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LEGEND

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PM Witness – MR PHILIPP MEISSNER
CW Witness – MS CANDICE WELSCH
LR Legal Representative – MR CHRISTOPHER MURDOCH SC
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CA Commissioner, I have on screen two witnesses, who will give evidence together. They have kindly agreed to join us from Vienna.

Could I just perhaps ask you to introduce yourselves, to begin with. Mr MEISSNER?

10 PM Thank you very much. My name is Philipp MEISSNER. I work in the UN Office on Drugs and Crime as a focal point for prison reform in the Justice Section. As you may know, UNODC invests quite heavily into assisting Member States in improving their compliance with minimum standards relating to the treatment of prisoners, so this is the context from where we will come in with regards to anti-corruption measures in prison settings.

CA All right. And Ms WELSCH?

20 CW My name is Candice WELSCH. I am Chief of the Implementation Support Section of the Corruption and Economic Crime Branch, also of the UN Office on Drugs and Crime. My team were responsible for providing technical assistance and support to States in preventing and fighting corruption.

CA Thank you. My name is Glenn RICE. I'm counsel assisting the Crime and Corruption Commission public hearings broadly into the subject of corruption risks in prisons.

30 Thank you for making your time available and agreeing to speak to the Commission, which is now in session. The Chairman, Mr MACSPORRAN, is here in attendance, and there are other people in the room, even if you may not be able to see them or hear them.

Now, you briefly gave the identification of your respective positions, but I wonder, for those of us who may not be familiar with the hierarchy of the United Nations, just what the content of your respective roles is, if you wouldn't mind?

40 CW The UN Office on Drugs and Crime is mandated to deal with a number of varieties around crime, drugs, terrorism and also strengthening criminal justice systems. As I mentioned, I am chief of a section that is responsible for providing support to State parties to better implement the UN Convention against Corruption. That is the basis for all of our work and it includes everything from strengthening preventive measures, strengthening integrity in public service, we also work with the private sector and civil society, through strengthening criminalisation, so legislative reform, building capacity, strengthening institutions that investigate, prosecute and adjudicate corruption offences; as well, we work a lot on international cooperation, such as extradition or mutual legal assistance and asset recovery.

50 CA Thank you.

Mr MEISSNER?

PM (Indistinct) what the UN Convention against Corruption is for my colleague, Ms WELSCH, in the Justice Section we base our technical advisory services on the so-called international standards and norms on

crime prevention and criminal justice. I think that for the session today and for the topic that we will be discussing, what is of particular importance is the so-called UN Standard Minimum Rules for the Treatment of Prisoners, which is, if I may say so, an international standard on crime prevention and criminal justice adopted back in 1955. You may have heard that this core standard, when it comes to the treatment of prisoners and prison conditions, was recently revised in the course of an extensive intergovernmental review process and readopted by the General Assembly in December 2015 as the so-called Nelson Mandela Rules.

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So, if you want, this international standard is our normative compass for both developing technical guidance material on the one hand, which we do on a variety of issues related to prison management and the treatment of prisoners, but also for the implementation of technical assistance to projects in direct cooperation with national prison administrations.

CA Can I tell you that the publication entitled Handbook on Anti-Corruption Measures in Prisons is of particular interest, given the subject matter of this inquiry. Mr MEISSNER, perhaps if you wouldn't mind, you might outline what your role was in the preparation of that handbook?

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PM Absolutely. Given the respective mandates which we just elaborated on, the preparation of this handbook was a natural joint effort within UNODC, meaning the Corruption and Economic Crime Branch and the Justice Section of UNODC joining forces, given the double mandates that we just described, on trying to develop a technical guidance material on a topic which we frequently encounter in the context of our technical assistance work.

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So our colleagues from the Corruption and Economic Crime Branch feeding in from the perspective of the UN Convention against Corruption, and us complementing with our practical experience, cooperating with national prison administrations, based on the Nelson Mandela Rules, was the overall background of this publication.

CA In the acknowledgments, you are noted as being one of the joint preparers of the final version; correct?

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PM This is correct. Based on an outline prepared by an international consultant and in cooperation with Constanze von Söhnen, who is a colleague of Ms Candice WELSCH, working in the Corruption and Economic Crime Branch, absolutely, yes.

CA And, Ms WELSCH, you're nominated as at least a contributor to the handbook. Perhaps you might tell us a little bit more about what that contribution amounted to?

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CW Certainly. Constanze von Söhnen, who is the other staff member from the Corruption and Economic Crime Branch that, like Philipp, worked on really doing a lot of the actual drafting of the work and working with the consultant that we originally hired, is a member of my team. As with all publications that we prepare, I was involved in the decision firstly to prepare the handbook, which we made jointly with our colleagues in the Justice Section. It was an area where we were getting an increasing number of technical assistance requests, and we realised that there was a real lack of international knowledge and ideas of best practices in this

area.

I was also engaged, then, in planning what would be in the handbook, in selecting the consultant that was hired and in overseeing and approving all of the final content of the handbook. As Philipp mentioned, this was really a joint effort, which is not always very common for us across the different UN agencies, but this was really a joint effort between the Corruption and Economic Crime Branch and the Justice Section, where all of the prison work is done.

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CA The international perspective to this broad area is of interest to us. Could I ask you, firstly, a little bit about the methodology behind the preparation of the document?

CW First, we worked between our sections to identify what we thought were key areas that would need to be covered in this handbook. We then advertised for a consultant who we were looking for with this very particular expertise on anti-corruption in prisons. We jointly selected that expert, who then prepared the first draft of it.

