RESPONSE OF THE GOVERNMENT OF NEW ZEALAND\textsuperscript{1} TO NOTE CU 2011/26 AND NOTE CU 2012/157/DO/JS
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Tēnā koe Mr Bedford

Thank you for your email dated 25 September 2012 attaching an invitation from the United Nations Office on Drugs and Crime to provide information about good practice examples related to the United Nations Minimum Rules for the Treatment of Prisoners. The invitation also asked for comment about the Economic and Social Council’s intention to review the rules in light of advances in correctional science and practice. We would appreciate your assistance in forwarding this information to the Justice Section of the United Nations Office on Drugs and Crime.

New Zealand operates its prisons in accordance with the United Nations Minimum Rules for the Treatment of Prisoners. Examples of how we give effect to areas of concern outlined in the rules are set out below.

**Health and well-being of prisoners**

The health and well-being of prisoners is a key concern for us. We recognise that prisoners need to be healthy and have their mental and physical well-being attended to in order to fully take advantage of rehabilitation programmes and make changes to enable them to lead law-abiding lives.

In 2011, all prisons across the country became smoke-free. The preparatory work for this, including support for prisoners and staff to break their smoking habits, meant that the implementation took place without incident, which is a world first. Since then, we have seen a reduction in the number of fire-related incidents in prison, as well as an increase in the air quality and health of our staff and prisoners.

To address the increasing number of prisoners who present with mental health needs, we have implemented a Mental Health Screening Tool in our men’s prisons. Support for vulnerable prisoners in mainstream units has been increased through the introduction of mental health in-reach services and welfare checks for those who require additional support. Practical steps, such as replacing ventilation grilles and introducing...
new clothing and bedding for prisoners considered to be 'at risk', have contributed to a reduction in the rates of serious self-harm incidents.

To ensure our health centres are providing a level of care equal to that of other primary health care practices in New Zealand, we are assessing all our prison-based health centres against externally developed National criteria. By 2014, it is anticipated that all 16 of the health centres within our prisons will have been assessed and achieved the required standards.

We are also working directly with health partners to establish a High Dependency Unit for prisoners with complex health needs. Many of these prisoners would require residential care if they were managed in the community. The unit will enable prison staff and health providers to provide additional support to prisoners who have ongoing health or disability needs as a result of ageing or other medical conditions. The unit will provide a safe and secure environment where prisoners can be supported to maintain their level of health, and be effectively supported in their transition out of prison if they are released, or to age with dignity within the prison.

Rehabilitation and Reintegration

Nearly half of our prisoner population are Māori, so in addition to general rehabilitation programmes, we provide programmes and units that create a motivational and rehabilitative environment underpinned by Māori culture and the Māori language.

Māori Focus Units allow prisoners to live in an environment that encourages cultural identity and values, and shifts prisoner thinking away from the attitudes and beliefs that formerly supported their criminal lifestyles. In partnership with Māori community groups, we have also opened two Whare Oranga Ake units. These units operate outside the secure perimeter of the prison and support Māori prisoners close to release to find work and accommodation, as well as to engage with family and local communities in positive ways.

Drug and alcohol abuse is a major driver of crime. Two-thirds of New Zealand prisoners have substance abuse problems and over 50 percent of crime is committed by people under the influence of drugs and alcohol. Since 2010 we have doubled the number of prisoners who can access intensive drug treatment programmes. Additionally we are expanding the range of alcohol and drug treatment available to prisoners which will enable an extra 4,000 prisoners to access treatment by 2014.

Education and employment

We run various programmes that give prisoners the opportunity to participate in education and employment related activities. Prisoners with identified literacy and numeracy needs are supported to gain these skills in order to more effectively participate in rehabilitation opportunities and to gain employment on release.

Efforts to increase prisoner literacy and numeracy have proven to be successful, with 89 percent of the 2,383 prisoners in literacy and numeracy programmes demonstrating an improvement in their skills. We will be building on this success by expanding literacy and numeracy training to groups who until now have had limited access to these
opportunities, such as people on remand, those serving short sentences, and those with special learning or English as a second language needs.

