

Rule 44 bis (new proposal by OHCHR)

OHCHR notes that the Special Rapporteur against Torture has identified three issues that could constructively be included as new rules under Rule 44. See A/68/295, paras. 65-66.

The first issue concerns the duty of the prison administration to ensure that, notwithstanding internal investigations, all complaints or reports of torture or other ill-treatment, including prison violence, threats and intimidation, as well as incidents of deaths in custody, irrespective of their cause, or shortly following release, are transmitted without screening to an external independent body for investigation. OHCHR would suggest to add that all incidents resulting in serious injuries also be transmitted in this manner since they may not necessarily result from torture or other forms of ill treatment.

The second issue concerns the duty of the State to establish protocols and guidelines for the prison administration to cooperate with the relevant authorities during an investigation by not obstructing the investigation and by facilitating the collection and preservation of evidence.

The third issue concerns that those implicated in deaths in custody, or torture or other forms of ill treatment should immediately and for the duration of the investigation be suspended, at a minimum, from any duty or service involving access to detainees or prisoners, and in particular victims and potential witnesses, because of the risk that they might undermine or obstruct investigations.

Rule 47

OHCHR supports the issues for revision identified by the second meeting of the Expert Group.

Rule 54

OHCHR supports in principle the issues for revision identified by the second meeting of the Expert Group regarding the a new Rule 54 bis to initiate prompt and impartial investigations whenever there are reasonable grounds to believe that an act of torture or other inhuman or degrading treatment or punishment has been committed in prison settings, irrespective of whether a complaint has been received. Consistent with OHCHR's previous comments, it is of the view that any investigation should be independent.

Rule 55

OHCHR supports in principle the issues for revision identified by the second meeting of the Expert Group. OHCHR supports the proposal by Norway and the respective proposal of the Special Rapporteur on Torture to clarify that places of deprivation of liberty that are to be visited by inspection mechanisms may include police lock-ups, vehicles, prisons, pre-trial detention facilities, security service premises, administrative detention areas, psychiatric hospitals and special detention facilities.

Part II: Rules Applicable to Special Categories

Rules 57 – 59 and Rule 60 (1)

OHCHR in principle supports the issues for revision identified by the second meeting of the Expert Group and to relocate Rules 57 – 59 and Rule 60(1) to make them part of an amended Rule 6, whose title is to read 'Basic Principles'.

Rule 71

OHCHR supports both the proposals of New Zealand and Finland. In addition, it supports the position taken in the Essex paper that prison labour shall not amount to slavery or servitude in violation of Article 8(1) of the ICCPR. It also supports the position in the Essex paper that a requirement to work should only be as a result of a conviction in a court of law. Arguably this latter position is already taken into account since Rule 71 falls within Part II dealing with prisoners under sentence, but it should be kept in mind if there is a reorganisation of the text or its headings.

Rules 82 – 83

OHCHR supports the issues for revision identified by the second meeting of the Expert Group.

Rule 93

OHCHR supports the issues for revision identified by the second meeting of the Expert Group, and the suggestion by Norway to support the proposal of the Special Rapporteur on

Torture, i.e. to provide, at all stages of the criminal justice process, all persons detained, arrested, imprisoned, suspected, accused, or convicted with prompt, independent and effective legal representation of the detainee's own choosing, if available, and otherwise at the State's expense. OHCHR expresses its concern at language in the existing rule and in part of the proposal of Finland which makes reference to a prisoner being able to "apply for legal aid where such aid is available". In the pre-conviction phase of criminal proceedings prior to a conviction being finally determined, this is a lowering of the protection provided for in Article 14(3)(d) of the ICCPR which provides that legal assistance shall be made available to an accused and paid for by the State when the person does not have sufficient means to pay and the interest of justice so require. The UN Principles and Guidelines on access to Legal Aid in the Criminal Justice System indicate that the language "where the interest of justice so require" contained in Article 14 of the ICCPR is met when an accused faces any possible term of imprisonment. Legal aid should be made available prior to any interrogation by the authorities in the case of arrest or detention.

Rule 94 (Civil prisoners)

(New proposal of OHCHR)

OHCHR refers to Article 11 of the ICCPR and its language that, "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation." OHCHR notes that this is a non-derogable right under Article 4 of the Covenant. Therefore, OHCHR proposes to delete the language in Rule 94 that states "In countries where the law permits imprisonment for debt..." as it is incompatible with the prohibition in Article 11 of the ICCPR to put a person in prison for his or her inability to repay a debt, which is a form of contractual obligation. To not do so would be a lowering of international human rights standards.