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There were some weaknesses in the draft, so there was a lot of working back and forth between all of us in trying to bring it to a level that we thought we could then share it with a broader group of experts.

So we then convened an expert group meeting, which contained -- I guess we brought 15 to 20 international experts from different places around the world, experts that we could identify that had worked around this area. For the United Nations, it's very important that we bring together a very broad range of experts, that we cover all different kinds of situations around the world, and so we selected experts there.

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We had a meeting, then, here in Vienna. That was attended by Philipp, Piera from the Justice Section side, Constanze and myself from the Corruption and Economic Crime Branch and the different experts that were there, and we went through all the different parts of the handbook to try to gather their expert inputs, to gather additional examples.

Then after that, we just realised we still needed considerable more work on the draft to get it exactly where we wanted it, so there was additional research carried out by our colleagues in our offices to find more examples internationally. As I've mentioned, we like to make sure that it's globally representative, so we try to find a diverse number of examples that we can draw on. That took some time, and after a lot of back and forth, it was then eventually finalised and published.

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CA So there's a component of desk-based research, I presume; correct?

CW Yes.

50 CA But also a component of consultation or collaboration with, I think you mentioned a range of experts?

CW Yes.

CA How do you identify such persons to consult with? Are they staff of the United Nations or from other areas, can you tell us?

- PM When it comes to participants which we invite for these so-called expert group meetings -- and I just want to mention that this is a typical approach that we pursue. It's not us writing and drafting technical guidance material without these consultations. We typically validate drafts which are prepared by either us or international consultants through this range of consultations.
- 10 When it comes to the selection of experts, we are obviously in a position to build on, in this case, members of national prison administrations who we are already in contact with through our field-based technical assistance work or which we get to know in the course of this implementation of technical assistance projects, but we also reach out to civil society representatives as well as members of universities which have a particular knowledge and expertise in the issues that we are dealing with. Obviously we also do so in consultation with other relevant UN organisations and other international organisations subject to the topic that we are dealing with.
- 20 CW In this case, there were also some experts from anti-corruption agencies that had worked on prisons issues. And then in some cases, if I recall correctly, we might know of a particular case or a particular initiative that was taken at the national level. Then we might also reach out through their embassies and their permanent missions here to the United Nations for, then, the government to identify the best national experts that would be available to attend.
- 30 CA Quite early in the handbook, you identify that its content is influenced by the legal framework. You mention in particular the Convention against Corruption and also the Nelson Mandela Rules. What relevance do both of those have to the question of anti-corruption measures in prisons?
- CW The Convention against Corruption, as we said, is the framework for all of the work that we do here at UNODC in the Corruption and Economic Crime Branch. The UN Convention against Corruption has been ratified by 186 State parties, so it clearly has become the international standard on anti-corruption.
- 40 While it doesn't specifically mention prisons, there are a lot of provisions that relate to public service at large. They are, in fact, public officials. There is a very broad definition. It also includes the judiciaries. It includes people in the private sector that are fulfilling public functions. It includes parliamentarians. It's a very broad definition. Therefore, a lot of the approaches that we will talk about in some detail about how to prevent and combat corruption in prisons are based on a broader framework that is in the Convention against Corruption that is understood as the best international standards in the area.
- 50 CA And the Nelson Mandela Rules, could you express a view about what relevance they have to corruption risks in prisons?
- PM I would certainly say that the Nelson Mandela Rules are highly relevant for any effort to tackle corrupt practices in prison administrations. As you may have seen, the Nelson Mandela Rules, in particular in their revised version, include very important safeguards against corrupt practices. But overall, I would say that the issue of sound prison management practices

that are outlined in the rules, which are accepted as suitable by the United Nations as a whole, provide an important barrier against corruption to start with.

10 Even in topics which one may not directly associate with the risk of corruption, but the basics of assessing on an individual basis the risk and needs of prisoners, classifying and allocating prisoners to a suitable prison regime as per the assessment results, offering a variety of rehabilitation programs in line with the actual needs of the prison population, but also ensuring that prison facilities are adequately staffed, operated in line with prison capacity and managed by sufficiently trained staff are important preconditions for prisons to be operated in a safe and orderly manner.

I would also like to draw attention to the various safeguards contained in the Nelson Mandela Rules as regards prisoner entitlements. Altogether this package of the Nelson Mandela Rules are highly relevant for anti-corruption initiatives in prisons, and that's also the reason why we invest heavily in promoting their practical application.

20 CA To start, to talk about some specific things, at the outset of your handbook you make the comment that prisons are particularly vulnerable to acts of corruption in comparison to other justice institutions. Why is that so?

PM First of all, I would probably make four points in that regard. The very first relates to the closed nature of prisons, to start with. Obviously we're talking about ensuring the safe and secure custody of offenders. That's why access from outside parties will be heavily restricted and regulated. The reality in many Member States which we observe is that prisons tend to be very isolated from the community not only in terms of actual access from outside parties but also in terms of the mindset of the general public and policy-makers alike. I think it is this isolation which renders the prison context vulnerable to corruption, in particular if it is coupled with a lack of suitable and continuous oversight, despite what I would call a perception amongst the general public that prisons are places of incapacitation where crime apparently cannot occur. So isolation and the closed nature of prisons would be one point which I would like to highlight when we talk about vulnerability of prisons to corrupt practices.