Prisoners have the opportunity to gain industry related qualifications and obtain relevant work experience whilst in prison. Recent initiatives have seen this training targeted at potential skills gaps in the New Zealand labour market as a result of the devastating earthquakes in Christchurch.

Open days have been held at prisons throughout the year to allow industry leaders, local employers and the general community to observe prisoners participating in training and work experience activities such as catering, joinery and other trades. This also provides an opportunity to introduce prisoners to potential employers.

Prisoners with the appropriate security level are able to work outside the secure perimeter of the prison in jobs that may provide employment on their release from prison. Many prisoners are employed by local employers and there are plans to increase the number of prisoners in this type of employment. We have also partnered with community groups to provide employment opportunities for offenders, and we collaborate with other government departments to support prisoners to find work opportunities prior to their release from prison. In the last year, 47 percent of offenders maintained their job after release.

Thank you for the opportunity to provide information on our initiatives and we look forward with interest to the outcome of the review. Further information about our initiatives can be found at http://www.corrections.govt.nz. If you require any other information, please do not hesitate to contact Sarah Jardine, Manager, Strategic Policy, at sarah.jardine@corrections.govt.nz.

Nāku noa, nā

Jane von Dadelszen
Director, Policy and Research
Information on New Zealand best practices, national legislation and implementation of the United Nations standard minimum rules on the treatment of prisoners

Introduction

1 New Zealand welcomes a review of these rules. The rules are important to us in the design and delivery of prison services. To be of most effect they need to be as current as possible, reflecting emerging knowledge on effective correctional practice and reflective of society’s expectations in the way prisoners are managed and treated.

The Review Process

2 We would like to see the expert group establish a process for the review and seek information in a systematic manner to advise on the redrafting of the Rules. Establishing such a process is important to enable states to contribute effectively.

3 The following material is provided as an initial contribution, essentially to provide examples of the concrete material we could draw on to inform a review.

General comments

4 Much of the material in the rules remains relevant and important. The preliminary observations that introduce the rules remain important in their emphasis on setting out what is generally accepted as good practice for the treatment of prisoners and management of institutions, rather than detailing a model system for penal institutions. The full acknowledgement of constant development in the field is also of continuing relevance.

5 However, from both those perspectives the rules in their current form do require review. First approved in 1955 and subsequently in 1977, application of the rules in the twenty-first century is increasingly circumscribed. This arises from a number of perspectives which include:

- Modernisation of expression – most obviously by replacing the use of the male pronoun with gender neutral language, but also in such areas as reference to prisoners suffering from mental illness (currently described as “Insane and Mentally Abnormal Prisoners”).

- Over-prescription – in places the rules make concrete statements of standards that lack obvious justification, or are outdated. An example of over-specification is Rule 23(2) with its requirement for a nursery for infants staffed by qualified personnel. Other arrangements can be made for care when, as in New Zealand’s case, units are small and general staff are able to provide support to both mothers and children. An example of outdated specification
can be found in, Rule 7 (1) which talks of a “bound registration book with numbered pages”. The principle is important but probably should be presented as something like “a permanent record identifying individual prisoners and detainees with separate entries for each person”.

- **Assumption of direct state provision of services** – the rules need review to ensure that while the state is responsible and accountable for prison services this does not require that services are directly provided by the state. Management of prisons may be undertaken by private sector entities on contract to the state. Furthermore the non-government/voluntary sector may provide a wide range of services. As a result some rules, such as 46(3) which requires that prison officers have civil service status and security of tenure, need amendment to reflect these different circumstances.

6 Other comparable broad areas for change may be identified as part of a further review.

**Best practices**

7 New Zealand’s policies and procedures for the management of prisoners are founded on best practice derived from available research, both that conducted in New Zealand and internationally. The Department also maintains close contact with relevant and comparable jurisdictions in order to keep abreast of best practice as it is identified in operating circumstances. In each case New Zealand aims to design and deliver services that are appropriate for and responsive to the needs of the New Zealand environment. Particular attention is given to responding to the needs of particular cultural groups and especially to Maori, the indigenous people of the country.

8 Full specifications of services are provided in Departmental documents, including the Prison Services Operations Manual which can be found on the Department’s website [http://www.corrections.govt.nz/](http://www.corrections.govt.nz/).

