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**Making the United Nations guidelines in  
crime prevention work**

## **Workshop 2: Survey of United Nations and other best practices in the treatment of prisoners in the criminal justice system\*\***

### **Background paper**

#### *Summary*

While detainees and prisoners lose their freedom of movement in detention, they still keep their rights as human beings and must not be treated in inhuman or degrading ways, let alone be tortured. The present paper describes best practices in the treatment of prisoners around the world, focusing on the question of responsibility for prisons at the governmental level, administration of prisons, practices in respect of particular types of prisoners, and monitoring and inspection of prisons. Even though the prison system worldwide is facing numerous problems, such as overcrowding, lack of necessary infrastructure and inadequate numbers of staff, ways can be found to improve the conditions of detained persons with a view to their reformation and social rehabilitation, which the International Covenant on Civil and Political Rights defines as the essential aim of the treatment of prisoners. Political commitment, policy innovations and adequate allocation of resources have important roles to play in improving prison systems all over the world.

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## I. Introduction

1. Prison<sup>1</sup> is an important and integral part of the criminal justice system in every country. Despite the adoption of principles encouraging the development of community-based measures and restorative approaches, retributive punishment remains the central feature of most jurisdictions, with imprisonment the commonest way it is given effect. Used appropriately, prison plays a crucial role in upholding the rule of law by helping to ensure that offenders are brought to justice and by providing a sanction for serious wrongdoing. At best, prisons can offer a humane experience with opportunities for prisoners to obtain assistance with rehabilitation, which can reduce the risk of re-offending. At their worst, prisons can be sites of serious human rights violations, incubators of disease or mere warehouses from which prisoners return to society poorly equipped to lead a law-abiding life.

2. In addition to the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)), the administration of prisons is subject to a range of treaties, including the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>2</sup> as well as standards and norms, such as the Standard Minimum Rules for the Treatment of Prisoners,<sup>3</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex), the Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111, annex), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (General Assembly resolution 40/33, annex), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (General Assembly resolution 45/113, annex), the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>4</sup>

3. Standards have been developed also at the regional level, such as the revised European Prison Rules adopted by the Council of Europe (2006) and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the Inter-American Commission on Human Rights (2008). The Latin American Standing Committee of the International Penal and Penitentiary Foundation has also made a proposal for the revision of the Standard Minimum Rules.

4. These instruments make it clear that while prisoners lose their right to freedom of movement they retain their other human rights while in detention. International standards forbid all forms of torture or inhuman or degrading treatment. The International Covenant on Civil and Political Rights also makes it clear that the

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<sup>1</sup> By prison, this paper means facilities under the authority of the prison administration in which persons are held while awaiting trial or under sentence. The term prisoner is used to describe all people in prison whether detained before trial or after conviction.

<sup>2</sup> United Nations, *Treaty Series*, vol. 1465, No. 24841.

<sup>3</sup> *Human Rights: A Compilation of International Instruments*, Volume I (First Part): *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part I)), sect. J, No. 34.

<sup>4</sup> *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex.

penitentiary system for convicted offenders “shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation” (art. 10, para. 3). The aim of the present paper is to describe aspects of best practices in prison systems around the world. It has not been possible to undertake a formal survey of practices, so a comprehensive analysis is impossible. The paper focuses on areas identified in the discussion guide (A/CONF.213/PM.1) and the regional preparatory meetings held during 2009. The examples of good or promising practices should be viewed as illustrative only. The basic criteria by which practices have been chosen are the extent to which they protect and promote the human rights of prisoners and in the case of sentenced prisoners seek to contribute to rehabilitation.

5. In many countries, both rich and poor, these functions are severely hampered by high levels of overcrowding, lack of necessary infrastructure and inadequate numbers of staff. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has found in his fact-finding missions to many countries in different regions of the world “that police and prison authorities simply do not regard it as their responsibility to provide detainees with the most basic services necessary for survival, let alone for a dignified existence or what human rights instruments call an ‘adequate standard of living’” (A/64/215 and Corr.1, para. 43). The situation in countries emerging from conflict is even worse.

6. In much of the world, prisons are in a state of crisis and need to be accorded much higher priority by Member States and the international community. Substantial resources need to be mobilized if prisons are to fulfil their proper function and meet international standards. This is not simply a question of building new physical infrastructure and recruiting more prison staff. The use of imprisonment needs to be considered as part of the criminal justice system as a whole, a point made in several regional preparatory meetings. Workshop 5 is to examine strategies and best practices against overcrowding in correctional facilities,<sup>5</sup> which are absolutely complementary to the matters discussed in Workshop 2.

7. The focus of this paper is on the practice of imprisonment rather than the use of prison in sentencing, although the two topics are closely connected. The aim is to address what needs to be done by those responsible for the administration of prisons in Member States and to consider good practices in this regard.

## **II. Responsibility for prisons**

8. Responsibility for prisons and the wider criminal justice system is placed with a variety of government organs in different countries. The majority of prisons and detention facilities or closed institutions fall under a central ministry of justice, a ministry of interior and/or a ministry of public security. In many countries, there may be additional detention facilities run by the military (for dealing with breaches of military discipline); the ministry of health (for psychiatric patients or for all

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<sup>5</sup> In this paper, the term correctional facilities includes all prisons and pretrial detention facilities, although the latter do not have a correctional function.

health care) and social welfare and education departments (e.g. for children in conflict with the law).