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40 Secondly, I would like to briefly outline the issue of power imbalances in the prison context. In most cases, prisoners will obviously highly depend on the prison administration and on prison staff, even for satisfying their most basic needs, such as access to nutrition, to suitable accommodation, to health care, to continued access to the outside world in the form of visits, et cetera, and this is even more the case for many prisoners who may have special needs in the prison context, thinking of women, young prisoners, the elderly, prisoners with mental health care issues, with disabilities, members of ethnic minorities and indigenous populations, et cetera.

50 Thinking of this unique level of control and power which prison staff have over prisoners, this may obviously also serve as a catalyst for corrupt practices, in particular if it is coupled here with unsuitable selection of prison staff and poor prison staff training.

A third point, coming back to the issue of prisoners, is that obviously prisons and prison populations contain not only prisoners with special

needs but also a few number of prisoners that may pose special risks. We're also talking about high-risk prisoners, be it members of organised crime groups or other criminal networks, so prisoners who may have a long history of serious offending and experience in manipulating, abusing or intimidating others. There is also a risk of corruption that emanates from high-risk prisoners, again, in particular, if it is not matched by a professional cadre of prison staff which is professionally trained in how to deal with attempts of manipulation.

10 The last and final point I would like to make is that we face a bit of a contradiction between what is expected from prison staff, on the one hand, and the recognition of their work on the other. We need to recall that the work of prison staff is extremely demanding and challenging. We are talking about ensuring safe and secure custody, on the one hand, but also actively assisting prisoners to prepare for their social reintegration upon release on the other.

20 What we also face, however, is that the reputation of the work of prison staff and the recognition of their work is poor, is typically insufficient in most of the countries where we work, so there is a feeling of being left alone, of not being valued for the work which prison staff may perform, and this may also contribute to a risk of corruption in prison settings and may result in a code of silence amongst prison staff of how things are done. It may result in what we call an "us versus them" mentality: prison staff, on the one hand, being left without support; prisoners, on the other, who need to be dealt with in a certain way. So this is a case, in particular, again when work conditions for prison staff as well as continued support schemes in prisons are insufficient.

30 I would like to leave it at these four points as the reasons why the prison context is particularly vulnerable to corrupt practices.

CA Just to take up one of the points you made about prison staff, the level of remuneration and comparatively low status, is that a common international experience, firstly?

40 PM According to our experience, there are certainly notable exceptions, but it is a common feature worldwide, I would say. Also compared to other criminal justice officials, the reputation, remuneration and support systems, in particular with regards to prison staff training, tend to be insufficient, in particular with regards to their demanding work. Talking about prison staff training, for example, we strongly advocate for tailored prison staff training, as their work is very different, for example, from the work of police officers. But many jurisdictions still struggle to provide suitable training to prison staff prior to them entering on duty. In many cases, it's regular police training with a little add-on for the specifics related to working in prisons.

50 In other few countries -- and that's a practice that we certainly strongly support -- there are dedicated staff training academies with training ranging from six months to two years. So there are strong differences, but there is a risk in many countries that there is insufficient attention being paid to the proper training, including in-service training, for prison staff.

CA Do you know, have there been any studies on whether there is a true relationship between relatively low remuneration and corrupt risks or is it

just an assumption that we make?

CW Generally speaking, if a salary is going to be less than a person needs to live reasonably well and support their families reasonably well, then there is an extra incentive to be corrupt. So there is that risk that's there. If people are not paid enough to support their family, and we see this in many countries with traffic police or something like this, there is this assumption that they need to supplement their income because they aren't paid enough or aren't paid regularly enough to be able to survive otherwise.

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But studies that have shown that sometimes the view is that you just have to pay more and that will resolve your corruption problems are clearly an oversimplification. There have been studies that have shown that if you take a corrupt environment, you increase the salaries and you don't make any other changes, you will effectively just have increased the price of the bribes, because then people want higher bribes.

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So it has to be done at the same time as making other reforms, so that it's clear that this is a professionalisation, but with this comes increased integrity measures and also increased oversight. Therefore, those measures working together have been shown to be more effective at reducing corruption.

CA You may have mentioned that there is perhaps a contradiction between what ideally we would ask of correctional staff, on the one hand, and, on the other hand, their relatively low levels of remuneration and status. Could you give us your view on what desirable qualities, in the best of all worlds, we would get from our prison staff?

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PM The work of prison staff, I would start by saying, is certainly more than locking doors and ensuring the safety in prisons, which are the skills which immediately come to mind.

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What I would focus on at least as much as adherence to security and safety protocols is strong interpersonal skills. Prison staff will be asked to work with a difficult segment of society both in terms of socioeconomic backgrounds and other factors that have to do with the reasons for their reoffending, so prison staff would need to be able to deal with a variety of different and sometimes difficult, sometimes dangerous, individuals, and interpersonal skills, we would think, are a key to the work which they perform.

At the same time, obviously prisons are a highly regulated environment in terms of prison regulations, standing orders and respective routines, so we also need to have people who are able to deal with that environment in terms of discipline, reliability, et cetera.

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One issue probably which I would like to mention when talking about safety and security is the concept of dynamic security. Typically when we talk about safe and secure prisons, we think of the prison walls, the locks, the doors, the watch towers, et cetera, so the types of physical security features, on the one hand. On the other hand, we may think about procedural security in terms of how prisoners and visitors are being searched and what kinds of other security protocols are in place.