9 Details of particular best practice processes can be provided as part of the ongoing review of the rules.

**National Legislation and International obligations and agreements**


11 Collectively these legislative developments provide a comprehensive process for managing offenders, and alleged offenders in prisons, and, for those who served community based sentences and parole following release from imprisonment.
12 The following link provides access to the Corrections Act 2004:


13 Particular features of the Corrections Act that may assist in redrafting the rules are:

13.1 An explicit statement of the purpose of the corrections system – section 5 of the Act states:

5 Purpose of corrections system
(1) The purpose of the corrections system is to improve public safety and contribute to the maintenance of a just society by—
(a) ensuring that the community-based sentences, sentences of home detention, and custodial sentences and related orders that are imposed by the courts and the New Zealand Parole Board are administered in a safe, secure, humane, and effective manner; and
(b) providing for corrections facilities to be operated in accordance with rules set out in this Act and regulations made under this Act that are based, amongst other matters, on the United Nations Standard Minimum Rules for the Treatment of Prisoners; and
(c) assisting in the rehabilitation of offenders and their reintegration into the community, where appropriate, and so far as is reasonable and practicable in the circumstances and within the resources available, through the provision of programmes and other interventions; and
(d) providing information to the courts and the New Zealand Parole Board to assist them in decision-making.
(2) Subsection (1) does not affect the application or operation of any other Act

13.2 Notable features within this section are the explicit statement of purpose, the requirement to consider the rules in establishing legislation and a requirement to assist in the rehabilitation of offenders and their reintegration into the community. Together these provide a framework for Corrections to direct its strategy, policy and operational management in respect of offenders.

13.3 A statement of principles is set out in section 6 of the Act:

6 Principles guiding corrections system
(1) The principles that guide the operation of the corrections system are that—
(a) the maintenance of public safety is the paramount consideration in decisions about the management of persons under control or supervision;
(b) victims’ interests must be considered in decisions related to the management of persons under control or supervision;
(c) in order to reduce the risk of reoffending, the cultural background, ethnic identity, and language of offenders must, where appropriate and to the extent practicable within the resources available, be taken into account—
   (i) in developing and providing rehabilitative programmes and other interventions intended to effectively assist the rehabilitation and reintegration of offenders into the community; and
(ii) in sentence planning and management of offenders:
(d) offenders must, where appropriate and so far as is reasonable and practicable in the circumstances, be provided with access to any process designed to promote restorative justice between offenders and victims:
(e) an offender's family must, so far as is reasonable and practicable in the circumstances and within the resources available, be recognised and involved in—
   (i) decisions related to sentence planning and management, and the rehabilitation and reintegration of the offender into the community; and
   (ii) planning for participation by the offender in programmes, services, and activities in the course of his or her sentence:
(f) the corrections system must ensure the fair treatment of persons under control or supervision by—
   (i) providing those persons with information about the rules, obligations, and entitlements that affect them; and
   (ii) ensuring that decisions about those persons are taken in a fair and reasonable way and that those persons have access to an effective complaints procedure:
(g) sentences and orders must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and the safety of the public, corrections staff, and persons under control or supervision:
(h) offenders must, so far as is reasonable and practicable in the circumstances within the resources available, be given access to activities that may contribute to their rehabilitation and reintegration into the community:
   (i) contact between prisoners and their families must be encouraged and supported, so far as is reasonable and practicable and within the resources available, and to the extent that this contact is consistent with the maintenance of safety and security requirements.
(2) Persons who exercise powers and duties under this Act or any regulations made under this Act must take into account those principles set out in subsection (1) that are applicable (if any), so far as is practicable in the circumstances.
(3) Subsection (1) does not affect the application or operation of any other Act.

13.4 The set of principles gives more detailed expression to what factors need to be addressed in working toward achieving the purposes of the corrections system referred to above.

13.5 Recent amendments to the Act to provide for contract management of prisons support a focus on achieving Corrections purposes within the relevant legislative framework and with explicit requirements for compliance with relevant international obligations and standards.

