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MINIMUM RULES FOR THE TREATMENT OF PRISONERS
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Item 5 of the agenda

**THE REVISION OF THE STANDARD MINIMUM RULES FOR THE
TREATMENT OF PRISONERS: PRISON SAFETY¹**

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Promoting penal reform worldwide

THE REVISION OF THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS: PRISON SAFETY

1. The safety of those held in custody is an essential requirement of an effective and humane penal system.

Background

2.1 As a contribution to the revision of the UN Standard Minimum Rules for the Treatment of Prisoners (SMR), this paper draws attention to an important omission in the 1955 text: the SMR do not state that prisons must be safe.

2.2 The SMR provide authoritative guidance about the administration of prisons. These rules are one of the most important mechanisms by which the treatment of prisoners can be judged.

2.3 Safety is a minimum condition for human dignity in prison; therefore, it needs to be explicitly expressed in the Rules. Implied principles have no leverage. Unless the SMR are amended, checks on their implementation will not include risks to safety. A recent survey by the African Institute for the Prevention of Crime and the Treatment of Offenders (2011) assessed prisons in 14 African countries, using the SMR as its guide. The report is evidence-based in highlighting unacceptable prison conditions and treatment. As, however, it closely follows the SMR, prisoners' safety is not assessed.

2.4 International instruments, agreed since the adoption of the SMR, underline the importance of the right of people in prison to have personal security. Advances in correctional science include effective methods of preventing violence, harm and coercion among prisoners, and by staff on prisoners, particularly through enhanced ways of managing conflict. These developments in law and practice demonstrate the need for an explicit statement, in the revised SMR, that prisoner safety is essential to the effective management of prisons.

The legal basis of the right to safety in prison

3.2 The Convention against Torture and Other Cruel, Inhuman or Degrading Punishment, Article 16 (1984)

“Each state party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

3.3 The International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (1965). [States undertake to guarantee . . .]

“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.”

3.4 The Bangkok Rules, *Preliminary Observations* (2006)

“The resolution is an acknowledgement of the fact that violence against women has specific implications for women’s contact with the criminal justice system, as well as their right to be free of victimization while imprisoned. Physical and psychological safety is critical to ensuring human rights and improving outcomes for women offenders, of which the present rules take account.”

3.5 Manual on Human Rights Training for Prison Officials (2005)

“Prison authorities have a responsibility to ensure the physical safety of prisoners, staff and visitors. ... No one in prison should fear for his or her physical safety.”

The Office of the UN High Commissioner for Human Rights

3.6 Notes and Comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners (2012)

“One of the most important obligations on prison authorities is to ensure the personal safety of prisoners from physical, sexual or emotional abuse by others.”

(21st Session, the UN Commission on Crime Prevention and Criminal Justice)

3.7 In addition, regions and States have acknowledged that safety is central to the administration of prisons. Examples include:

- 3.8 The African Charter on Prisoners' Rights (2001)
"Prison officers who comply with national and international standards for the protection of prisoners deserve the respect and the cooperation of the prison administration where they serve and the community as a whole."
- 3.9 The Council of Europe (2006)
"Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety."
The European Prison Rules (52.2)
- 3.10 Australia (2012)
"An officer in charge of prisoners must take all reasonable steps for the safe custody and welfare of the prisoners."
Corrections Act 1986 (Version 18 March, 2012) Section 20 (2)
- 3.11 Japan (2011)
"Penal institutions house a wide spectrum of inmates whose characteristics and life histories vary considerably. In such a climate, it is indispensable to keep a safe penal institution environment."
Correction Bureau, Ministry of Justice, Japan
- 3.12 Namibia (2003)
"The Namibian Prison Service was established to provide safe custody of prisoners, to rehabilitate them and to ensure their successful reintegration into community as law-abiding citizens, ultimately contribute to public safety."
(Namibian Prison Service Strategic Plan 2003-2007)
- 3.13 The United States of America (2004)
"PERFORMANCE STANDARD: Protection from Harm
The community, staff, contractors, volunteers, and inmates are protected from harm. Events that pose risk of harm are prevented. The number and severity of events are minimized."
(American Correctional Association, Performance-Based Standards for Adult Local Detention Facilities)

Effective prison management

4.1 The Bangkok Rules, cited above, state that physical and psychological safety is critical to ensuring human rights and improving outcomes for women offenders.

