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SUMMARY OF DISCUSSIONS

The Southeast Asia Regional Consultation on the Implementation of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)

8-9 August 2016
Bangkok, Thailand

On 17 December 2015, following a four-year process, the revision process of the 60-year-old UN Standard Minimum Rules for the Treatment of Prisoners (SMRS) was completed by the unanimous adoption of the revised SMR, to be known as the ‘Nelson Mandela Rules’ by the UN General Assembly. The revision process involved four intergovernmental expert group meetings between 2011 and 2014. A ‘targeted revision’ approach was used which considered only areas and issues in the 1955 SMR considered most urgently in need of revision.

On 8-9 August 2016, the Thailand Institute of Justice (TIJ)¹ and Penal Reform International (PRI)² convened a consultation with prison personnel from 10 countries (Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Bangladesh and Kenya) and other organisations (UNODC, UNAFEI, the International Committee of the Red Cross and Raoul Wallenberg Institute) to discuss the revised areas of the Nelson Mandela Rules.

The meeting was opened with remarks made by Dr Kittipong Kittayarak, Executive Director of the Thailand Institute of Justice and Thailand’s Minister of Justice, General

¹**Thailand Institute of Justice (TIJ)** is a Bangkok based public organization that aims to promote excellence in research and capacity-building in the area of criminal justice. The primary objective is to promote the implementation of the United Nations standards and norms related to women and children in contact with the criminal justice system. As a member of the United Nations Crime Prevention and Criminal Justice Programme Network Institute (UNPNI), TIJ gears its work towards important cross-cutting issues on the United Nations agenda such as the rule of law, sustainable development, human rights, peace and security. At the same time, it works toward enhancing domestic justice system and the rule-based community within the ASEAN region.

² **Penal Reform International (PRI)** is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide. We currently have programmes in the Middle East and North Africa, Sub-Saharan Africa, Eastern Europe, Central Asia and the South Caucasus, and work with partners in South Asia. See our work on the Nelson Mandela Rules at: <https://www.penalreform.org/priorities/prison-conditions/standard-minimum-rules/>

Paiboon Kumchaya. A short presentation on the revision process of the SMR and key changes was given by Olivia Rope, PRI's Programme Officer.

The purpose of the meeting was to discuss the revised areas of the Rules to identify both current good practices and existing and foreseen challenges in their implementation. Information from discussions will be input into guidance currently being developed to assist stakeholders in the implementation of the Nelson Mandela Rules.

This report summarises the discussions under the six sessions as follows:

1. Prison management
2. Respect for dignity
3. Restrictions, discipline and sanctions
4. Contact with the outside world
5. Incident management
6. Healthcare

Session 1: Prison management

Participants shared information on the current inspection systems in their countries, with the bodies mandated to undertake inspections varying, including: Visiting Justice, National Preventative Mechanisms and National Human Rights Institutes. The authority held by each of the bodies also varied with some having full independence from the prison administration and the ability to make unannounced visits, while others were required to notify a prison in advance of any visit.

Discussions on the revised Rules in regards to file management systems focused on the types of systems, if and how a prisoner could access their file, and how confidentiality of files was ensured. Some good practices were identified in regards to giving prisoner's access to their own file, for instance where a prisoner or family member can log-in to a database to see information such as key dates for parole or release, and in another country it was explained that the prisoner can give consent for relevant information to be sent to his/her consular representatives so they can assist them with their case. Some countries limited prisoners' access to files after release while others had processes where prisoners could request specific information (e.g. through a request to the Court). One challenge identified with giving prisoners access to files was where the prisoner had links with terrorist organizations and for security purposes information should therefore not be shared.

With regards to confidentiality of files, a first step suggested to ensuring this, particularly in low-income countries where there are less sophisticated or electronic systems, would be implementing measures to prevent *at a minimum* prisoners having access to files (which occurs in many prisons currently). Another key measure to improve implementation of this Rule would be to give staff training on the handling of files.

The training of prison officers was highlighted as key to the implementation of the majority, if not all, of the SMRs. Budgetary limits were identified as a challenge shared by all prison systems and because of this training possibilities need to be optimized. It was noted that many prison staff are doing their job 'with minimum knowledge and

skill' and implementing the Rules relies on their professionalism and skills, as well as good morale and motivation.

Session 2: Respect for dignity

There were four main topics discussed with regards to the right to human dignity, enshrined in Rule 1 of the SMR: cell and body searches, work, deaths in custody and the treatment of prisoners with disabilities.

With regards to body searches, participants noted that while procedures and the principles of necessity and proportionality are in place 'on paper' they are not implemented because there is a failure to train prison staff. Searching procedures in some countries are also not in place (except with regards to the gender of the staff member for body searches) and so the circumstances and modalities for searches to uphold the right to dignity requires more guidance. Such guidance needs to take into account the balance of ensuring security in prisons which is a current struggle. Other questions that arose was who decides on the gender of the prison staff to undertake a body search for prisoners who are lesbian, gay, bisexual or transgendered (LGBT).

The type of work and payment arrangements for prisoners varied significantly across countries. There were a number of scenarios and issues that bring challenges: ensuring some payment to prisoners when prisons make a profit off goods produced by prisoners (including from farms); how to ensure a balance between giving prisoners opportunities to gain skills and making profit from their work.

Many countries have external businesses that are set up in the prison facility and employing prisoners. Some good practices were identified with involving the private sector in this way. For instance, in one country prisoners receive a wage which they can put into savings or send to family members (it was noted this is below the minimum wage to reflect the lower productivity in prisons compared to in the community). In another country, prisoners can participate in certified trainings, in cooperation with external companies (e.g. bus driving, etc.)