Requirements of prison management contracts
(1) Every prison management contract must provide for—
   (a) objectives and performance standards for the contractor in relation to the management of the prison that are no lower than the standards applicable to prisons managed by the department; and
   (b) objectives and performance standards for the contractor in relation to the management and care of prisoners in the prison that are no lower than
the standards applicable to prisoners in prisons managed by the department; and
(c) the appointment or engagement by the contractor of—
   (i) a suitable person as manager of the prison, which appointment
       or engagement must be subject to approval by the chief executive;
       and
   (ii) sufficient suitable staff members to enable the contractor to
       carry out the contractor's statutory and contractual obligations in
       relation to the prison; and
(d) the training to be provided, at the expense of the contractor, to staff
   members of the prison, which training must be—
   (i) to the standard appropriate for the particular position; and
   (ii) to a standard no lower than the standard of training received by
       staff members of prisons managed by the department; and
(e) the co-ordination of services and processes of the prison with those of
   prisons managed by the department and by other contractors, including
   any co-ordination necessary for the operation of any systems established
   to implement the requirements of sections 47 and 48; and
(f) the arranging and maintenance by the contractor of adequate
   insurance against the contractor's liability for any claims arising out of, or
   in connection with, the contract; and
(g) the avoidance of conflicts of interest that might arise in relation to the
   exercise or performance, by the contractor or any staff member of the
   prison, of any power, duty, or function conferred or imposed by or under
   the contract, or by or under this Act or any regulations made under this
   Act; and
(h) the provision by the contractor of programmes designed—
   (i) to ascertain and address the causes of prisoners' offending; and
   (ii) to assist the reintegration of prisoners into society; and
(i) the respective obligations (including financial obligations) of the parties
   to the contract in relation to any voluntary organisations that undertake
   work in the prison; and
(j) the management of the prison pending the resolution of any dispute
   between the chief executive and the contractor in relation to the prison;
   and
(k) the termination of the contract for breach of contract; and
(l) the obligations of the contractor, in the event of the termination or
   expiry of the contract, to co-operate with the chief executive and to comply
   with any instructions issued by the chief executive in order to ensure the
   orderly and efficient transfer of the management of the prison.

(2) Every prison management contract must impose on the contractor, in
relation to the management of the prison, a duty to comply with—
(a) the requirements of this Act, of any regulations made under this Act,
    and of any instructions or guidelines issued by the chief executive under
    section 196, in so far as those requirements are applicable to contract
    prisons; and
(b) the requirements of the New Zealand Bill of Rights Act 1990, as if the
    prison were a prison managed by the department; and
(c) the requirements of the Public Records Act 2005, as if records relating
    to the prison and to prisoners in the prison were records created or
    received by the department; and
(d) all relevant international obligations and standards; and
(e) the requirements of sections 56(1) and (2) and 58(3) of the State
    Sector Act 1988 (which relate to personnel and equal employment
    policies), as if the contractor were the chief executive of a department
    within the meaning of that Act and as if those requirements applied, not
only in respect of employees of a contractor, but in respect of all staff members of a contract prison.

(3) A prison management contract may contain other provisions, as agreed between the chief executive and the contractor, that are not inconsistent with—

(a) this Act; or
(b) any regulations made under this Act; or
(c) any instructions or guidelines issued by the chief executive under section 196 that are or will be applicable to the prison.

14 The combined focus on purpose and principles, as well as explicit requirements in contracts for prison management for compliance with legislation and international obligations, provide a legislative environment where, as far as possible, the actual methods for delivery of services are not specified or are specified in broad terms.

15 There are exceptions to this general approach where matters are so significant that detailed specification is required. Specification on the use of force and approval and use of mechanical restraints are examples of this. Even where specification is necessary, there needs to be a capacity for timely responses to emerging developments and avoidance of the imposition of unnecessary or inhibitory constraints. An example of this can be seen in the Corrections Act which originally provided a legal context for the operation of mobile telephones. Subsequently this was amended to refer to electronic communications devices, which reflected developments in, for example, computerised communications systems.

Conclusion

16 New Zealand welcomes a review of the United Nations standard minimum rules on the treatment of prisoners and looks forward to contributing to that review. Such a review requires a managed process and clear structure.