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

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

Prepared by

Sub-Committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment (SPT), Working Group on the Standard Minimum Rules for the
Treatment of Prisoners²

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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.

Observations by the SPT concerning the Standard Minimum Rules for the Treatment of Prisoners

Prepared by the SPT WG on the Standard Minimum Rules for the Treatment of Prisoners¹

The on-going process to revisit the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) represents an opportunity for the SPT to stress the need for this basic universal document to uphold and reinforce a number of key overarching principles which are of central importance to the effective prevention of torture and ill-treatment, and which, the SPT believes, are implicit within the SMR themselves: these being the principles of due process, human dignity and non-discrimination in places of detention,

I. Due process

1. Since imprisonment can only be legitimate when sanctioned by legal process, the SPT believes that it would be appropriate for the SMR to acknowledge the importance of due process as a basic procedural safeguard which is applicable not only throughout all phases of the criminal justice process but is also relevant to the period of imprisonment itself. Due process, in the sense of the 'right to a fair trial' is well established. However, due process obligations are not limited to the criminal proceedings and trial. The State has the obligation to ensure that the rights of those convicted and those on remand, are properly protected throughout their period of imprisonment, and the concept of due process is a helpful tool in this regard.

2. As a result, there must be effective legal procedures available to all prisoners which enable them to challenge any acts or omissions of the detention staff or authorities who are believed to exceed what has been legally sanctioned, and its incidental consequences.

3. In order to achieve such a standard of protective oversight, there needs to be a competent, independent and impartial authority or judicial body empowered to determine whether the detention staff or authorities have acted in breach of their mandate or in excess of their authority and before whom both the detainee and custodial staff or authorities appear on the basis of equality.

4. Whilst in prison, whether sentenced or in pre-trial custody, persons deprived of their liberty must (a) be able to receive advice and assistance from those with adequate legal knowledge regarding the exercise of their rights, sufficient to enable them to access complaints mechanisms; (b) have effective access to a lawyer able to initiate appropriate forms of proceedings before the relevant competent authority or judicial body.

5. Proceedings arising from the situation in penitentiaries can be specialised and may require the expertise of different forms of legal skills than those appropriate for

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These comments have been prepared by the SPT WG on the SMR and will form a basis for further discussion within the SPT on the issues they raise. They do not, therefore, represent the official position of the SPT. They do, however, reflect its current thinking on the issues raised.

defending against a criminal charge. Translation facilities may also be required. When determining issues brought before them, the competent authority or judicial body must be able to take into account relevant national and international human rights standards.

II. Human dignity

1. The deprivation of liberty does not negate the right to personal self-determination, which needs to be respected and protected to the maximum extent that is compatible with the fact of their imprisonment. In particular, each person enjoys, inter alia, the freedom of conscience, which remains inviolable, and the right to a life project, which is only temporarily intruded upon by the fact of their imprisonment.²

2. All prisoners are the subjects of rights and duties rather than being objects of treatment or correction. Concepts such as these are belittling. Hence, a paradigm shift away from clinical or therapeutic assumptions, where such assumptions exist, is necessary in order to properly reflect a human rights oriented approach which works to prevent mis-treatment.³

3. Special attention must also be given to solitary confinement; it may only be used as an exceptional disciplinary sanction of last resort, strictly time-restricted and both its use and the manner of its implementation must be subject to stringent controls.

III. Non-discrimination

1. Decisions concerning the particulars of a regime of detention should be based on individualized risk assessments, conduct whilst in detention and other relevant objective factors. Approaches based on labeling or categorizing prisoners on the basis of general psychological profiles, on the nature of their criminal record or on perceptions of the perceived danger which, if not in prison, a prisoner might pose to society at large, can have the effect of depriving them of the enjoyment of their rights on the basis of equality and thus constitute a form of discrimination.

September 2013

² The right to a life project has been developed by the jurisprudence of the Inter American Human Rights System.

³ The SPT notes that the SMR currently appears to use the word 'treatment' in at least three different way: a) in a general, rather ambiguous term of uncertain scope (Title and Rules 1, 8, 22 (1), (2), and 94; b) in a medical sense, as regards those detainees who are unwell (Rules 22 (1), 23 (1), 44, 82 (4) and 83; and c) as a descriptor of a corrective/ therapeutically approach to detainees (Rules 28 (2), 35 (1), 55, 59, 61, 63 (1), 63 (3), 65, 67 (b), 68, 70 and 75 (2)). It is this latter use of the word which is of concern to the SPT.