But the issue of dynamic security has received more and more attention recently. This again relates to prison staff being able to build a constructive rapport to prisoners, knowing the prisoners under his or her care, what their issues are, what the risks that emanate from them may be, and, by having this knowledge about the prison population, be able to develop this type of sixth sense, if I may say so, to be able to foresee incidents or risks before they escalate into crisis. This again relates to this interpersonal issue, which I mentioned at the beginning, the importance of which cannot be overstated.

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CW If I can add an additional element there, it is of course that of having integrity. When we look at integrity and ethics, it's going to be an important part of ideally what you are considering upon hiring the person, and we can talk about that a little bit more perhaps in a few minutes, but also that this is a strength that you are encouraging and building within your prison staff that are there.

CA Given the increased emphasis on the benefits of dynamic security, is enough attention being paid to the selection of prison staff?

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PM You mean at an international level?

CA Yes. I'm just interested in an international perspective on that, if anything came out of your collaborations for the preparation of this handbook on issues of recruitment and selection of staff.

PM Again, I think it would heavily depend on the jurisdiction that we are talking about. In some countries, indeed, where a prison administration is in a position to select from a high number of applicants, a heavy emphasis is placed on proper selection. For example, in one country I'm aware of, only 10 per cent of the applicants make it through this selection process.

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On the other hand, again, we need to deal also with jurisdictions where the profession of a prison officer is not being held in very high regard, resulting also in very low numbers of applications. In extreme cases, it may even be that a criminal justice official may be transferred to the prison administration because of having poorly performed in his or her work. There, of course, we face a much more difficult situation, because the prison administration just does not receive the number of high-quality applicants from which it can select.

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CA There are a couple of observations made in the handbook I'd just like you to comment on, if you can. One of them is that a hierarchy amongst prisoners plays a major role in shaping corruption in prisons. Would you care to expand on what's meant by that?

PM I think it relates to the point that prison staff always need to be the ones in charge. Despite this notion, the reality in many prison administrations is that some prisoners may get into a position of power, either within the prison population but also, as well, vis-a-vis prison staff. This practice includes a variety of risks. The Nelson Mandela Rules are quite clear in requesting that in no circumstances whatsoever may prisoners be in a position of formal or de facto disciplinary power vis-a-vis other prisoners. But if some high-risk prisoners are, for example, made head of cells with power over other prisoners, in collaboration with prison staff,

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this involves high risk of corrupt practices.

CA Another observation that is made is that it may be that where prisoners stand in their progress through the criminal justice system and service of a sentence might be relevant to their propensity to corrupt staff or other prisoners, that is to say, whether they're early entrants by way of remand or how advanced they are in the system. Does that have a bearing on propensity to corrupt other prisoners or staff?

10 PM I would say a highly vulnerable population in that regard certainly are pre-trial detainees, if I understood correctly about where they stand in the criminal justice process. A lot of pre-trial detainees will certainly do a lot, if not everything, to avoid imprisonment altogether, so the period of pre-trial detention is a situation where there is a particular vulnerability amongst detainees to try to engage in corruption in order to get their way out of prison or to respond to a certain request which may be made by public officials that may assist them in avoiding imprisonment altogether.

20 I would, however, not say that this is not the case for sentenced prisoners. It may just manifest itself differently. I mean, for sentenced prisoners, it may relate to conditions of imprisonment. So here, entry points for corruption may be attempts to corrupt others for the purpose of better conditions, for the purpose of transfer to another prison regime which may be less restrictive, for the purpose of receiving visits, but in extreme cases also for the purpose of remaining free from harsh prison conditions or even treatment.

30 So I think depending on where we are, the issue may manifest itself differently. But you are absolutely right that in the case of pre-trial detainees, when the issue still is whether there will be imprisonment or not, there is particular risk involved.

CA You spoke earlier about dynamic security, and that concept has played its part in the hearings that we have been conducting. In the handbook, you would allocate that as being one component of what you describe as the security triangle. Would you like to explain what the other components are?

40 PM Yes. I think these were the dimensions of prison security, which I already alluded to in my previous remarks. We are talking about physical, procedural and dynamic security, all of which are obviously necessary to ensure prison safety and security altogether. That's why we put them into this triangle. So we are, on the one hand, talking about the physical features of prison security, which has a lot to do with prison infrastructure and the security features that are involved in prison infrastructure -- again, perimeter fences, walls, doors, locks, et cetera.

50 We are talking about procedural security in terms of all the security protocols that need to be in place in order to continuously ensure security, the way that prisoners, visitors and others, even prison staff, are being searched, the way that prisoners are accounted for on a regular basis, the way in which you conduct prison visits, including contact visits or not, depending on the situation. So these are all the procedural features of security that should be clearly outlined in prison regulations as well as standing orders.

And then as a third component, which was the point I made previously, is the dynamic security putting a heavy emphasis on the alertness and professionalism of the prison staff in assessing and also foreseeing potential risks for security. So this altogether is the so-called security triangle.

