



BRIEFING

The process of Review of the UN Standard Minimum Rules for the Treatment of Prisoners

In December 2010, the UN General Assembly adopted resolution 65/230, “Twelfth United Nations Congress on Crime Prevention and Criminal Justice” which, among other things, requests the Commission on Crime Prevention and Criminal Justice to establish,

... an open-ended intergovernmental expert group... to exchange information on best practices, as well as national legislation and existing international law, and on the revision of existing United Nations standard minimum rules for the treatment of prisoners so that they reflect recent advances in correctional science and best practices, with a view to making recommendations to the Commission on possible next steps¹.

The purpose of this briefing is to provide information on the process, to date, of implementing this resolution.

Preparatory expert meetings.

Following the UNGA resolution, two preparatory expert meetings were organised by the UN Office on Drugs and Crime (UNODC), in Santo Domingo in August 2011 and in Vienna in October 2011.

In addition, UNODC commissioned Prof. Andrew Coyle to draft “Notes and comments on the Standard Minimum Rules for the Treatment of Prisoners”, outlining the developments in international and regional law and standards under each Rule. This document was presented and discussed at the October 2011 Expert Group Meeting.²

The preparatory work was collated by UNODC’s Justice Section and presented to the Intergovernmental Expert Group Meeting (IEGM) in Vienna in January/February 2012, in the form of a “Background Note.”³

¹ UN General Assembly resolution 65/230, “Twelfth United Nations Congress on Crime Prevention and Criminal Justice,” 21 December 2010, 1 April 2011, UN Doc. A/RES/65/230, 1 April 2011, para. 10. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/526/34/PDF/N1052634.pdf?OpenElement>, accessed 18 May 2012.

² This document was later published, ahead of the Intergovernmental Expert Group Meeting, as Commission on Crime Prevention and Criminal Justice, “Notes and comments on the Standard Minimum Rules for the Treatment of Prisoners,” UN Doc. E/CN.15/2012/CRP.1, 22 February 2012. Available at: http://www.unodc.org/documents/commissions/CCPCJ_session21/ECN152012_CRP1eV1251074.pdf, accessed 28 May 2012.

³ “Background note: Open-Ended Intergovernmental Expert Group Meeting on the United Nations Standard Minimum Rules for the Treatment of Prisoners, Vienna, 31 January-2 February 2012.” Available at http://www.unodc.org/documents/justice-and-prison-reform/AGMs/Background_note.pdf, accessed 28 May 2012.

The Background Note outlines the following options for the IEGM's consideration:

- A. Drafting "a binding instrument whereby States Parties should be under the obligation to ensure certain standards in places of detention and to accept inspection visits through a system of mutual evaluation";
- B. A "complete restructuring and substantive redrafting of the Rules";
- C. In view of the complexities involved in the previous option, "restricting the substantive redrafting of the Rules to an essential minimum";
- D. Adding a preamble "which would include a list of the fundamental principles contained in the treaties and a commentary, but leaving the text intact."⁴

Inter-governmental expert meeting - January/ February 2012.

The inter-governmental expert meeting (IEGM), in Vienna in January/ February 2012, was attended by 143 representatives from 52 States.⁵ The experts shared good practices on various aspects of prison administration and management, and considered the four options outlined above.

The Expert Group concluded that the SMR "had stood the test of time and were universally acknowledged as the minimum standards for detention of prisoners."⁶ However, the Group also "recognized the need for some areas of the Standard Minimum Rules to be reviewed."⁷ The "consensus" among the IEGM that "any changes to the Rules should not lower any of the existing standards" was included explicitly in its recommendations to the UN Commission on Crime Prevention and Criminal Justice.⁸

The Expert Group recommended the continuation of its work, and identified the following "preliminary areas for possible consideration in order to ensure that the Rules reflected recent advances in correctional science and best practices:

- (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 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;
- (i) Training of relevant staff to implement the Standard Minimum Rules."⁹

The report of the IEGM also refers to other areas or provisions raised by participants of the IEGM as warranting an update, including, for example, an extension of the scope of the Rules to include all persons deprived of their liberty, be it on criminal, civil or administrative grounds (Rules 4, 94 and 95), promotion of the reintegration of offenders into society as one of the main purposes of the

⁴ *Ibid.*, sec. 4.

⁵ For the full list see Report on the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Vienna from 31 January to 2 February 2012, UNODC/CCPCJ/EG.6/2012/1, 16 February 2012, para. 9. Available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=UNODC/CCPCJ/EG.6/2012/1>, accessed 28 May 28, 2012.

⁶ Report on the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Vienna from 31 January to 2 February 2012, UNODC/CCPCJ/EG.6/2012/1, 16 February 2012, Recommendation 4.

Available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=UNODC/CCPCJ/EG.6/2012/1>, accessed 28 May 28, 2012.

⁷ *Ibid.*, Recommendation 5.

⁸ *Ibid.*, Recommendation 4.

⁹ *Ibid.*, Recommendation 5.

provisions on the treatment of persons sentenced to imprisonment (Rules 65 and 66), the deletion of Rule 94 on civil prisoners and the need to better reflect the right to safety in prisons.¹⁰

Methods suggested to remedy gaps and inconsistencies in the current text of the SMR would potentially include the deletion of certain sentences or Rules, the amendment of others, changes in formulation and substance of certain Rules.

At the end of the meeting, the expert from Argentina declared that his government was willing to host the next meeting of the Expert Group.

Session of the UN Commission on Crime Prevention and Criminal Justice - April 2012.

Based on the recommendations of the IEGM, Argentina, Brazil, Italy and Thailand submitted a draft resolution to the 21st session of the UN Commission on Crime Prevention and Criminal Justice (CCPCJ, referred to as Crime Commission) from 23 to 27 April in Vienna.

