UN and EU Recommendations on the Treatment of Foreigners in Prison

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The UN recommendations were approved by the Seventh United Nations Congress on the Prevention and Treatment of Offenders in Milan in 1985, together with the Model Agreement on the Transfer of Foreign Prisoners. The recommendations, the Model Agreement as well as the Standard Minimum Rules for the Treatment of Prisoners can be found in the Compendium of the United Nations Standards and Norms in Crime Prevention and Criminal Justice(2006), published by the United Nations. The Compendium is available from the UN Office of Drugs and Crime, Vienna, Austria.

The EU recommendations are the conclusions of a two year study of best practices in 25 European countries, financed by the European Union and contained in the first chapter of the book, Foreigners in European Prisons, published by Wolf Legal Publishers, 2007. The two volume set is available by email from C.dejong@uvt.nl at Tilburg University or by Fax 00311134663616. Price: 57.50 Euros
The portion of foreign prisoners – both in absolute numbers and relative terms - is increasing around the world. In Europe alone, there are 100,000 foreigners imprisoned. Due to large scale migration trends, ‘pull and push factors’, the narcotics trade, and easy travel, persons are finding themselves arrested and detained far from home. For these people, whose only crime may be a desire to escape grinding poverty and a wish for a better life for their families, they may find themselves in an incomprehensible situation, friendless and alone. They often face a language they do not understand, unknown customs and regulations, and prejudice and xenophobia. At the time of their initial arrest, they be completely traumatized, shouted at but even beaten (pushed about because there is no common language of communication). Even after conviction (many are poorly represented by counsel who do not understand their language) foreigners continue to suffer because of the lack of contact with families and news from home.

The United Nations Recommendations on the Treatment of Foreign Prisoners speak of equality of treatment in terms of access to training, employment, prison leave, and release programmes. Yet most countries hold foreigners under much harsher regimes. The UN Recommendations suggest special measures for communication, understanding, dietary and religious requirements. The Standard Minimum Rules for the Treatment of Prisoners, which are applicable to foreign prisoners, emphasize the important role that Chaplains can play.

A two year study of Foreigners in European Prisons was completed in May 2007, which examined the legislation, regulations, and practice in 25 EU countries. This mammoth study has produced 73 practical recommendation plus examples of good practice. They deal with how foreigners should be treated upon admission, supporting links with family, education and training, contact with the outside world, conditional release, aftercare as well as training prison staff. There is a special section dealing with the administrative detention of irregular migrants. Again the importance of chaplains and prisoners being able to practice their religions are emphasized in the EU recommendations.

In order to make the basic UN principles and these utilitarian recommendations available to busy policy makers, penal managers, prison personnel, chaplains, and reformers, the International Commission of Catholic Prison Pastoral Care and the University of Tilburg are making this booklet available.

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The United Nations Recommendations on the Treatment of Foreign Prisoners

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.

2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.

3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison according to the same principles as nationals.

4. Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations.

5. The religious precepts and customs of foreign prisoners should be respected.

6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted.

7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or program staff and in such matters as complaints, special accommodations, special diets and religious representation and counseling.

8. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations should be given the opportunity to assist foreign prisoners.

9. The conclusion of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign offenders.
EU Recommendations

Recommendation (1)
In principle, foreign prisoners who have been sentenced should be transferred to their home country for proper rehabilitation and preparation for release. If this is not possible, the host country should institute special training and vocational programmes to help the prisoner’s reintegration into his/her future home country. Where the foreigner does not speak the language of the country to which he is to be deported, it is suggested that appropriate language courses be provided.

Recommendation (2)
Rehabilitation/reintegration is the principal aim for all prisoners. The requirement to provide rehabilitative programmes is laid down in the European Prison Rules under which rehabilitation is the sole aim of deprivation of liberty for sentenced prisoners (see No. 102.1 European Prison Rules).

Recommendation (3)
For detainees who will stay in the host country, alternatives to pre-trial detention and imprisonment should be further developed. The discrimination against foreigners and the disadvantages they suffer (including lack of eligibility for community service as an alternative to imprisonment or other alternatives) should be taken seriously. The same is true for conditional (early) release.

Recommendation (4)
It should be decided whether or not a foreign prisoner is to be expelled at the beginning of his prison sentence. This will allow concrete rehabilitative programmes to be planned in preparation for release in either the host or the future home country.