A number of examples for processes when a death in custody occurs were shared by participants. For example, if the prisoners' religion or culture requires a burial within a certain time period, the prison would arrange for this if they have not heard from family within 48 hours.

Meeting the needs of prisoners with disabilities is impeded in many countries because of overcrowding and poor infrastructure. However, pragmatic solutions can be found which are low-cost. Various initiatives to meet the needs of prisoners with physical disabilities included purchasing wheelchairs, constructing different/ more accessible toilets, training prisoners in basic healthcare so they can assist others. Participants shared the view that prison is not the right place for persons with severe physical or mental disabilities. It was noted that prison staff and even healthcare staff do not have the expertise to cope with prisoners who have severe mental disabilities.

Session 3: Restrictions, discipline and sanctions

Participants discussed the rules regarding disciplinary offences and various measures that ensure fair processes and sanctions in this regard. In one country, it was explained, that *any* disciplinary offence triggers a process which involves independent actors and time for the prisoner to prepare a defence. Disciplinary sanctions, in another, are service-oriented (for example, cleaning or assisting in the kitchen), rather than punitive (removing privileges) which has not impacted the number of disciplinary offences.

The types of restraints and circumstances which permit the use of restraints varied widely across the prison systems represented. Several questions arose in regards to prisoners who are undergoing a detoxification from drugs and may hurt themselves or others.

It was noted that training on how to use any method of restraint is critical as there are subtleties which can result in cruel treatment. There are also issues arising with drugs to incapacitate (e.g. riot agents) because the impact of these can be acute if used in an enclosed space and given the typical prisoners' poor health status. Proper classification is a key element of reducing the use of restraints, as well as an adequate prisoner-staff ratio. Medical staff should not be asked to give permission to use a restraint on a prisoner as it is not their role.

Session 4: Contact with the outside world

The regulations for visits varied greatly, with one country permitting visits every day of the week (within certain hours) while another only permitting 1 visit and 1 letter a month to convicted prisoners. Similarly, with regards to the types of visits, in many countries, conjugal visits are not permitted and closed visits are the norm. In others open visits were encouraged and one participant explained how parents can make a request to attend a wedding of their child (noting that there was some public outcry at this).

A number of good practices that allowed for greater contact between prisoners and their families were shared. For example, a regulation that allowed prisoners to go home for 48 hours, the establishment of prison visit centres with secure video conferencing facilities so families can be in contact with their family member in prison more frequently and with less cost implications, and release of prisoners for one week in the case of a relative falling ill or to attend a funeral.

With regards to meeting legal representatives, one country allowed access to visits from lawyers 24 hours 7 days a week and in another, lawyers were able to use video conferencing to speak with their client in prison which had helped speed up legal processes.

Session 5: Incident management

It was noted that complaints processes are an integral element to any transparent and well-run prison facility. Without correct procedures for complaints and requests, problems can flourish and also prison staff can be at risk of malicious allegations and unsafe working environments. Most countries had well-established processes for

complaints and/or requests, but a number of challenges were faced in ensuring these were effective.

Some innovative methods for complaints were noted included a SMS initiative where family and visitors could send a text message with complaints on behalf of their family member in prison to the head of the prison system. Another involved a confidential phone line for prisoners to an independent agency.

Challenges with complaints processes included: how to address cases where prisoners make false and malicious complaints against prison officers, how to ensure information is given to illiterate prisoners or those who have very little understanding of their rights, the time consuming nature of complaint handling (are there effective and efficient processes?), and also challenges with ensuring that different agencies work together effectively to resolve complaints.

Participants discussed the issues that arise in ensuring the safety of prison staff and prisoners when natural disasters or emergencies occur (e.g. fires and floods). It was noted that preservation of life must overrule security in such instances. In one country, although procedures were in place, when a tsunami hit nearby, prison staff could not open the prison gates in time (as they need to be unlocked manually) and so many staff and prisoners died.

Session 6: Healthcare

With the revised SMRs bringing the provisions on healthcare into line with medical ethics, participants discussed the role of healthcare staff and applying the principle of medical confidentiality in the prison setting.

Medical confidentiality is breached in prisons where prisoners have access to, and sometimes even the management of, medical files. While electronic files can have advantages, a secure system with strong safeguards is required. Other scenarios mentioned where confidentiality breaches have occurred included where the prison director has the key to files in case they need to medicate a prisoner in the absence of a healthcare professional (although it was mentioned that they would seek the consent of the prisoner), and secondly where the prison shares the types of medication needed with the prisoner's family as they supply it when visiting. One good practice mentioned was where the medical records are kept at the prison healthcare clinic and any request from a third party to view the file is passed to the prisoner who must give consent.

With regards to healthcare staff, budgetary and capacity constraints were shared across many countries. To resolve this, in one country, prison staff can be given medical training so they are equipped to provide healthcare services. However, it was noted that as they are under the command of the prison director their medical decisions can be overruled. Some of the medical staff were employed by Corrections, some by a private service provider (it was noted that the prisons still made it clear they had the 'duty of care'), and others by the Ministry of Health.

Various suggestions were offered for improving continuity and equivalence of care for prisoners, including building a relationship of trust between not only prison and healthcare staff, but also between the prison and the nearby hospital. Continuity of care

can be improved through simple measures also, such as providing two weeks' medication at release so the prisoner has time to organise an appointment with a doctor in the community.

Finally, three key elements for any prison healthcare system were reiterated: 1. A comprehensive medical screening for every prisoner; 2. Upholding medical ethics (i.e. doctors cannot carry out 'double duties', they must fulfil their primary purpose which is the care of their patients; and 3. Clinical infrastructure (e.g. medical units) must never be used or taken over when there is overcrowding.

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For more information, please see: www.penalreform.org / www.tijthailand.org