4.2 Safety is a basic requirement of an effective prison system. Safety enhances rehabilitation, helps to prevent suicide, and reduces the costs of running prisons. When prisoners have to protect themselves by their own means, violence is the likely result. When prisons are dangerous, people come out more likely to offend again and to commit more serious offences.

4.3 Violent institutions are also very inefficient. Fights and assaults monopolise time that staff could spend on rehabilitation; staff sick leave increases when they deal with violence; and there are wider healthcare costs of physical injuries.

4.4 Since 1955, progress has been made in understanding how to prevent violence among prisoners. Strategies to reduce fights and assaults build on the development of conflict resolution skills. A resolution on the use and application of United Nations standards and norms, agreed at the 21st Session of the Commission on Crime Prevention and Criminal Justice (2012) encouraged states “to continue exchanging good practices, such as those regarding conflict resolution in detention facilities. . .”

4.5 Effective policing of prisons by officers enhances safety. Early intervention by staff, challenging the harmful behaviour that leads to or escalates conflict, is far more effective in reducing the costs of running prisons than staff reacting with force to violent incidents after they occur. Prisons can be made safe by meeting people’s basic human needs; teaching more effective ways of managing conflict; confronting tactics that escalate disputes; and establishing formal mechanisms within prison which facilitate and promote conflict resolution.

4.6 The Permanent Committee of Latin America’s proposals on the SMR state: “As far as possible, prison authorities should have recourse to mechanisms of a restorative nature to settle disputes with persons deprived of liberty, and such quarrels as may arise among them.”

4.7 There is, therefore, strong international consensus that prisons should be safe. Fortunately, advances in penal practice demonstrate that prisons can be expected to achieve safety.

Definition

5.1 Prison violence has been defined as:

“Any incident in which a person is abused, threatened, or assaulted. This includes an explicit or implicit challenge to their safety, well-being or health.

The resulting harm may be physical, emotional or psychological.”

(HM Prison Service Prison Service Order 2750, London: NOMS, 2007)

5.2 Safe custody can encompass:

- Physical safety from assault
- Freedom from all forms of victimisation (including verbal abuse, threats, and exploitation)
- Security of personal possessions

Measurement

6. Prison authorities should record and monitor the number of assaults (on both staff and prisoners). Measuring and analysing levels of assault contribute to prison safety and should be a duty of the state in maintaining prisons.

Proposed text

7.1 There are various ways in which SMR could be revised to establish the principle that safe custody is a requirement of prisons. It could be included in the statement of principles in the preface to the SMR. A rule on safety could be seen as an operational duty of prison staff. Rules promoting human dignity could add that ensuring safety is essential to dignity. Or, a new rule could be adopted, with wording based on the following four options:

- A) Everyone in prison has the right to personal safety. In depriving a person of liberty, the state takes on the duty of protecting the prisoner from harm.
- B) Prison authorities shall ensure the safety of prisoners, staff and visitors. Procedures shall be in place to reduce to a minimum the risk of violence and other events that might threaten safety.
- C) Prison authorities have a responsibility to protect prisoners from harm and to minimize the number and severity of harmful events.
- D) People have a right to be free of victimisation while in prison. Physical and psychological safety is critical to ensuring human rights and improving outcomes for offenders.

Conclusion

8. Prisoner safety is so important that it must be stated in the revised Standard Minimum Rules for the Treatment of Prisoners. Prisoner safety needs to be seen as an important aspect of the process of revision, along with independent inspection, legal representation, the needs of prisoners with disabilities, and the other areas explicitly cited in the resolution on the SMR revision process at the 21st Session of the UN Commission on Crime Prevention and Criminal Justice. Consensus can be achieved by focussing on a limited and coherent package of reforms to the SMR.

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