Thailand, joined by Argentina and Brazil, also hosted a side event on “The Standard Minimum Rules for the Treatment of Prisoners” on 23 April, seeking to provide a platform in preparation of negotiations of the draft resolution relating to the SMR review.

Following discussions, changes and amendments, the plenary of the Crime Commission adopted the Resolution “Standard Minimum Rules for the Treatment of Prisoners” on 27 April.¹¹ The resolution was sponsored by Argentina, Brazil, Italy and Thailand and co-sponsored by Albania, Chile, Croatia, Dominican Republic, Ecuador, El Salvador, Germany, Lebanon, Norway, the Philippines, South Africa and Uruguay.

The resolution recognises that some areas of the SMR “could be reviewed so that the Rules reflect the latest advances in correctional science and good practices, provided that any changes to the Rules would not lower any existing standards.” (OP5) It also takes note and repeats *verbatim* the list of preliminary areas as identified by the IEGM for possible consideration (as quoted above), referring to the report and recommendations of the IEGM (OP6). With regard to these areas the resolution “underscores that the requirements and needs of prisoners with disabilities should be duly considered, as applicable, in accordance with the Convention on the Rights of Persons with Disabilities.” (OP7)

Furthermore, the mandate of the expert group was extended with a view to reporting to the 22nd session of the Crime Commission (OP8), inviting member states to actively participate (OP9) and expressing gratitude to the government of Argentina for its readiness to host the next meeting of the Expert Group (OP10).

In addition to the further process of review, the Crime Commission took note of the document “Notes and comments on the Standard Minimum Rules for the Treatment of Prisoners” and recommended its translation into the UN languages for dissemination (OP11).

Finally, the resolution reiterates the important role of the UN network, IGOs and NGOs in the dissemination, promotion and practical application of the SMR, in accordance with the procedures for the effective implementation of the SMR (OP16).

Next steps in the process.

Following its adoption by the UN Commission on Crime Prevention and Criminal Justice, on 10

¹⁰ For the full list see *ibid*, para. 41.

¹¹ “Standard Minimum Rules for the Treatment of Prisoners”, UN Doc. E/CN.15/2012/L.4/Rev.2, 24 April 2012. Available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.15/2012/L.4/Rev.2>, accessed 28 May 2012. The UNODC website still lists the text under “draft resolutions” as of the time of finalizing this briefing, but the text was adopted in its entirety on 27 April. Hereinafter reference will be made to the resolutions Operational Paragraphs (OP) within the text,

August the UN Economic and Social Council (ECOSOC) endorsed the resolution (E/RES/2012/13) and it will be tabled for the 67th Session of the UN General Assembly 2012.

The next inter-governmental expert meeting has been scheduled for 11 to 13 December in Buenos Aires/ Argentina, to continue its work pursuant to General Assembly resolution 65/230. The outcome of this Expert Meeting is to be reported to the 22nd session of the UN Commission on Crime Prevention and Criminal Justice, taking place from 22 to 26 April 2013 in Vienna.

Civil society.

Throughout the process, a group of NGOs has argued, including in several joint statements¹², that while the SMR still hold value today, in the 55 years since their adoption, there have been major developments in human rights and criminal justice, and these have resulted in what must now be recognised as unacceptable flaws and gaps in a modern set of standards. This group of NGOs considers it unthinkable that the Rules should pass through a process of review without being amended and supplemented at least in its most outdated areas.

This group of NGOs also believes that a commentary, while certainly useful, would not, by its very nature, suffice in assuring the compatibility of the Rules with modern standards.

NGOs have also argued that the flaws and gaps of the SMR are even more problematic given they are often referred to as a primary source of standards relating to the treatment in detention. In many countries, the SMR are the only standards available to prisoners regarding their treatment in detention and in other countries the Rules are used as the “blueprint” for national prison rules.

Moreover, the SMR is one of the key frameworks used by national and international monitoring and inspection mechanisms in assessing the treatment of prisoners. It is therefore crucial that this framework is consistent with current standards of human rights and criminal justice.

NGOs have also flagged the precedent of an amendment to the SMR in 1977, through ECOSOC resolution 2076 (LXII). This resolution amended Section E (Rule 95) to the SMR,¹³ broadly speaking extending their scope by providing for the applicability of the Rules to persons arrested or imprisoned without charge. The 1977 resolution is of particular interest as it demonstrates that targeted changes and amendments to the Rules are feasible and effective as a method of upgrading.

With regard to claims, made by some states during discussions, that in the face of economic crises it is not the time to redraft the Rules, NGOs reiterated that the 2010 UN General Assembly resolution which the process is based on explicitly comprehends a progressive assignment. They also flagged that if the SMR still hold value today, 57 years later, it is because the drafters of the current Standard Minimum Rules were visionary and long-sighted in economically and politically as difficult times as 1955.

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¹² See Joint Statement submitted by Amnesty International (AI), Conectas Direitos Humanos, the Centro Regional de Derechos Humanos y Justicia de Género, the Friends World Committee for Consultation (Quakers) and Penal Reform International (PRI), non-governmental organizations in consultative status with the Economic and Social Council, UN Doc. E/CN.15/2012/NGO/4, 20 April 2012. Available at: <http://www.un.org/Docs/journal/asp/ws.asp?m=E/CN.15/2012/NGO/4>, accessed 28 May 28, 2012;

Joint oral NGO statement to the Crime Commission on 27 April 2012. Available at: <http://www.penalreform.org/files/Joint%20Oral%20statement%20SMR%2027-04-12.pdf>, accessed 28 May 28, 2012.

¹³ Adopted in 1977 by ECOSOC Res. 2076 (LXII), 13 May 1977, following a recommendation by the Committee on Crime Prevention and Control at its Fourth Session.