9. Responsibility for prisons may be devolved to state, provincial and/or local levels. For example, in the Philippines, local jails are managed by the Department of the Interior and local government, while national prison institutions are managed by the Department of Justice.

10. In recent years there has been a trend towards moving responsibility for prisons into ministries of justice. The ministry of justice is responsible for prisons in all countries of the Council of Europe, except Spain. This is also the case in most of the Americas, much of Africa and some of Asia. In the Middle East, prisons are more commonly part of the ministry of interior, although several countries in the region are currently considering a change. Some countries in Eastern Europe have moved prisons to the ministry of justice, while in others the ministry of interior has retained control.

11. The requirement for a civilian as opposed to a military prison system is at the heart of the international human rights framework. Some international norms also emphasize that criminal offences should be dealt with as part of the due-process protections of a civilian justice system; that prisons should be run by the civilian power; that detainees should retain all rights not taken away by the fact of their imprisonment and while they are in prison they should be prepared for life as free citizens; and that prisons and information about them should be open to independent monitoring and oversight, subject to some form of parliamentary scrutiny and to access for civil society groups. These requirements are impossible to meet if prisons are under military control, and there is a high risk that they may be jeopardized and compromised if under the control of the same ministry that has responsibility for the police, internal security and other functions such as immigration control.<sup>6</sup>

12. Reforming prisons is best undertaken as part of wider criminal justice reform encompassing matters relating to criminal procedure and sentencing, as well as the execution of sentences, and involving prosecutors and judges. Placing responsibility for prisons with the ministry of justice is more likely to produce important innovations and lead to consideration of the development of sanctions that do not involve the deprivation of liberty. The ministry of justice is also better placed to ensure that other relevant government departments can contribute to an agenda of rehabilitation; it may also be able to work to improve public confidence in criminal and other forms of justice in ways that fit with its overarching values. It is also better placed to introduce a human rights culture in prison management, identified as necessary, for example, by the African Regional Preparatory Meeting. Examples of a successful transfer of responsibility can be found in the Russian Federation and in Thailand;<sup>7</sup> Lebanon and Mozambique are also working to that end.

13. Other ministries still play important roles. The Latin American and Caribbean Regional Preparatory Meeting concluded that health education and social policies

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<sup>6</sup> See Committee of Ministers of the Council of Europe Recommendation No. Rec (2006) 2, rule 71.

<sup>7</sup> "International experience in reform of penal management systems: a report by the International Centre for Prison Studies", King's College, London, 2008. Available from [www.kcl.ac.uk/depsta/law/research/icps/downloads/International\\_Experience.pdf](http://www.kcl.ac.uk/depsta/law/research/icps/downloads/International_Experience.pdf).

for inmates should be developed by the relevant ministries, not by the penitentiary administration alone. Also, the separation of juvenile offenders can best be ensured by giving responsibility for those under 18 to the ministry of social welfare, education or justice, through a specialized department.

14. While in most countries health in prisons is still under the authority of the ministry responsible for the prison administration, there is currently a trend to shift this responsibility to ministries of health, which brings positive results in terms of access to health care in prisons and in terms of continuity of care. This is the case, for example, in Australia, France and, more recently, in the United Kingdom of Great Britain and Northern Ireland.

15. While imprisonment is a public function, there is an important role for civil society and non-governmental organizations (NGOs) in working to improve conditions and promoting reform. There are relatively few examples of NGOs running prisons — mainly in South and Central America — and these have not been subject to independent assessment. NGOs often contribute to activities and regimes within prisons, assisting with the reintegration of prisoners on release, raising public awareness about the rights of prisoners and campaigning for reforms.

16. In some countries, the private sector plays a role in running prisons. In some cases (South Africa, United Kingdom, United States of America) this involves contracting for the design, construction, management and financing of prisons. In others, businesses deliver specified functions such as catering, maintenance and rehabilitation activities (Chile, France, Japan). Many countries do not consider it appropriate for profit-seeking entities to be engaged in the running of prisons. There are also concerns that making prisons attractive for business may have an adverse impact on sentencing policies.

17. Particular challenges face prisons in post-conflict and fragile States. The physical infrastructure may have been destroyed and the criminal justice system may often be unable to function, leaving vast numbers of detainees, including former combatants, awaiting trial for long periods of time. Reform in such States needs to take account of the broader requirements of post-conflict justice indicated in the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616) and in the Chicago Principles on Post-Conflict Justice (2007).

### **III. Administration of prisons**

#### **A. Registration, file management and classification of prisoners**

18. The most basic good practice in prison management relates to the need to have systems to collect and use information about detained persons. A reliable registration and file management system, either electronic or manual, enables the authorities to know whom they are detaining and for how long. Such information can also be used as a basis for processes of classifying prisoners. This should be undertaken following an assessment of the risk that each individual prisoner presents. Collecting data about prisoners and prisons and developing information management systems can also better inform criminal policies and help to monitor compliance with international standards. Maintenance of accurate prisoner records

is also crucial to prevent overcrowding and rights violations. The United Nations Office on Drugs and Crime (UNODC) is currently assisting the Sudan in establishing and using a system for the accurate and reliable recording of prisoner information. The UNODC *Handbook on Prisoner File Management*<sup>8</sup> contains practical guidance on setting up effective registration systems.