- 10 CA One of the current features in this jurisdiction that might affect that balance is the subject of overcrowding. Could you give us an international perspective on the prevalence of overcrowding?
- PM Absolutely. I'm sad to say that prison overcrowding is a pervasive challenge at global level. We still face a situation nowadays in which a solid majority of UN Member States faces a situation whereby its prison system operates beyond 100 per cent of its actual capacity. This includes situations of what we call extreme overcrowding, meaning prison systems working beyond the capacity of 150 per cent of their actual capacity in more than 50 countries worldwide. I also don't want to hide that there are situations where a country operates beyond 400 per cent of its capacity.
- 20 The consequences of this type of overcrowding, you will not be surprised, are obviously immense. We have seen situations in which prisoners need to sleep in shifts or they need to tie themselves to bars and windows in order to be in a position to sleep while standing.
- So the issue of overcrowding, I can confirm without reservations here is a huge challenge worldwide, which not only contravenes the application of the Nelson Mandela Rules and other minimum standards but certainly also undermines efforts to prevent corrupt practices in prisons.
- 30 CA Is there a relationship, then, between overcrowding and development of corruption risks?
- PM I would say that there is definitely a linkage between a vulnerability of a prison system to corrupt practices, on the one hand, and overcrowding on the other.
- 40 I would even add to that the risk of ill treatment and abuse. If we face a prison system in which prisoners need to compete for accessing basic services, where their involvement in constructive activities, be it education, professional training, work or others, will obviously be diminished, and it's never a good idea to have prisoners spend their time idle, and if we face situations where prison staff are under pressure because the prison staff-prisoner ratio will decrease and where they will focus probably on maintaining overall control and security while not sufficiently investing in addressing the rehabilitative needs of prisoners and finally where intelligence on corruption is no longer captured, I would definitely say that there is an increased vulnerability for corruption in overcrowded prisons, yes.
- 50 CW If I might just add to that, I think there is also an impact on the oversight mechanisms that I think we will talk about in prisons in terms of detecting and identifying corruption when it's happening. Obviously, in cases where the entire system is overcrowded and overstretched, then all of the measures for accountability and oversight will be equally overstretched and therefore less capable of detecting corruption or other ill treatment that's occurring.

CA Ms WELSCH, you know the Convention against Corruption pretty well, by the sound of it.

CW I do.

CA One of the requirements, I think, is that parties establish measures or systems to facilitate reporting of corruption. How does that apply to the prison context?

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CW Indeed. There are actually a couple of different provisions in the convention that talk about reporting. If you're not aware of it, we have a different guide here called Resource Guide on Good Practices in the Protection of Reporting Persons. If you don't have it already, I'm happy to send it to you. It's not prison specific, but it contains a very good overview of what the legal framework is and then, in practice, where a lot of the challenges are. So I'll just perhaps give an overview, and then I can also forward this to you in terms of drawing better lessons from it.

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Essentially there are different provisions in the convention. Article 33 talks about measures that need to provide protection from any unjustified treatment for persons who report corruption that's happening. If they become witnesses in trials, there is also Article 32 that talks about the provision that is needed for witness protection. And then there are a number of other provisions that also refer to measures to strengthen the reporting of corruption either by public servants in the public service as well as the ability of people to be able to report to anti-corruption agencies.

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Now, in the prison system -- I guess to take a step back, protection of reporting persons is a challenge that all countries are facing, and this is really something that-

CA Are we talking about whistleblowers?

CW Yes. "Whistleblowers" is hard to translate in other languages around the world, so the UN Convention against Corruption calls them "reporting persons", but "whistleblowers" is what we would say in English. That is a problem that we see around the world where there are a lot of challenges just in general in terms of reporting corruption, and yet we know that a lot of corrupt acts are detected because of whistleblowers, and so it is critical that people feel that they can come forward and report safely.

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There are a number of concerns that stop people in general in the public. One of them, of course, is fear for their own safety. The other one, and this is actually often even higher than the fear for their own safety, is that there is a belief that nothing will be done, so that it's not worth taking the risk in coming forward. I think when you apply these concerns that happen globally to the protection of whistleblowers and you apply that into the prison setting, you see how much more significant they are there.

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Obviously in the prison setting, you have a very closed environment. It makes it very hard to do anything and not have other people know what it is you're doing. So there is this risk, I think, that people feel of coming forward there and making a report. Also, the ability to do something anonymously is obviously heavily compromised in this very closed

environment.

More importantly, you also have a situation where particularly prisoners may be doubtful that anything would ever be done. Prisoners, I think, often are in a position where they feel, as Philipp highlighted earlier, that the difference in the power imbalance that exists in prisons is so much more extreme than what we would have in general society, so there is this feeling of powerlessness, with people not wanting to take a risk and not being assured of what might be done.

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Therefore, making sure that you have systems in place to encourage reporting in the prison setting is really critical. This also comes into effect with encouraging reporting amongst prison staff, because there's also the phenomenon, that Philipp referred to earlier that people may want to protect each other, prison guards, and not ever report any misconduct or something on others.

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So we need to have mechanisms that are in place. There are a variety of different ones that can be taken. The best practice is that there are options, there are a lot of options there, everything from -- a lot of systems now have online reporting, there might be hotlines, there might be a way of leaving a report, a physical paper note written somewhere. Thought does need to be taken, as I said, if that prisoner then is going to be interviewed or going to be engaged, there needs to be a way to explain where this person is if you're trying to protect their identity at this time.

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It's also important that there are measures in place that that person will be informed of what happens with the investigation or with the report, because, as I said, one of the big concerns is that people don't report because they don't feel it leads to anything. It's important that any reporting mechanism also contains this follow-up so that the person who gives the report is aware, then, of what happens afterwards, and also measures that show that reports are taken seriously and that changes are made as a result of that, so whether the results of investigations are published, are made well-known, that measures that are then taken to address a weakness that was found because of a report are also known amongst the prison population and the staff so that there is also this understanding that you can report safely and that what you report will lead to something.

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CA You mentioned reporting by initially whistleblowers and then extended that to staff. Is there a place for reporting systems for prisoners that have some integrity in their eyes?