Recommendation (5)
Foreign prisoners frequently receive insufficient (written) information about their legal rights and duties in a language they understand. Staff in prisons and immigration detention centres should be particularly educated to address the specific needs and language deficits of foreign detainees. In many countries racism among prisoners is a problem that should be addressed to a greater extent by the prison and detention authorities.

Recommendation (6)
Overcrowding is a severe problem in many prisons and administrative detention centres that increases the “normal” problems of foreigners. Measures should be taken to prevent this.

Recommendations with respect to the EU level

Recommendation (7)
From a criminal justice perspective, there are initiatives that should be developed on the European front that would meet some of the needs of
the humanitarian/welfare agenda while protecting the public and reducing the risk of reoffending, two issues that are not mutually exclusive. These require coordination and cooperation among organisations and agencies in the European Union.

**Recommendation (8)**
To meet the needs of justice and public protection, protocols should be established among European Union countries so that previous convictions and other relevant information can be obtained for sentencing. Such information will also be important during the prison sentence to enable work on offending behaviour, rehabilitation and resettlement issues. The repatriation of European Union prisoners to serve their sentence in their own country does have advantages in areas of education, training and general rehabilitation needs.

**Recommendation (9)**
The number of European Union prisoners who voluntarily return to serve their sentence in their own country is low. While, in the United Kingdom context, about 20% of foreign national prisoners are from European Union countries, serving a sentence in one’s own country has distinct advantages. Depending on prisoner release arrangements in European Union countries, it might also mean that prisoners are released under supervision as opposed to being released unconditionally.

**Recommendation (10)**
European Union prisoners who complete their sentences in the United Kingdom (or any other European Union country) and are then deported are not under any form of supervision on release. Protocols should be established among European Union member countries to facilitate the transfer of supervision licences on deported prisoners so that their resettlement can be supervised and the public better protected against their reoffending.

**Recommendation (11)**
The ability for community penalties and conditional release to be transferred, managed and enforced among European Union countries, could also provide courts with sentencing alternatives to imprisonment and thereby reduce the foreign national prisoner population. Social exclusion is likely to have a negative impact on successful reintegration into society after release.

**Recommendations with respect to the treatment of foreign offenders**

**Recommendation (12)**
Prison authorities should acknowledge the vulnerable position of foreign prisoners and be committed to addressing their special needs. For this reason they should introduce special sections regarding foreign prisoners in prison regulations and implement special programmes to compensate for the disadvantages that foreigners experience in daily prison life.
**Living conditions & facilities**

**Recommendation (13)**
Prison authorities should be aware that putting prisoners of the same national/cultural/religious background can be seen as ‘good practice’ as it can lessen feelings of isolation. However, it can also create undesirable hierarchical or violent subcultures.

**Recommendation (14)**
Foreign prisoners should be allowed to enter penitentiary institutions where they have better chance of successful resettlement, even if they will not remain in the detention country after release.

**Recommendation (15)**
Foreign prisoners should be lodged in penitentiary institutions located in the capital city to facilitate regular contact with diplomatic missions and relatively easy transportation to and from the airport when relatives from abroad visit.

**Reception and admission**

**Recommendation (16)**
Admission to penitentiary institutions can be seen as an intimidating and dehumanising experience. It is therefore essential that prisoners have a proper understanding of what is actually happening, and prison authorities should have information available in various languages. Further, prison authorities should at least translate prison rules and house rules into a few of the most common foreign languages and should ensure that they are presented to foreign prisoners upon admission. A good practice can be found in England and Wales where foreign prisoners receive a ‘Foreign National Prisoners Information Pack’ upon admission. This pack contains information in 20 languages about the rules, prisoners’ rights and duties, complaint procedures, how to contact the embassy, how to apply for a transfer etc.

**Recommendation (17)**
Staff at reception should receive special language training and learn about cultural diversity.

**Recommendation (18)**
Prison authorities should take into consideration that foreign prisoners often have to make long-distance calls and sometimes at odd hours, because of different time zones, in order to notify their families about their detention.

**Recommendation (19)**
A good practice can be found in England and Wales where ‘Foreign National Orderlies’ are used to inform new foreign prisoners about prison life, how to find their way around and how to reduce their isolation. These Orderlies are foreign prisoners themselves who have multi-language skills and who have received special training.