## **B. Staff recruitment and training**

19. Effective prisons require adequate numbers of properly trained and remunerated staff. In some prisons, staff remain at the perimeter during the night, or even during the day, with day-to-day administration in the hands of prisoners themselves. If prisoners are assigned rehabilitation and welfare responsibilities, it should be ensured that they do not exercise any role in managing security and discipline in the prison.<sup>9</sup>

20. While problems associated with “self-governing prisons” are widely acknowledged, prison management should incorporate consultation and communication with prisoners through prisoners’ councils or committees. In Ecuador this has reduced riots and disturbances.

21. Many regional instruments spell out the importance of proper staff training. For example, the European Prison Rules state that before entering into service, prison staff must be given a course in their general and specific duties and be required to pass theoretical and practical tests. Throughout their careers, staff should maintain and improve their knowledge and professional capacity by attending in-service training and development courses. The regional preparatory meetings in Latin America and the Caribbean and in Asia and the Pacific recommended that training should be extended also to the judiciary, prosecutors and law enforcement officials.

22. In the Dominican Republic the old police and military administration system is being transformed into a new model correctional service focused on rehabilitation of and vocational training for inmates. Currently, 11 of the 38 prisons have been converted to this model, with a further five to be converted in 2010. A school for staff has been established, which provides a full range of training, from basic staff training to management training. New staff have been recruited to the system with enhanced pay and increased responsibilities. Corrupt practices are met with instant dismissal.

23. Staff training and management capacity-building are key components of UNODC prison reform programmes in developing and post-conflict countries such as Afghanistan, Lebanon, the occupied Palestinian territories and Southern Sudan.

## **C. Physical conditions of detention**

24. International standards state that each prisoner must have enough space. The International Committee of the Red Cross (ICRC) has recommended minimum cell

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<sup>8</sup> United Nations publication, Sales No. E.08.IV.3.

<sup>9</sup> Standard Minimum Rules for the Treatment of Prisoners, rule 28(1).

space of no less than 3.4 sq m per prisoner and within the security perimeter 20 to 30 sq m of space per prisoner. Minimum rates of air renewal and intensity of light have also been specified.<sup>10</sup> Every detainee or prisoner should have his or her own bed or mattress with clean bedding.

25. Prisons must keep different categories of detainees separate from each other. Pretrial detainees must be kept separately from convicted prisoners, women must be held separately from men and, if children are detained, they must be kept separately from adults. If detainees or prisoners are held in dormitories or shared cells, there should be an assessment of whether they are suitable to live together. A cell-sharing risk-assessment system was developed in the United Kingdom following the murder of an ethnic-minority prisoner by a racist cellmate in 2000.<sup>11</sup>

26. Prisons must serve sufficient food free of charge for all detainees and prisoners at normal times each day. The food must be of sufficient quantity and quality and provide 2,400 kcal. The food must also meet the medical, religious and cultural needs of individual detainees and prisoners. Clean drinking water must be provided to all detainees and prisoners whenever they need it. ICRC recommends 5 litres per day, plus a further 10 litres for washing.<sup>10</sup>

27. All detainees and prisoners must have access to a bath or shower as often as is necessary to maintain their personal hygiene. The detention centre must provide soap and towels. Sanitary installations must be sufficient to allow detainees and prisoners to comply with their bodily needs in private and in a clean and decent manner.

28. There are many examples of practices that have been introduced to meet these requirements. In Bangladesh, the Dhaka central jail has developed a bakery that provides bread for prisoners and sells its products to those visiting the jail and the local community. Profits are reinvested in the prison.<sup>7</sup> In Rwanda biogas technology has been introduced to convert animal and human waste into fuel.<sup>10</sup> Prison farms have been developed in many African countries.<sup>12</sup>

29. The maintenance of equipment is often a low priority in jails. In the Russian Federation, small teams of serving prisoners are allocated to undertake these duties in pretrial prisons.

#### **D. Health care and psychological care**

30. When the state imprisons or detains someone it takes on the responsibility of looking after his or her health. All necessary medical care and treatment must be provided free of charge. The standard of preventive, curative, reproductive and palliative medical care must be at least the same as that in the outside community, regardless of the regime of the detention. The World Health Organization (WHO)

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<sup>10</sup> Pier Giorgio Nembrini, *Water, Sanitation, Hygiene and Habitat in Prisons* (Geneva, International Committee of the Red Cross, 2005).

<sup>11</sup> *Report of the Zahid Mubarek Inquiry* (London, Her Majesty's Stationary Office, 2006). Available from [www.zahidmubarekinquiry.org.uk/article3d65.html?c=374](http://www.zahidmubarekinquiry.org.uk/article3d65.html?c=374).

