

27 September 2013

Original: English

**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 SWITZERLAND¹
TO NOTE VERBALE CU 2013/129/DO/JS**

¹ This document is reproduced in the form and language in which it was received.

Switzerland's position on the revision of the Standard Minimum Rules (SMR)

The revision of the SMR offers a welcome opportunity to renew the commitments of our States to ensure humane detention conditions in any form of deprivation of liberty and to implement in good faith the minimum standards to be updated. We need to revisit States' political commitments to address the needs of persons deprived of their liberty, with full respect for their inherent dignity and fundamental rights and to adhere strictly to our obligations under international treaty and customary law. Treating all persons deprived of their liberty with humanity and respect for their dignity is a fundamental and universally applicable rule.

Most of the nine areas of review under consideration address issues that are covered by the non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment (see art 7 ICCPR and CAT) as well as by other human rights norms such as the due process of law and minimum guarantees (see art 14 ICCPR), the non-derogable right to freedom of thought, conscience and religion (art 18 ICCPR) and the right to health (see art 13 ICESCR). Therefore in Switzerland's view, a human-rights-based approach is fundamental for the SMR review process.

We also take the opportunity to stress the need for the full implementation of existing human rights obligations and commitments in this context. States need to allocate adequate resources including properly trained staff. In this context, it is important for developing countries to make use of the technical assistance offered by relevant United Nations entities and the international community to strengthen national capacities and infrastructure with regard to ensuring standard minimum rules for the treatment of persons deprived of their liberty.

Switzerland is committed to active engagement with the open-ended Intergovernmental Expert Group established by the Commission on Crime Prevention and Criminal Justice (CCPCJ) to exchange information on good practice and challenges, with a view to ensuring that the revised rules reflect the recent advances in correctional science and best practices, as well as developments in international case law and the General Comments of human rights bodies, and to implement them at the national level.

Switzerland continues to welcome active participation in the review process by relevant civil society organisations.

Switzerland's objectives for the revision of the SMR

Switzerland recognizes the importance of the principle that persons deprived of their liberty shall continue to enjoy their human rights except for those lawful limitations - compatible with States' obligations under international law - that are demonstrably necessitated by the fact of incarceration. Any change to the SMR should not lower any of the existing standards, rather their revision should seek to improve them. In this spirit, Switzerland has the following priorities for the revision of the SMR:

1. **The preliminary observations** should specify that the rules are applicable to all persons under any form of detention or imprisonment and to all forms of deprivation of liberty, and that the scope of the SMR includes both state and privately-run places of detention.
2. **Rule 6** should be revised as a “**rule of general application**”. In particular, it should state clearly that all categories of prisoners should be treated with respect due to their inherent human dignity and that the SMRs apply to all individuals without discrimination of any kind.
3. **The rules on disciplinary sanctions and punishment** should be revised, notably with regard to solitary confinement.
4. **The rules on medical services** should be revised, notably to ensure that medical and health services are available and accessible, without discrimination of any kind.

1. Preliminary Observations

- A preamble should be introduced and should mention the Universal Declaration of Human Rights, the relevant human rights treaties (the two Covenants, CAT, CERD, CEDAW and CRC) and relevant Optional Protocols (such as OPCAT) as well as political commitments adopted in the context of human rights in the administration of justice, such as the 1990 Basic Principles for the Treatment of Prisoners and the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- The preliminary observations should specify that the scope of SMR should not only include places of detention run by the State but also privately-run places of detention.
- It should also be made very clear in the Preliminary Observations of the SMR that the rules are effectively applicable to all persons under any form of detention or imprisonment and to all forms of deprivation of liberty without exception and regardless of the legal status of the imprisoned person.

