



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.

(1) First inter-governmental expert meeting - January/ February 2012.

Following two preparatory expert meetings organised by the UN Office on Drugs and Crime (UNODC), in Santo Domingo in August 2011 and in Vienna in October 2011, the outcomes of which were collated by UNODC’s Justice Section in the form of a “Background Note”² a first inter-governmental expert group meeting (IEGM/ Expert Group) took place in Vienna in January/ February 2012.

The IEGM was attended by 143 representatives from 52 States³, who shared good practices on various aspects of prison administration and management, and considered the options outlined in the “Background Note” prepared in preparation of the meeting:

- 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”;

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 “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.

³ 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.

- 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

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.”⁵ However, the Group also “recognized the need for some areas of the Standard Minimum Rules to be reviewed.”⁶ 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.⁷

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.”⁸

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, 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 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.⁹

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, and 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.

(2) 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 the Crime Commission) from 23 to 27 April in Vienna.

⁴ *Ibid.*, sec. 4.

⁵ 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.

⁶ *Ibid.*, Recommendation 5.

⁷ *Ibid.*, Recommendation 4.

⁸ *Ibid.*, Recommendation 5.

⁹ For the full list see *ibid.*, para. 41.

Following discussions of drafts, changes and amendments, the plenary of the Crime Commission adopted the Resolution “Standard Minimum Rules for the Treatment of Prisoners” on 27 April.¹⁰ 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 recognised 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 took note and repeated *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”¹¹ and recommended its translation into the UN languages for dissemination (OP11).

Finally, the resolution reiterated 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).

Following its adoption by the Crime Commission, the resolution was endorsed by the UN Economic and Social Council (ECOSOC) on 10 August (E/RES/2012/13) and adopted by the UN General Assembly on 20 December 2012 (A/RES/67/188).

(3) Preparation of the second inter-governmental expert group meeting

In preparation of the second IEGM, the UNODC Secretariat provided a Working Paper¹², available in all UN languages, which examines in detail the developments in relevant international law and standards, and subsequent proposals for discussion among Member States.

Fifty contributions were submitted ahead of the IEGM from 41 Member States and one non-Member State with observer status with the UN, and a compilation provided by the UNODC Secretariat.¹³

Additional submissions to the IEGM included a paper by the UN Sub-Committee on the Prevention of Torture,¹⁴ the “Summary of an Expert Meeting at the University of Essex on the Standard Minimum Rules for the Treatment of Prisoners Review”,¹⁵ as well as additional submissions by non-

¹⁰ “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.

¹¹ UN Doc. E/CN.15/2012/CRP.1, 22 February 2012, http://www.unodc.org/documents/commissions/CCPCJ_session21/ECN152012_CRP1eV1251074.pdf

¹² Working paper prepared by the Secretariat, 6 November 2012, UNODC/CCPCJ/EG.6/2012/2, <http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/E-V1257278.pdf>

¹³ Summaries of replies from Member States to the Notes Verbales of 8 March 2011 and 11 September 2012, 30 November 2012, UNODC/CCPCJ/EG.6/2012/CRP.1, http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/IEGM-SMR_II_CRP_prepared_by_the_Secretariat.pdf

¹⁴ UNODC/CCPCJ/EG.6/2012/INF/3, 26 November 2012, <http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/SPT-INF-3.pdf>

¹⁵ UNODC/CCPCJ/EG.6/2012/NGO/1, 21 November 2012, available in Arabic, English, French, Spanish and Russian; http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings5.html#_ftn3

governmental organisations.¹⁶

In order to provide information to Geneva-based Permanent Representations and to facilitate inter-agency cooperation of the UNODC and the OHCHR, the Permanent Representations of Argentina to the UN in Geneva and in Vienna hosted a briefing at Palais des Nations in Geneva on 22 November 2012.

(4) Second inter-governmental expert group meeting/ Buenos Aires – December 2012.

The second IEGM took place from 11 to 13 December 2012 in Buenos Aires, Argentina to further consider the preliminary areas identified at its first meeting.

The meeting was attended by 76 representatives from 28 states. In addition, the Office of the UN High Commissioner for Human Rights (OHCHR) and the UN Sub-Committee on the Prevention of Torture, the Council of Europe, representatives of the institutes of the United Nations crime prevention and criminal justice programme network, independent experts and NGOs participated at the meeting.

The IEGM made substantive progress in identifying the “issues and Rules for the revision of the Standard Minimum Rules”, based on and commending the Working Paper prepared by the Secretariat as having, to a large extent, “captured the issues and identified the rules of the Standard Minimum Rules to be considered for a comprehensive revision under each preliminary area” (para. 6).