Recommendation (20)
Being engaged in useful and paid work is essential for prisoners and especially for foreign prisoners because they often do not receive financial support from outside the institution. Prison authorities should ensure that foreign prisoners have equal access to work, education and training programmes. Providing classes for foreigners to learn the national language or English could be beneficial for both prisoners and staff.

Recommendation (21)
Prison authorities could seek support from local libraries and diplomatic missions to create a prison library collection of books, magazines and newspapers in various foreign languages.

Food – Religion – Personal hygiene – Medical care

Recommendation (22)
Prison authorities should stock prison shops with culturally specific ingredients or products.

Recommendation (23)
Prison authorities should create a multi-faith room for the use of prisoners from different religious backgrounds.

Recommendation (24)
Prison authorities should make sure that representatives of the most common religions have regular access to foreign prisoners for individual meetings and to hold religious meetings. A good practice can be found in Sweden where the Swedish Prison Service has created a network of representatives of different denominations that visit foreign prisoners. This ‘Council for Spiritual Welfare’ network consists of around 130 people.

Recommendation (25)
All prisoners should be allowed to wear clothing, hairstyle and head dress of their choice. Turbans for Sikhs and head scarves for Muslim women should be accepted, as it is in the United Kingdom.

Recommendation (26)
Prison authorities should provide medical care free of charge to all prisoners, including foreign prisoners who may not have health insurance.

Recommendation (27)
Requesting interpreter assistance from non-medical staff or other prisoners seems practical, but is undesirable because of medical confidentiality and the sometimes poor quality of translation of medical terminology.

Consular help and legal aid

Recommendation (28)
Foreign prisoners must be made aware of their right to contact their diplomatic mission. To avoid misunderstandings, prison staff should be informed that foreign prisoners can only give up this right if he makes a written request to that effect.
Recommendation (29)
Diplomatic missions should acknowledge the important role they play or could play for foreign prisoners. In many cases diplomatic mission are prisoners’ only ‘life-line’. The practice of the Prison Service in England and Wales, which is worth following, is to organise meetings every two years for diplomatic missions to inform consular staff about prison regimes and how to provide a professional service to their imprisoned nationals.

Recommendation (30)
Another good practice can be found in The Netherlands. The ‘Foreign Liaison Office’ of the Dutch Probation Service coordinates the visits of 275 Dutch volunteers who live and work abroad in 80 countries and who pay social visits to Dutch nationals in foreign detention. These visits take place every four to six weeks and are organised in close cooperation with Dutch diplomatic missions.

Recommendation (31)
Prison authorities should provide (free) legal assistance to foreign prisoners. Some Belgian penitentiaries organise ‘Foreign Prisoners’ Information Sessions’ for lawyers to give them more insight into the legal proceedings involving foreign prisoners. In countries like the Czech Republic, Hungary and Malta, non-governmental organisations provide free legal help to foreign prisoners.

Recommendation (32)
Foreign prisoners should be made aware about their status as soon as possible, for example, if they are eligible to remain in the country of detention or will they be expelled after release.

Contact with the outside world
Recommendation (33)
Prison authorities should allow foreign prisoners more flexible visiting schemes to allow family and relatives to make a possibly long trip worthwhile. Further prison authorities should allow foreign prisoners to make telephone calls at different hours in relation to different time zones.

Recommendation (34)
Community welfare organisations should be encouraged to pay social visits to foreign prisoners to reduce their social isolation. Visits to Dutch citizens detained abroad by volunteers of the ‘Foreign Liaison Office’ of the Dutch Probation Service can be seen as a good practice. Another example worth following is that of the Spanish non-governmental organisations that provide free stamps and telephone cards to foreign prisoners and also provide contact between the prisoner and their families.
Re-integration activities – Prison leave
Recommendation (35)
Prison authorities should acknowledge that reintegration activities and prison leave for foreign prisoners are as important as for other prisoners. Social welfare organisations can play a role in the resettlement of foreign prisoners. An example is Spain where some non-governmental organisations provide secure shelters and dormitories to facilitate prison leave for foreign prisoners.

Release – Expulsion
Recommendation (36)
The decision to expel foreign prisoners should be made as early as possible (see also recommendation 32) and foreign prisoners should preferably not be put in administrative detention while waiting to be expelled.

Aftercare – Probation
Recommendation (37)
It is advisable that social welfare services offer assistance to foreign ex-offenders in their reintegration process, as in Portugal and England and Wales.