<sup>12</sup> Penal Reform International, "A model for good prison farm management in Africa", 2002. Available from [www.penalreform.org/a-model-for-good-prison-farm-management-in-africa.html](http://www.penalreform.org/a-model-for-good-prison-farm-management-in-africa.html).

guide to health in prisons provides valuable information on the provision of health care in prisons.<sup>13</sup>

31. Health staff must comply with the 1982 Principles of Medical Ethics, relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (General Assembly resolution 37/194, annex). The role of health staff in prisons is that of caregivers, and they should not be involved in measures of security and control.

32. Detainees must be offered a medical examination when they first arrive in detention, and continuity of treatment initiated before entering prisons should be ensured. Detainees and prisoners must be able to see a suitably qualified medical officer on a regular basis. Women and children must also be able to see specialists in women's and children's medicine. The WHO/UNODC Kyiv Declaration on Women's Health in Prisons provides guidance on gender-specific aspects of health care.<sup>14</sup> The prison administration must provide suitable premises and equipment for consultation and for emergency treatment. It must also supply adequate and appropriate medicines. If outside treatment or hospital care is required, the escort arrangements must be decent and appropriate to the medical condition involved.

33. Detainees and prisoners who require medical attention are patients. They are entitled to privacy both in consultation with medical staff and in their treatment. If safety is a serious concern, consultations may take place within sight but not within hearing of a detention officer. If a medical condition is identified, a detainee should be informed of all treatment possibilities available. This applies in particular for drug-dependence treatment.

34. Medical records are not part of the general prison records, but must remain either under the control of the detainee or prisoner (where the law gives this right to patients generally) or under the control of the medical officer. In Belgium the electronic medical record belongs to the prisoner and follows him or her in every situation, such as transfer to another prison.

35. Appropriate measures must be taken to ensure that health care is continued both when a person is arrested or enters prison and when a prisoner is released. This continuity of care is a major concern for some types of treatment, such as tuberculosis, drug-dependence or anti-retroviral drug treatments. This is best achieved when community health services are responsible for health care in prisons or when NGOs are involved in the provision of health services both inside and outside prisons.

36. Comprehensive strategies are needed to reduce the risk that prisoners will contract tuberculosis, HIV/AIDS and hepatitis. Good practices include education and the sharing of information among peers. In Moldova the involvement of peers in

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<sup>13</sup> Lars Møller and others, eds., *Health in Prisons: A WHO Guide to the Essentials in Prison Health* (Copenhagen, World Health Organization, Regional Office for Europe, 2007). Available from [www.euro.who.int/prisons/meetings/20070917\\_4](http://www.euro.who.int/prisons/meetings/20070917_4).

<sup>14</sup> World Health Organization, Regional Office for Europe, and United Nations Office on Drugs and Crime, *Women's Health in Prison: Correcting Gender Inequity in Prison Health* (Copenhagen, 2009). Available from [www.euro.who.int/Document/E92347.pdf](http://www.euro.who.int/Document/E92347.pdf).

the implementation of HIV prevention and harm reduction, including through needle and syringe programmes, can be cited as a best practice.

37. An example of a comprehensive strategy on HIV/AIDS is provided by Indonesia, where the Ministry of Justice decided to promote HIV prevention and care activities for prisoners to prevent the spread of HIV within prisons and from there to the community as a whole. In 2005 the Indonesian National Strategy for HIV Prevention, Care and Support for Prisoners was launched, the first national strategy of its kind in Asia. It has enabled education and the provision of condoms, methadone and anti-retroviral drugs for prisoners. In the Islamic Republic of Iran authorities have implemented a comprehensive HIV prevention programme. They have also introduced methadone treatment, which has resulted in a significant reduction in injecting drug use, which plays a crucial role in HIV prevention, and a more than 90 per cent decrease in self-injury and fighting.<sup>15</sup> Similarly, since 2005 UNODC has supported HIV-prevention activities in prisons of South Asia. The tools developed by UNODC, WHO and the Joint United Nations Programme on HIV/AIDS (UNAIDS) provide guidance for countries to mount an effective national programme on HIV in prisons and to advocate and train stakeholders on HIV in prison settings.<sup>16</sup>

38. Prisons must also provide healthy living conditions for detainees, prisoners and staff. The prison doctor must inspect these facilities regularly to ensure that they are healthy. He or she should advise the centre's director of any concerns. There is a particular risk of spreading diseases in detention and in the wider community if hygiene is poor or living conditions are overcrowded.

39. International standards require staff to monitor the effect of detention on the mental health of detainees and prisoners. People with mental health problems are overrepresented in many prison systems; in some countries prisons are even used to house mentally ill persons who have not committed any offence. Effective practices include the integration of strategies to promote mental health into the overall prison management strategy; the creation of a positive prison environment; an integrated approach to mental health care that does not rely solely on medication, if at all; suicide awareness and prevention (e.g. in respect of at-risk prisoners in Australia); and specialized treatment (e.g. equine therapy in Mexico). In the United Kingdom multidisciplinary teams aim to offer prisoners the same kind of specialist care and treatment they would receive in the community. The UNODC *Handbook on Prisoners with Special Needs*<sup>17</sup> provides guidance on these matters.

## **E. Contact with family and the outside world**

40. Although detainees and prisoners lose the right to freedom of movement and association, they do not lose the right to communication and contact with the outside world. In particular, they have the right to contact with their families and

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<sup>15</sup> "HIV and AIDS in places of detention", 2008, available from [www.unodc.org/documents/hiv-aids/HIV-toolkit-Dec08.pdf](http://www.unodc.org/documents/hiv-aids/HIV-toolkit-Dec08.pdf).