2. Revision of the "Basic Principle" in Rule 6 as a "Rule of General Application":

- Paragraph 1 should contain the commitment of States to treat all categories of prisoners with respect due to their inherent human dignity and to their human rights without discrimination of any kind.
- A new paragraph 2 should be the non-discrimination clause in the present Rule 6/1. It should be added that the SMR are to be understood as applying to all individuals, without discrimination of any kind. Reference could be made to multiple or aggravated forms of discrimination.
- Paragraph 3 should state that no prisoner shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment and that no exceptional circumstances whatsoever, including the state or threat of war, internal political instability or any other public emergency, may be invoked as justification for torture (see art. 2/2 CAT). It should be stated that the obligation of States to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with, or at the behest of the State party.
- Paragraph 4, Rule 6/2 should be amended in line with art. 18 ICCPR and strengthened with a strong commitment stating that the religion, belief and moral precepts of the group to which a prisoner belongs shall be respected.
- A new paragraph 5 should recognize the commitment of States to the personal, physical and psychological safety and security of prisoners from exploitation, abuse and violence.
- A new paragraph 6 could recognize that prisoners shall be assigned to the extent possible to prisons close to their home or place of social rehabilitation, taking into account considerations such as the prisoner's role as sole or primary carer for minor children or other dependents, as well as each individual prisoner's preference and availability of appropriate programmes and services.
- A new paragraph 7 could amount to a relocation of the existing Rules 57 and 60.
- A new paragraph 8 should be dedicated to the adverse impact of overcrowding of places of detention on conditions of detention, which can result in conditions that amount to cruel, inhuman or degrading treatment or punishment or even torture. States should be encouraged to take all measures to prevent overcrowding of prisons.

3. Revision of the rules on disciplinary sanctions and punishment (Rules 27 – 32)

- The rules should prohibit the use and imposition of indefinite solitary confinement either as a part of a judicially imposed sentence or a disciplinary measure.
- The rules should also prohibit prolonged solitary confinement and frequently renewed measures that amount to prolonged imposition. No prisoner, including those serving a life sentence and prisoners on death row, shall be held in solitary confinement merely because of the gravity of their crime.

- The rules should ensure that solitary confinement can only be imposed, if at all, in very exceptional circumstances, as a last resort, for as short a time as possible and with established safeguards in place, after obtaining the authorization of the competent authority and subject to independent review.
- The rules should explicitly prohibit the imposition of solitary confinement of any duration for juveniles, persons with psychosocial disabilities or other disabilities or health conditions, pregnant women, women with infants and breast-feeding mothers.

4. Revision of the rules on medical services (Rules 22 - 26)

- The rules should ensure that medical and health services should be available and accessible, provided free of charge, without discrimination of any kind.
- The rules should state that medical confidentiality must be respected.
- The rules should ensure that every prisoner should be medically examined upon admission, with special attention to issues that concern women prisoners.
- In order to prevent torture and other cruel, inhuman or degrading treatment or punishment, the rules should be amended to include the duty of medical personnel to detect, treat, properly document and refer to the authorities responsible for investigating the allegation of torture and other cruel, inhuman or degrading treatment or punishment, any signs, allegations or reasonable grounds to believe that torture and other cruel, inhuman or degrading treatment or punishment may have occurred prior to admission or while in detention or penitentiary.

4. Other Proposals

- Rule 47 concerning the investigations of all deaths in custody should be revised. It should contain the duty to inform the prison medical staff and the next of kin, to transfer the body to the family, and to report the death to an investigatory body, independent of those implicated in the allegation and with no institutional or hierarchical connection between the investigators and the alleged perpetrators.
- The relevant rules should ensure that the impact of custody on children accompanying a detained person or living with an imprisoned parent or living outside a place of detention is duly addressed when the proposals made under the areas of review are discussed.
- The relevant rules should ensure contact with the outside world for all persons deprived of their liberty and at all stages of the deprivation of liberty, in particular prompt access to legal counsel and if necessary through legal aid.
- The relevant rules should ensure that education and information regarding the prohibition of torture or other cruel, inhuman or degrading treatment or punishment are included in the training of corrections personnel, civil or military, medical personnel and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of deprivation of liberty.

- A new rule should be introduced to ensure that persons deprived of liberty are held in officially recognized and accessible places of detention (prohibition of secret “incommunicado” detention).
- A new rule should provide for independent inspection mechanisms to have unimpeded access without prior notice to all places of deprivation of liberty to ensure these monitoring mechanisms are able to exercise their functions in the most effective and independent manner.
- A new rule should be introduced allowing anyone who is deprived of his or her liberty to challenge expeditiously the lawfulness of their detention, e.g. through *habeas corpus*, as an important safeguard of protection against torture or other cruel, inhuman or degrading treatment or punishment.