Staff
Recommendation (38)
Prison authorities should recognise that dealing with prisoners, and foreign prisoners in particular, in a professional, humane and personal way requires effective management and good inter-personal and technical skills on the part of prison staff. Prison staff should be carefully selected, properly trained, paid as professionals, have adequate work conditions and receive a respected status in society.

Recommendation (39)
Staff working with foreign prisoners should receive special training in language and also on the background of certain cultures, religion etc. A good example is that of Swedish prison staff working directly with foreign prisoners, who participate in university level training on ‘Intercultural Understanding’ and ‘Diversity and Dialogue’.

Recommendations with respect to foreigners in administrative detention. Institutions and capacity
Recommendation (40)
Detention of irregular migrants should never be used as a deterrent to prevent possible future arrivals.

Recommendation (41)
Detention of foreigners to secure their removal or the prevention of unauthorised entry is acceptable only if it can be shown conclusively that
these measures are necessary to protect the essential public interest and that no other less-restrictive methods of achieving these aims are likely to be effective.

**Recommendation (42)**
Alternative, non-custodial measures which are available in the European states, such as reporting requirements, supervision systems, placement in open centres and the deposit of a financial guarantee should always be considered before detention.

**Recommendation (43)**
The place and conditions of detention as well as the detention regime should reflect the basic difference that exists between the sanctions and measures of detention that are applied within the criminal justice system and the system of administrative detention that is applied to irregular migrants. Irregular migrants should not be transferred to prisons as a punitive measure unless they are under suspicion or have been convicted of a criminal offence. As far as possible, an ‘open regime’ should be maintained within the institution.

**Recommendation (44)**
All staff in detention centres for irregular migrants should be qualified and trained for the specific needs of irregular migrants detained pending the removal procedure.

**The responsible Ministry and legislation**

**Recommendation (45)**
Detention must not be imposed arbitrarily and never purely for the convenience of the authorities. It must be lawful, procedurally correct and based on grounds prescribed by law, reasonably predictable, necessary and applied without discrimination.

**Recommendation (46)**
The law must define in a clear and concrete way the requirements needing to be satisfied before detention may be authorised.

**Recommendation (47)**
Detainees should be told of the grounds for their detention and their rights while in detention.

**Length of stay**

**Recommendation (48)**
Detention of irregular migrants should be for the minimum period necessary. An absolute maximum duration for any such detention should be specified in national law, which should provide that, as a rule, the detention may not exceed three months. A prolongation should be allowed only if the detainee has not cooperated in facilitating his removal. In no case should the detention exceed six months, as stated in the Commission Proposal Returns Directive.
Recommendation (49)
Detention is justified only as a temporary measure. If the aims for which it is used cannot be achieved within a reasonable period defined by law, it should be terminated.

Recommendation (50)
Foreigners should not be detained for prolonged periods for reasons beyond a detainee’s own control, such as states failing to cooperate in the removal process.

The decision procedure

Recommendation (51)
The decision for administrative detention should be issued by judicial authorities. In urgent cases it may be issued by administrative authorities, in which case the order shall be confirmed by judicial authorities within 72 hours from the beginning of the administrative detention, as prescribed in the Commission Proposal Returns Directive.

Recommendation (52)
The decision of the judge should always contain clear reasons why other non-custodial measures would be inadequate for the purpose and, in the light of existing alternative measures, there should be clear proportionality between the detention and the end to be achieved. This should be communicated to the detainee in a language and in terms that he understands, together with reasons for the decision. There should be a presumption in favour of release.

Appeal and review

Recommendation (53)
Administrative detainees should have the right to appeal against the first instance and the review decisions and should be provided with the means, through legal assistance, to exercise this right. They must have access to independent and competent legal advice and assistance from the beginning of the detention, irrespective of their ability to pay. They should also have the right to attend any appeal hearing and to present their case.

Recommendation (54)
Periodic judicial reviews should be guaranteed by statute in the event of continuing detention. To assess the proportionality of the detention, the judge should take into account the conditions of detention. When these are found to be seriously deficient, the judge should have the power to order the release of the detainee on the grounds that detention in such circumstances is not proportional to the aims for which it is being used.

Recommendation (55)
Any review institution should be independent of the detaining authorities. The periodic reviews should take place regardless of whether the detainee has exercised his right to appeal. Detainees and their legal representatives should have the right to attend any review hearings and to present their
The reviews should include an opportunity for the detainee to refute any assertions made by the detaining authorities.