<sup>16</sup> HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective National Response, 2006, available from [www.unodc.org/documents/hiv-aids/HIV-AIDS\\_prisons\\_Oct06.pdf](http://www.unodc.org/documents/hiv-aids/HIV-AIDS_prisons_Oct06.pdf).

<sup>17</sup> United Nations publication, Sales No. E.09.IV.4.

with their legal representatives. Family members outside prison also have the right to contact with the detainee or prisoner. The prison administration must ensure that contact between a detainee or prisoner and his or her family is maintained, and visits should be authorized as a right and not a privilege. These visits should take place in conditions that are as natural as possible, especially if the visitors include children.

41. In some parts of the world, family and intimate visits are commonplace, one of the effects of which is to reduce tension in prisons. In the Islas Marias in Mexico prisoners are able to stay with their families. Conjugal visits for married couples have recently been introduced in Pakistan. In the Russian Federation the law specifies the number of long and short visits prisoners are entitled to, while in the Libyan Arab Jamahiriya prisoners are allowed up to 8 vacation days a year.

## **F. Complaints**

42. Detainees and prisoners who feel that their rights have been violated are entitled to make a complaint. Clear information should be given to detainees and prisoners about the procedure for making a complaint when they first come into prison. Detainees and prisoners should have — without fear of reprisal — an opportunity to submit requests and complaints to the director of the detention centre or his or her representative, or to an outside body such as the public prosecutor or defender or an ombudsman. All requests and complaints must be dealt with as quickly as possible and investigated where appropriate. In China the 2009-2010 National Human Rights Action Plan includes measures for

intensifying real-time supervision conducted by the people's procuratorate on law enforcement in prisons and detention houses ... Complaint letterboxes are set up in their cells, and a detainee may meet the procurator stationed in a prison or detention house by appointment ... to make a complaint.

## **G. Disciplinary matters**

43. Breaches of discipline that are against prison rules must be dealt with in accordance with a set of published procedures. The system should not allow unofficial punishment. The prohibition against torture and inhuman and degrading treatment applies in prison.

## **H. Security and use of force**

44. The main purpose of detention is to protect society from persons who may present a serious threat to public safety. It is also important to protect other detainees, prisoners and staff, and measures need to be taken to prevent violence, including sexual violence, within prison settings. The level of security for each detainee or prisoner must be based on an individual risk assessment.

45. Excessive security and control can, at its worst, lead to a sense of injustice and increase the risk of a breakdown of control and of violent or abusive behaviour. It is important to review regularly the security status of convicted prisoners as part of the

process of preparing them to return to the community. In the case of pretrial detainees, the risk assessment must also include any potential threat to witnesses. Solitary confinement as a preventive security measure must be avoided.

46. The use of force must be the last resort in controlling detainees or prisoners if good order breaks down. In order to protect detainees or prisoners against abusive treatment, there must be a clear set of procedures defining the circumstances under which force may be used. Firearms must be used only when there is a clear and immediate threat to life and in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Detainees or prisoners should not be used in maintaining control.

47. Organized systems for moving prisoners around the prison and direct contact between staff and prisoners are as important in maintaining security and control as are fences and cameras.

## **I. Death in prison**

48. Prisoners who are close to death from natural causes should be able to spend their last days with their families when possible. Systems of compassionate release should be in place to allow this.

49. When people die in prison, independent and transparent investigations involving the family must be carried out. Such investigations produce lessons that can help to prevent future incidents and to establish possible disciplinary action against staff members.

## **J. Regime activities**

### **Work**

50. Productive paid work is an important component of prison life, providing an active day for prisoners and generating financial resources. Work should not be excessively onerous or be required at the expense of the rights and welfare of prisoners, and it may never be used as a punishment. In many countries, involvement in work can lead to early release from prison. For example, in the so-called two-for-one system in several countries of South America, prisoners can shorten the length of their imprisonment by one day for every two days that they work. Good practice suggests that prisoners should be able to choose their type of employment within limits; the organization of work should resemble that of similar work in the community, and the interests of prisoners should not be subordinated to the pursuit of profit.

51. Esperanza industrial prison in Paraguay enables 300 prisoners to learn a trade, work eight hours each day and receive a salary for their work. At Mar del Plata prison in Argentina, prisoners can work in a fish-filleting factory, with the possibility of continued employment after release.

**Educational, vocational and cultural activities**

52. The Special Rapporteur on the right to education has recently reported that learning in prison is generally considered to have an impact on recidivism, reintegration and employment outcomes.<sup>18</sup> Prisons should seek to provide all prisoners with educational programmes that meet individual needs.

53. Kaki Bukit Centre Prison School in Singapore brings together different categories of inmates from both penal and drug institutions in one centralized location, where they attend academic and vocational classes.

54. In addition to education, prisons should offer a range of vocational training, cultural activities and sports. Querétaro prison in Mexico employs two cultural amateurs who provide activities for prisoners and their families when they visit.