CW There are different measures that have been used in different countries, and it depends a lot on the trust that people have. If prisoners -- and these can be determined through surveys or other discussions -- have trust in the prison administration, you could have perhaps an independent office within the prison administration, an ombudsman or something else that's somehow affiliated. It might also be if they have access to outside legal counsel, that could also be another mechanism that's used where again they might have more trust in that.

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In some countries where there is very low trust in governments in general, in the police, or, in this case, in prison guards, you might also have sometimes a civil society role where again there's a mechanism that's seen

as independent and separate from the institution where there is a low level of trust.

CA Perhaps we could turn, then, to the subject of measures to reduce corruption and corruption risks. Quite a bit of the handbook is taken up with that and we can't go through it all, but to take up some particular topics, first of all, the role of top-level leadership.

10 CW One of the key elements in all anti-corruption programs is what's often called the tone from the top. You see that in the private sector but also across government and otherwise. It is important that there is a clear understanding from the top of the administration that corruption is not tolerated, that any violations of that or any misconduct will be swiftly dealt with and then also that behaving with integrity and behaving ethically will be rewarded.

20 It's important that that's not only the tone from the top. One compliance officer in the private sector once explained that there is sometimes also a problem of the muddle in the middle, that if you have a very clear message from up high and then it's completely ignored from anyone else down, that still will leave a doubt amongst people at the working level of whether there really is this culture in the institution. It needs to start with the tone from the top, but then it needs to be carried down all the way through the administration.

CA How to do that, I suppose, is the question. As you work your way down the hierarchy, say to supervisor level or even a little higher, is there some strategy to ensure that the message extends there and further below?

30 CW Some method of it is requiring training for all staff across, and I think that can also be done in a way that it cascades down, so that a supervisor will understand, yes, they have the same general integrity and ethical standards that they need to follow that any staff member does, but, as a supervisor, they have even an additional burden to be able to communicate these standards.

40 It's important that the training be done in a way that is interactive and as realistic as possible. Good integrity training is not simply telling people, "These are the ethical standards. Here's the code of conduct. Follow this", but really getting them to understand what are the risks that you might face; how do you deal with those situations and also what are the consequences.

50 I think if we look in prisons, for example, it might be for a prison officer who might be offered a little bribe to smuggle in a mobile phone or something like this, for them to understand that also that behaviour has a number of serious consequences for them. One of them is, of course, that a prisoner can use a mobile phone to order crime happening on the outside, to other kinds of activities that then present also a large security risk within the prison and without, but also that by taking that one little bribe, they put themselves in a position of weakness vis-a-vis prisoners, because once prisoners know that you've taken a bribe in one case, they can always threaten to reveal that. This is what often starts as something that might seem very minor in the beginning, and it might even be something less serious than a bribe for a mobile phone but some little favour or something like that, that can then result in this thing of

weakness.

So if you have strong integrity training that's part of the overall training that Philipp was talking about that's really needed for a professional prison service, but to have these integrity elements really be a core part of that, and so that these kinds of discussions, these kinds of scenarios, can be played through, and also then the prison staff, the prison guards, are also given tools to know how to deal with that kind of situation when it arises.

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PM

If I may just add to that, I would like to fully subscribe to what my colleague just mentioned in terms of training for prison staff and this heavy emphasis on practice-oriented training, not just a theoretical outline of principles, et cetera, that need to be followed. Obviously that also needs to be part of it. But according to our experience, what prison staff can relate most to is this type of practice-oriented training.

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I would like to bring to your attention that we are currently in the process of developing an e-learning course for prison staff on the Nelson Mandela Rules, where we try to exactly follow that approach by not only relying on theoretical learning, but we have included practical scenarios of prison management situations which prison staff are likely to be exposed to. We did so in the form of videos in different prisons, where the user receives a description of a certain situation. One, indeed, relates to an attempt of manipulation by a high-risk prisoner. The video then stops, and the prison staff is being asked, or the user of this e-learning course is being asked, on how to react to this situation, being presented with four options, and then the video continues to show him or her the consequences of the choice.

30

I think that really is something you can do so differently in terms of role plays, in terms of such videos, in terms of basing yourself on concrete cases, but really emphasising the very serious consequences of corrupt practices on both security and safety within prisons but potentially also outside.

CA

The staff who work in unit are really the interface with the prisoners and therefore perhaps in the position of most risk; would you agree?

40

CW

Yes. It depends a little bit on the type of corruption you're talking about. If you are talking about embezzlement, for example, then you might have the people, obviously, that would control the finances, the people that make decisions on procurement. These kinds of things will be at most risk for that kind of corruption. But if you're talking about corruption in the engagement with prisoners, then, yes, it would be the direct prison guards that are working with prisoners that would be most at risk there.

50

CA

Can I tell you about the operation of a component of the system in this jurisdiction called the Ethical Standards Unit. It might go by lots of different names elsewhere, but there is a unit here called the Ethical Standards Unit. It has functions of, firstly, investigating reports of misconduct and corrupt conduct against staff, so there is an investigative function. Secondly, it has a function of assessing conflicts of interest involving staff. But thirdly, and this perhaps comes to the topic that you were just speaking of, the Commissioner wishes for it to have a role in promoting ethics awareness and getting correctional staff to buy into the

tone from the stop. Does that sound like an appropriate scope of work for such a unit?

10 CW It does indeed, and I think that last role is an important one. As you say, it's the way to make the ethics and the integrity components of it also become part of day-to-day work. So one other element, if you haven't already thought of it, that might be in that role might also be the ability to provide informal advice, so that if an officer is not sure what to do or something has happened, that they also have someone that they can go to that they can trust to talk with confidentially rather than necessarily -- they may go to their supervisor, and that's perfect, but it's also good to have an alternative contact point, I think, to discuss the kinds of ethical concerns that might come up in one's work.

