OPEN-ENDED INTERGOVERNMENTAL GROUP
OF EXPERTS ON THE STANDARD MINIMUM RULES
FOR THE TREATMENT OF PRISONERS
BUENOS AIRES, ARGENTINA, 11 – 13 December 2012

RESPONSE OF THE GOVERNMENT OF
THE UNITED STATES OF AMERICA\textsuperscript{1}
TO NOTE CU 2011/26

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The USG will provide comments on 3 issues: (1) national legislation examples; 2) best practices; and 3) the revision of existing United Nations standard minimum rules for the treatment of prisoners.

**National Legislation Examples**

The U.S. concept of “national legislation” in criminal law is unique because our judicial system is such that each state within the U.S. territory adheres to its own criminal law code - it is rare to have prison legislation that impacts across all 51 jurisdictions. One example though that was universal was the Prison Rape Elimination Act. This Act did not dictate practices, but instead facilitated the process whereby prisoners can access federal courts. Another example of legislation that impacted all 51 states, was the Prison Litigation Reform Act – it requires judges to look at the issues narrowly.

While we are not aware of any current pending legislation, there are three items of note that may prove germane; (1) The pending case before the U.S. Supreme Court on strip searches; (2) The efforts by several jurisdictions that make the possession/use of cell phones in correctional facilities a crime, including allowing for the suppression of the signals; and (3) the change in sentencing guidelines for the possession of crack versus powder cocaine.

**Best Practices**

Best practices are probably best captured in our American Correctional Association standards, although these are not universally accepted as best practices, since there are so many jurisdictional, resource, and cultural issues involved with best practices.

**Whether to revise the existing United Nations standard minimum rules for the treatment of prisoners**

The SMR should reflect the “equality” that women have achieved in prison in terms of growth in numbers and the need for gender specific programming and gender mainstreaming. Many of these issues were addressed in the Bangkok Rules, but to update the SMR, they should at least refer to the Bangkok Rules. The SMR is impressively advanced.
If we are going to change them, we should add more discussion or focus on the social reintegration from arrest to post-release. However, this may result in the restorative justice advocates pushing that agenda further. The biggest concern about any agenda including social reintegration concepts, is that there is very little to no research that indicates any of this work, under what culture and under what conditions. Given this lack of research, there should be a section (similar to what we did in the Bangkok rules) that advocates for research & research based programs. Additionally, we should note that this is a time in history when the major financially able countries are struggling (i.e. the EU, US, etc.), and now might not be an optimal time to open this for discussion.