55. The provision of vocational training and education to prisoners is a component of UNODC prison reform programmes in countries worldwide. In Afghanistan, for example, a series of vocational training and education programmes have been delivered by local NGOs to women prisoners in Kabul and three provinces, as an element of a programme to improve the social reintegration of women prisoners on release.

**Treatment and preparation for release**

56. Reintegrating prisoners effectively into the community after release is crucial. The various models include halfway houses and post-release hostels and other forms of supportive accommodation in which prisoners can learn to live independently. The Bolivarian Republic of Venezuela is in the process of establishing 25 community treatment centres in which prisoners who have served half their sentence can spend the rest of their term. Prisoners who have been assessed as suitable spend the night, weekend and holidays in the centre but during the day go out to work. The centres provide opportunities for residents to undertake education and training and to participate in cultural and sporting activities. Specific evaluations are lacking as yet, but the initiative has promise as a way of reducing the most negative aspects of imprisonment and improving reintegration and the prevention of re-offending.

57. Circles of support and accountability for released sex offenders and the lifelines concept for resettling prisoners following long sentences have been developed in Canada. In countries of Eastern Europe, there are often resocialization staff who can help prisoners to return to the community. In some countries reconciliation with victims, communities and even the offender's own family is important, particularly in serious cases.

58. In many countries, public and media hostility towards prisoners acts as a barrier to reintegration. Singapore's annual Yellow Ribbon initiative is an attempt to overcome these barriers through a campaign to give ex-convicts a second chance in society. In the United States the Second Chance Act authorizes federal grants to government agencies and community and faith-based organizations to provide social, health and other services that can help to prevent re-offending and violations of probation and parole.

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<sup>18</sup> See A/HRC/11/8.

## **IV. Particular groups of prisoners**

### **A. Pretrial detainees**

59. In many countries, a majority of people in prison have not yet been tried or convicted. Pretrial detainees represent over three quarters of all prisoners in some countries, including Liberia (97 per cent), Mali (89 per cent), Haiti (84 per cent), Andorra (77 per cent), the Niger (76 per cent) and Bolivia (Plurinational State of) (75 per cent). High rates are particularly common in post-conflict countries.

60. Reducing the proportion of pretrial detainees is largely a question of improving the functioning of the criminal justice process.

61. However, prisons themselves can work to reduce pretrial detention. They can ensure that periods in pretrial detention are kept as short as possible by monitoring time limits of pretrial arrangements. Prisons must keep accurate information about prisoners, and they must not receive anyone into detention without a valid order from a judge. They can also engage in inter-agency initiatives to clear backlogs of cases. In India and Malawi, prisons host courts in which magistrates hold hearings inside the jail.

62. Pretrial prisoners are not being held in detention as a punishment, and a number of international norms protect their special status. Detainees who have not been convicted must always be treated as innocent, although in practice, in many countries, pretrial prisoners are kept in the worst conditions and do not enjoy the same rights or have access to the same services as convicted prisoners.

63. Taking into account the long periods that many pretrial detainees spend in prison, it is important to ensure that, like convicted prisoners, they are given an opportunity to participate in all prison activities. For instance, pretrial and unconvicted detainees should be given the opportunity to work or study if they wish, and be allowed sufficient time out of the cell.

### **B. Groups with specific needs**

64. Most detainees and prisoners are adult males. Some other groups of prisoners have different needs and require special attention, including women, children and young persons, older prisoners, prisoners with mental health-care needs, prisoners with disabilities, people of foreign nationalities or cultural groups and prisoners under sentence of death. The UNODC *Handbook on Prisoners with Special Needs* includes guidance and recommendations for the treatment of some of these groups.

#### **Women**

65. The proportion of women in prison is in most countries between 2 and 9 per cent. Women are a very disadvantaged group and often victims of abuse and violence, and their needs are usually very different from those of men. The draft United Nations Rules for the Treatment of Women Prisoners and Non-custodial

Measures for Women Offenders were produced in late 2009<sup>19</sup> following an intergovernmental expert group meeting organized by UNODC and hosted by Thailand. All of the regional preparatory meetings welcomed this initiative.

66. Women must be supervised by female staff. Women must always be kept in separate accommodation from men, although there are innovations such as the high-security prison in Ringe, Denmark, where men and women live together in units of about 10 people, sharing a communal kitchen and bathroom.

67. Women detainees and prisoners who are mothers must be given every opportunity to maintain links with their children. Special attention must be given to the needs of women with small children. The best interests of the children must always be considered when making decisions affecting them. There is marked variation in policy about the age limit beyond which children cannot remain in prison with their mother. In general, the emphasis needs to be on small living units approximating as much as possible life outside. Examples of good practice include Boronia prison in Western Australia, where there are gardens and well-maintained houses that resemble a suburban landscape, and Fronenberg prison in Germany, where 16 mothers live with their children up to the age of 6 in self-contained flats.

68. In some countries, special efforts are made to enable mothers with children not to serve prison sentences. In the Russian Federation, sentences can be suspended until the child is 14. In a recent case, the South Africa constitutional court ruled that sentencing should take account of the impact on children.

69. Women detainees and prisoners also have specific health-care needs. The WHO/UNODC Kyiv Declaration on Women's Health in Prisons and the UNODC/UNAIDS policy brief on women and HIV in prison settings<sup>20</sup> provide guidance to countries to respond to the health needs of women in prisons.