**Recommendation (56)**

An effective complaints procedure should be provided relating to the treatment of detainees within the institution, so that problems may be speedily investigated and appropriate remedies provided in cases where they are warranted. Depending on the different legal traditions and institutional arrangements to be found within each of the countries concerned, such complaints may either be directed to a judge or another institution such as an Ombudsman or Board of Visitors.

**Recommendation (57)**

Illegal entry to the territory of a European state or an irregular stay in such a state should in itself not be considered to be a crime punishable by imprisonment.

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**Data and non-expelled foreigners**

**Recommendation (58)**

National authorities should provide detailed information or relevant statistics regarding the total number of foreigners in administrative detention to ensure transparency.

**Recommendation (59)**

Prior to and during detention the highest priority should be given to encouraging voluntary return through intensive and individualised counselling. Furthermore, the involvement of the International Organization for Migration and other national and international organisations should be encouraged so to contribute effectively to the process of voluntary return.

**Recommendation (60)**

To minimise the risks associated with ‘social exclusion’, the law should regularise the status of foreign nationals who cannot (or can no longer) be lawfully detained, but who have not been granted rights of residence.

**Recommendation (61)**

Persons unable to return to their home countries because of the situation in these countries and/or the risk of being ‘subjected to torture or to inhuman or degrading treatment or punishment’ should not be detained while the host state is waiting for a change of situation that would allow return.

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**Detention of irregulars under criminal law**

**Recommendation (62)**

Restrictions to which criminal offenders are subjected should be applied as little as possible to irregular migrants, especially with respect to the right to make phone calls or visits, engage in correspondence, possess personal goods, use a library, not to be subject to disciplinary sanctions and enjoy free movement inside the holding or detention centre. In other words, irregular migrants should not be considered and treated as criminals.
Recommendation (63)
Administrative detainees should not be detained together with remand or sentenced prisoners. To accommodate such detainees in an institution which is otherwise integrated into the criminal justice system is acceptable only in exceptional circumstances. Even then, however, administrative detainees should not be in the same buildings as are used for ordinary criminal prisoners, nor subject to the same restrictions. There should be no comingling of the two groups.

Minors
Recommendation (64)
Unaccompanied persons under the age of 18 should never be detained and should be released into the care of family members who already have residency within a given country. Where this is not possible, alternative care arrangements should be made by the competent child-care authorities for unaccompanied minors to receive adequate accommodation and appropriate supervision. Residential homes or foster care placements may provide the necessary facilities to ensure their proper development. A legal guardian or adviser should be appointed.

Recommendation (65)
All appropriate alternatives to detention should be considered in the case of children accompanying their parents. Children and their primary care givers should not be detained, unless this is the only means of maintaining family unity. Such detention should occur only in the most exceptional cases and in the least restrictive conditions. Nursing mothers and women in the later stages of pregnancy should not be detained.

Citizens detained abroad
Recommendation (66)
Collection of data on nationals detained abroad should be carried out on a national and European level.

Recommendation (67)
More cooperation between national states and involved authorities is beneficial.

Recommendation (68)
There is an urgent need for the introduction of minimum standards in consular care for nationals detained within the European Union. These standards should contain provisions for social/legal/financial support to detainees, assistance to families at home and help with transfer agreements.

Recommendation (69)
Social visits made by volunteers of the ‘Liaison Office’ of the Dutch Probation Service to Dutch nationals detained abroad can be regarded as a good practice, as can the activities of the non-governmental organisations
like the British ‘Prisoners Abroad’, the ‘Irish Commission for Prisoners Overseas’ and the Swedish ‘Bridges to Abroad’.

**Recommendation (70)**
Transfer agreements between European countries could be more effective if procedures were simplified and quicker. The transfer of European Union prisoners to their home countries has advantages for their social, educational and rehabilitation needs and will thus better protect the public against reoffending.

**Recommendation (71)**
Allowing community penalties and conditional release to be transferred, managed and enforced among European Union countries would provide courts with sentencing alternatives to imprisonment and thus reduce the foreign national prisoners population of the European Union.

**Recommendation (72)**
Prison authorities should develop special training and vocational programmes to help the reintegration of foreign prisoners into their home country.

**Recommendation (73)**
Nationals who have been detained abroad should receive access to national aftercare and probation provisions upon return to their home country. Providing practical assistance to nationals detained abroad directly after return, such as how to obtain official documents, how to apply for housing, a job, social benefits etc., is essential to combat recidivism.
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