20 There are other countries that have adopted things like that. In Italy, for example, there are integrity focal points that work within the prison service, so a designated person who becomes the integrity focal point for that particular prison or institution. In some cases, the anti-corruption agency in the country also plays kind of a similar role. But having one that's really embedded in the prison administration that can talk with credibility about the kinds of risks and dilemmas and concerns that prison staff have I think can be important.

CA You've already mentioned the topic of an anti-corruption unit or a focal point. Is that a generally desirable approach?

30 CW I think so. In terms of comparing with the Ethical Standards Unit, we were surprised that there don't seem to be so many international examples of it yet, and I think perhaps some of that is also -- there may be units that are looking at it from just a misconduct perspective rather than understanding the risks of corruption, but we do see this changing as there is greater awareness. There are different kinds of mechanisms that are being set up to have this role, and I certainly think it's a very positive step forward.

CA We've spoken already about the importance of staff selection. Is there a way to maximise the kind of capacity and integrity that correctional centres would look for in the recruitment and vetting process?

40 CW Maybe I'll touch on the integrity side, and then Philipp can come in on other capacities that you're looking for. The Convention against Corruption does highlight the importance of recruitment as obviously that core step. If you're hiring the wrong people to begin with, it's very hard to then form those people into the kind of staff that you want. So there are different measures that are taken in areas.

50 I think it's important from the beginning to highlight that integrity is an important part of what you are looking for. Therefore, depending on the recruitment process, whether it's a written exam, you could have questions, you could have them play out certain scenarios; as part of an interview process, you could raise this as an important area.

In some places as well, you might have -- we see it more often with, for example, police that are investigating organised crime or something; they have an additional level of screening that looks at other areas that might make them vulnerable to corruption, so looking a little bit at also what

their financial risk is, understanding who they are and, like, around them.

In some cases, the police -- I don't know if I've ever heard of it in a prison context, but even polygraphing, they do polygraph tests where they ask questions about involvement in criminal activity or all these other kinds of things to try to understand. That helps from the beginning, as well, I think, in setting the high tone for the officers that you are hiring that you are placing a great importance on integrity as part of the person you're hiring. So it helps to vet the right people and to make sure you're selecting the right people, but it also starts from the beginning, I think, to set the culture and the tone in the organisation you want.

10

Philipp, do you have anything else about recruitment?

PM

No, not about recruitment. I think we've talked a lot about training already. I think the absolute must is that the training is tailored to the actual work of prison staff and not the type of general training of other criminal justice officials.

20

Maybe one additional point I would like to make is that the training for prison staff should not be limited to security and safety but also to humane treatment and facilitating and actively supporting rehabilitation. I recall a quotation from one White Paper in a certain country, which resonated quite strongly with me, which said that every staff is the rehabilitator, so also going beyond the security and safety dimension to include this strong focus on rehabilitation. All the rest, I think, in terms of the training being practice oriented, et cetera, we've already sufficiently touched upon.

CA

One topic which is slightly controversial is integrity testing. By that, I mean consciously creating a potentially compromising situation for a staff member. How widespread is that kind of testing?

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CW

That's a good question. We do hear of examples of it, and it can be done in different ways. In some cases, it has been done in countries essentially to make a large publicity out of it, to try to show that the government is taking something seriously. I can think of in Uganda, in the health sector, the Minister of Health herself went in, pretending to be a patient at a hospital and, when she was asked to pay a bribe, immediately had all of the people arrested. It was sort of a naming and shaming approach.

40

It can be effective in the short term at least at reducing corruption. I'm not sure that approach is necessarily effective in the long term. There are other ways. Because of different concerns around entrapment and that kind of thing, using it as a way to criminally prosecute people who then accept the offer of a bribe is perhaps a little bit more challenging for legal reasons. However, if it's being done purely for internal disciplinary measures, then I think the concerns around entrapment are perhaps a little less serious.

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I have also heard of ways that it's being done in a little bit less innocuous ways, where in police stations money is left out on somebody's desk, and then you see if anyone comes and picks up the money. So you're looking for more general what you're assuming to be ethical behaviour of someone rather than a direct situation. I think it can be effective, but it's certainly not without its controversy due to concerns around entrapment.