70. The UNODC *Handbook for Prison Managers and Policymakers on Women and Imprisonment*<sup>21</sup> (2008) provides further guidance and examples of good practice for prison authorities to ensure that women and their children receive appropriate treatment in prisons, while alternatives to imprisonment are encouraged for certain categories of women.

### **Children and young people**

71. International law and special rules exist for the treatment of children who are in conflict with the law. The most important are the Convention on the Rights of the Child,<sup>22</sup> the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. These state that detention should be used as a last resort

<sup>19</sup> Drafted in compliance with Commission on Crime Prevention and Criminal Justice resolution 18/1. The draft rules will be submitted by the Government of Thailand for final adoption by the General Assembly at its 65th session, through the Twelfth Congress on Crime Prevention and Criminal Justice and the Commission on Crime Prevention and Criminal Justice at its 19th session.

<sup>20</sup> Available from [www.unodc.org/documents/hiv-aids/Women%20and%20HIV%20in%20prison%20settings.pdf](http://www.unodc.org/documents/hiv-aids/Women%20and%20HIV%20in%20prison%20settings.pdf).

<sup>21</sup> United Nations publication, Sales No. E.08.IV.4.

<sup>22</sup> United Nations, *Treaty Series*, vol. 1577, No. 27531.

and for the shortest possible time. In addition, the Council of Europe has recently published European Rules for Juvenile Offenders subject to Sanctions or Measures.<sup>23</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recently concluded that to many children deprived of their liberty, the above norms, with their envisaged protection and conditions, must sound as if they are out of touch with reality.<sup>24</sup>

72. Children and young people are vulnerable to abuse by older detainees and prisoners, as well as staff. This was highlighted by the report of the independent expert for the United Nations study on violence against children (A/61/299). If it is necessary to detain children, they must always be kept in separate accommodation from adults. If girls are kept in female prisons, effective separation and equality of rights should be ensured. Staff who work with children must be given appropriate training.

73. Children have specific welfare, educational and health needs. The activities and facilities available to them in detention must meet those special needs. Children must be able to carry out activities that help their continuing development. The authorities responsible for children in detention must establish and maintain links with the authorities responsible for the education, welfare and health of children in the outside community, and the children should be allowed contact with their parents and other family members.

74. The appropriate philosophy is expressed by Sirindhorn vocational training school in Thailand. Seeking to provide a child-centred regime for delinquents, it describes itself as a “temporary substitute home for a child that has made a mistake”.

75. Some countries recognize the developing maturity of young people above the age of 18. In Brazil, as part of the National Programme of Public Safety and Citizenship, special penitentiaries for young adults aged 18 to 24 are being built in order to tackle overcrowding and avoid an escalation in the criminal career of youngsters. Other countries have extended special programmes for children in conflict with the law to cover young people up to age 21, or in some cases older. In Finland people are considered to be young offenders up to age 29.

#### **Foreign prisoners and prisoners from minority groups**

76. In some countries there are large numbers of foreign prisoners, in particular as a consequence of increased transnational crime. Prisons must allow foreign nationals to contact representatives of their own government, such as consular representatives. Member States should be encouraged to enter into prisoner transfer agreements using the United Nations model treaty, which requires the consent of the prisoner. Efforts should be made to enable these prisoners to keep in contact with their families. The federal prison system in Argentina has established an assistance programme for English-speaking women prisoners.

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<sup>23</sup> Recommendation CM/Rec(2008)11.

<sup>24</sup> A/64/215 and Corr.1, para. 69.

77. In many countries minority groups are overrepresented among prisoners. In Canada, the prison system has constructed a “healing lodge” where aboriginal women can serve all or part of their sentences.

#### **Other groups**

78. The authorities responsible for places of detention must also give particular attention to the needs of members of other specific groups, especially those who are old, infirm, mentally ill or dependent on drugs, as well as those who are lesbian, gay, bisexual or transgendered.

79. Prisoners serving life or other long-term sentences also require special attention. Good practice suggests that a progressive system in which security levels are regularly assessed and prisoners who make progress are moved to less restrictive regimes tend to produce the best results. Open establishments and resettlement prisons are most likely to prepare long-term prisoners for release.

80. Prisoners under sentence of death are subjected to severe restrictions in many countries worldwide and spend years in unacceptable conditions, which has a severe impact on their mental well-being. While the United Nations calls for the abolition of the death penalty, it also calls on Member States that retain the death penalty to ensure the humane treatment of those under sentence of death.

## **V. Monitoring and inspection**

81. Under international law, prisons and other places of detention should be visited regularly by qualified and experienced persons who do not work for the prison authorities. Such independent inspection was seen as very important by the regional preparatory meetings, particularly the Western Asia meeting, which agreed that regular inspections could guarantee the security of inmates and ensure compliance with international standards.

82. All detainees and prisoners have the right to communicate freely and in private with these official visitors. Interviews may take place within sight of detention officers but not within hearing. In some countries representatives of the local community and of international organizations, such as ICRC, are allowed to visit places of detention in order to monitor the conditions of detention and the treatment of detainees and prisoners.