The Expert Group submitted its report and recommendations to the 22nd session of the Crime Commission.¹⁷ It recommends to the 22nd session of the Crime Commission to “consider whether to extend its mandate to continue its work, or refer the matter to a drafting group of Member States” (para. 3). The IEGM further recommends to “request the Secretariat to prepare an ongoing consolidated text of the Rules for discussion at a further meeting to continue the revision process” drawing on a “joint submission by Argentina, Brazil, South Africa, United States of America, Uruguay and Venezuela (Bolivarian Republic of)”, (para. 5), but which is to date not available online.

In paras. 7-16, the report of the Expert Group identified for consideration issues and rules for the revision of the SMR, following the list of areas identified by the first IEGM (see above under (1) lit. (a) to (i)). Paras 29 to 32 welcome and take note of contributions received from member states, submissions from non-governmental organisations, the paper submitted by the Subcommittee on Prevention of Torture and other submissions, and the summary of an expert meeting on the review of the Standard Minimum Rules for the Treatment of Prisoners, held at the University of Essex.

(5) Next steps in the process.

The report and recommendations of the IEGM in Buenos Aires has been submitted to the 22nd session of the Crime Commission in Vienna from 22 to 26 April 2013, and a draft resolution will be tabled on the continuation of the process.

Thailand and Switzerland, possibly joined by other sponsor states, are going to host a side event on “Revision of the Standard Minimum Rules for the Treatment of Prisoners: State of Play and Next Steps” on 22 or 23 April (tbc), seeking to provide a platform in preparation of negotiations of the draft resolution relating to the SMR Review. Following a welcome and introduction by Her Royal

¹⁶ These include additional submissions of the NGOs undersigning this Joint Briefing: Friends World Committee for Consultation and Penal Reform International, Amnesty International, the American Civil Liberties Union; see “Other submissions” at http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings5.html#_ftn3

¹⁷ Report on the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Buenos Aires from 11 to 13 December 2012, 27 December 2012, UNODC/CCPCJ/EG.6/2012/4, <http://www.unodc.org/documents/justice-and-prison-reform/EGM-Uploads/E.version.pdf>

Highness, Princess Bajrakitiyabha, panelists will report on the IEGM in Buenos Aires, comment on the interagency relevance of the SMR Review, elaborate on their experience from other standard setting exercises, give a perspective of states supporting a targeted revision of the Rules and of civil society, and close by giving an outlook on possible next steps.

Brazil has kindly offered to host a further meeting to continue the revision process.

(6) Civil society.

Throughout the process, a group of NGOs has argued, including in several joint statements¹⁸, that while the SMR still hold value today, in the 58 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.

NGOs have also argued that the flaws and gaps of the SMR are even more problematic given that they are often referred to as a primary source of standards relating to 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 are one of the key frameworks used by national, regional 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.

Concrete suggestions for a possible revised text of the Rules in the key areas identified at the first IEGM were discussed by 28 experts at a meeting at the University of Essex, convened on 3 and 4 October 2012. The “Summary of outcomes” from this meeting of independent experts was submitted to the UN in Arabic, English, French, Spanish and Russian ahead of the IEGM in Buenos Aires. It seeks to identify current international norms and standards in the areas proposed for possible reform and any outdated language and gaps in the SMR as a result of the international legal developments that have taken place since their adoption in 1955. The submission recommends specific changes to the Rules and elaborates on the rationale behind each of them. It reiterates the commitment made in the resolution that any changes must not lower existing standards.

Further recommendations have been submitted from within this group of NGOs by Friends World Committee for Consultation and Penal Reform International, by Amnesty International and by the American Civil Liberties Union.¹⁹

A little known fact regarding the Standard Minimum Rules for the Treatment of Prisoners is that they were originally adopted by the League of Nations in 1934. In 1949 a decision was taken by the then newly-established UN to revise them, and the process was completed in 1955, completing – in other words - the first revision of the SMR.

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,²⁰ broadly speaking extending their scope by providing for the applicability of the Rules to persons arrested or imprisoned

¹⁸ 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.

¹⁹ see “Other submissions” at http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings5.html#_ftn3

²⁰ 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.

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 updating them.

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 on which the process is based explicitly comprehends a progressive assignment. They also flagged that if the SMR still hold value today, 58 years later, it is because the drafters of the current Standard Minimum Rules were visionary and long-sighted, in times which were no less difficult economically and politically between 1949 and 1955.

End/