- PM Probably one less-controversial means but which should not replace these types of integrity tests altogether -- in more practical terms, for example, not exempting prison staff from certain security and safety procedures, such as doing random searches on prison staff when they enter a certain prison wing or come out, not in a systematic manner but from time to time, and this being equally applied to all prison staff and also properly explained to prison staff can be quite an effective means to create awareness that this is happening in order to mitigate the risk of, in that case, smuggling of contraband into or out of a prison.
- 10 CA Is there any best practice, for example, on frequency of staff being searched for contraband and for other reasons?
- PM I wouldn't say there is an international good practice in terms of the frequency that this should happen. What we certainly do promote is that prison staff should not be exempt from these types of practices, from searches, which is something that we do observe in many jurisdictions. Prison staff come in and out and, being prison staff, are not subjected to these types of searches, which should not be the case.
- 20 CW I guess some of that will also depend on the relationship with the risk. If there is a very high risk or it's suddenly known that there is a huge influx of drugs into the prison, then you might want to increase the searches during that time. So I think it needs to be commensurate with the risk at the time. That also brings home the point of understanding and doing a thorough risk assessment of corruption and ill treatment and other criminal behaviour within prisons and then ensuring that the system that you have of oversight and detection of that is then tailored to the particular risk.
- 30 CA Just to move on a little bit, one of the accountability measures that is referred to is the role of prison intelligence. Would you like to address the importance of gathering prison intelligence and what kind of information is useful in a corruption reduction context?
- PM Prison intelligence and the work of prison intelligence units in many jurisdictions is obviously crucial to collect intelligence both about prisoners that may pose a particular risk but also about prison staff and corrupt practices amongst prison staff that may be of concern. I think this comes back to our discussion on the whole issue of dynamic security, which again is a precondition to generate high-quality prison intelligence, which can then be processed and analysed properly, very often in the form of a dedicated prison intelligence function or unit.
- 40 CA Oversight of the operation of prisons is a topic that gets reasonably lengthy treatment in the handbook, and the distinction is made between internal and external inspections. What role does internal oversight have? What form would that take?
- 50 W If you look at the Nelson Mandela Rules, what is actually being envisaged as per international standards when it comes to oversight is a twofold system. On the one hand, we talk about regular monitoring and inspection from the internal side, what you referred to as internal inspection mechanisms. On the other hand, we are talking about inspections from a body or entity independent of the prison administration.

This twofold system was included in the course of the revision process of the standard minimum rules, and I think one main point was that inspections and continued monitoring should not be left to external bodies alone. I will say that with the reservation that it is extremely important to have external oversight in prisons but that also prison administrations and corrections headquarters in particular should equally take a strong interest in ensuring that prisons are managed as per national law, prison regulations, standing orders, et cetera, and should have a dedicated function in charge of inspecting its prisons.

10

The practices, we noticed when we looked further into the issues, vary largely depending on the jurisdictions. Some administrations interpret their internal inspections to focus rather on financial issues, for example, audits, or on technical issues related to looking after how the security protocols are being adhered to in practice, and not many have interpreted it in a very comprehensive manner to encompass all issues related to prison conditions and the treatment of prisoners.

20

In that context, I would like to draw your attention to yet another publication that we have produced, which is a checklist for internal inspection mechanisms under the Nelson Mandela Rules, entitled Assessing compliance with the Nelson Mandela Rules: A checklist for internal inspection mechanisms, where we try to guide Member States on what kind of potential methodology could be used for internal inspection mechanisms to do their work.

30

Maybe one final word about the value of internal inspection mechanisms. These, of course, will be conducted by members of the prison administration, which will have an intimate knowledge of the system, including the issues that may arise within the system. They will be in a position to speak to their peers in a different manner compared to the outside parties, and this has both advantages and limitations at the same time. That's why the overall system, meaning a twofold system of internal and external inspection, should be in place.

CA

Why also have the external inspections; what's the rationale?

PM

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With the external inspections, there of course we have the crucial advantage that these will be conducted by a body which is independent of the prison administration, so the limitations of internal inspections which I just outlined will, of course, not be in place if somebody sheds a fresh and independent light from the outside world on how prisons are being managed, what the conditions look like and how prisoners are being treated.

50

I learned that the Optional Protocol to the Convention Against Torture was ratified by Australia in December last year. Of course, this optional protocol is quite clear and strong about the need for external inspections of any places where persons are deprived of their liberty.

CA

Is independence of the external inspector from prison management a necessary feature of that kind of oversight?

PM

Yes, absolutely. I think the optional protocol -- although this convention is primarily dealt with by our colleagues in Geneva, the Committee on Torture and the Subcommittee on the Prevention of Torture, it needs to be

conducted by an entity independent of the prison administration. That's the wording of the Nelson Mandela Rules. I think in the optional protocol, it talks about the functional independence of that particular body. Typically it is being implemented in the form of ombudsmen, public defenders, human rights commissioners, et cetera, but it needs to be clear that this body does not form part of the prison administration itself.

- 10 CW If I could just make one small point, and I may be stating the obvious here, but having inspection services or audits or external inspections is in addition to having the kind of regular oversight and accountability that any institution needs. Obviously you need to have strong supervision of prison guards. You need to ensure that on any decisions concerning finances or procurement or this kind of thing, you have built in place the mechanisms to look, as you said, at conflicts of interest like the Ethical Standards Unit is looking at, that you have oversight over decisions that are made in this area, that there is financial oversight. This is kind of the very core, I think, that needs to be part of all of the focus of the work and that in any area that might be identified as having a risk of corruption, there is this sort of functional, everyday accountability and oversight as part of it, and then you have the internal and external oversight mechanisms that are then a step removed from that.
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- CA Those are the questions I wanted to ask you. Would you just excuse me a moment? I'll see if anyone else wants to ask you something.
- CW Of course.
- 30 PO Mr MURDOCH?
- LR No questions, thank you.
- PO Thank you. Thanks, Mr RICE.
- CA Apparently no-one else wants to ask you further questions. Could I thank you both for your contribution, on behalf of the Commission that is undertaking this hearing. Thank you.
- 40 CW It's our pleasure to be able to provide support to your work. It's an important area and we're pleased to see that you're taking it so seriously.
- CA Thank you. Farewell.
- PO Thank you.
- PM Thank you very much.
- PO That's all we have, Mr RICE?
- 50 CA That concludes the public hearing, Commissioner.
- PO Thank you. Thank you all for your assistance, particularly the reporters tonight under difficult circumstances. We will adjourn now and await the report.

END OF SESSION