83. Models of good practice include an independent prison inspectorate (Western Australia), local independent monitoring boards (England and Wales) and the office of the inspecting judges (South Africa). In civil-law countries some inspectorial functions are also undertaken by prosecutors, public defenders and penal execution judges: in Argentina the *procuración penitenciaria* is responsible for inspection of the federal prison system.

84. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 57/199, annex) states that inspections should be independent and have access to all parts of a prison and all information and that private interviews can be held. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has stated that a proactive approach is required,

monitoring compliance with human rights affected by detention even in cases where no complaints have been received.

85. The Optional Protocol, ratified by 50 countries as of October 2009, requires Member States to establish national preventive mechanisms, which so far include a wide range of arrangements, including several existing bodies such as an ombudsman's office or human rights commission work alongside civil society. Internal prison inspection does not satisfy the requirements of effective independent monitoring.

## **VI. Conclusions and recommendations**

86. The Congress may wish to reiterate and emphasize the central importance of the Standard Minimum Rules for the Treatment of Prisoners, as they represent good principle and practice in the treatment of prisoners and the management of institutions.

87. The Congress may wish to welcome initiatives being undertaken to supplement the Standard Minimum Rules, and in particular the development of supplementary rules specific to the treatment of women in detention and in custodial and non-custodial settings, mandated by resolution 18/1 of the Commission on Crime Prevention and Criminal Justice. The Congress may also wish to endorse and approve the set of draft supplementary rules agreed upon by an open-ended intergovernmental expert group meeting and submitted to the Congress.

88. The Congress may wish to consider whether additional supplementary standards are needed in respect of other vulnerable groups in prison, such as children and young people, older prisoners or people with health problems, including physical and mental disabilities and drug dependency.

89. The Congress may wish to encourage Member States to reaffirm their commitment to meeting the requirements of international standards in respect of the treatment of prisoners, in particular the Standard Minimum Rules, and to consider urgently how they can be met. Such consideration should include measures to reduce overcrowding, which represents the biggest single barrier to compliance with international standards. It should also involve reviews, where necessary, of the law, policy, practice and budgetary allocations relating to imprisonment.

90. Bearing in mind the dire state of prisons in Member States emerging from conflict and the crucial importance of establishing functioning civilian criminal justice systems to peacebuilding and the re-establishment of the rule of law, the Congress may wish to consider giving much higher priority to the strengthening or reconstruction of prison systems in post-conflict settings to bring them into compliance with the requirements of international standards, and to the provision of adequate resources by donors to achieve this.

91. The Congress may wish to encourage Member States to develop the necessary policies and institutional infrastructure to ensure that prisons are used sparingly and fulfil their proper role. They should not be used in the absence of appropriate social and welfare provisions to detain people in need of care, protection, treatment or control who are not accused or convicted of breaking the criminal law (e.g. mentally ill people, women at risk of violence or street children).

92. The Congress may wish to encourage Member States to review the way that prison systems are organized within their government structures and the roles of various departments, bearing in mind that effective prison systems that meet international standards are the responsibility of the State as a whole, with particular roles to be played by ministries of justice, interior, finance, health, education and social welfare. Member States in which prisons are the responsibility of the ministry of interior or security should consider transferring responsibility to the ministry of justice.

93. The Congress may wish to encourage Member States to integrate prison health into wider community health structures, and assign responsibility for the management and provision of prison health services to those same ministries, departments and agencies providing health services to the general population. Where this is not achievable in the short term, action should be taken to significantly improve cooperation and collaboration between prison health services and community health services.

94. The Congress may wish to encourage Member States to ensure that prisons are professionally managed and have adequate numbers of qualified and properly trained staff, and avoid situations in which prisoners exercise a role in managing security and discipline in the prison.

95. The Congress may wish to encourage Member States to develop prisoner data management systems to collect information about the numbers and characteristics of prisoners and prisons so as to better inform policies, improve the management of individual prisons and the criminal justice system as a whole and monitor compliance with international standards.

96. The Congress may wish to encourage Member States to put in place procedures and mechanisms to ensure that all those in prison are legally detained and have access to necessary legal advice and assistance. They should have adequate mechanisms to vent their grievances and have means to maintain contact with the outside world.

97. The Congress may wish to encourage Member States to commit the necessary resources to provide a prison system in compliance with the Standard Minimum Rules, obtained from national and, where appropriate, international sources, and to mobilize the energies of civil society, local communities, relevant government departments and authorities at the local and national levels.

98. The Congress may wish to encourage Member States to ratify the Optional Protocol to the Convention against Torture if they have not done so and give priority to the establishment of mechanisms of accountability, independent external inspection and oversight and monitoring.

99. Furthermore, the Congress may wish to consider whether:

(a) The United Nations should undertake activities to raise public awareness about prisons (e.g. by designating an annual “day of the prisoner”) to help States and civil society organizations to draw public attention to the international standards governing the use and management of prisons and the rights and needs of prisoners;

(b) The institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network should, together with UNODC, develop

capacity to establish a database of good practices in the treatment of offenders and management of prisons, building on the existing materials produced by UNODC since the Eleventh Congress;

(c) UNODC should be encouraged to continue providing technical assistance for prison reform to Member States that request it, including in the form of tools and training, and Member States should provide UNODC with the requisite resources to do so.

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