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## RECOMMENDATIONS

of 30<sup>th</sup> November, 2011

of the *Contrôleur général des lieux de privation de liberté*

made using paragraph 2 of article 9 of the law of 30<sup>th</sup> October 2007,

and concerning the Nouméa prison (New Caledonia)

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**1** - As an exception to the standard provisions of the law under which the *Contrôleur général des lieux de privation de liberté* (CGLPL) exercises his functions, the legislator has provided, in paragraph 2 of article 9 of the law of 30<sup>th</sup> October 2007, an emergency procedure as follows:

"If the *Contrôleur général des lieux de privation de liberté* is aware of any serious violation of the fundamental rights of persons deprived of their liberty, he may immediately communicate his findings to the appropriate authorities, giving them a date by which they must respond and, at this date, he may determine whether the said violations have ceased ". If he deems it necessary, he may "immediately render public the contents of his findings and the responses received".

The *contrôle général* has not misused this procedure. Up to the present, in urgent cases, concerning specific individuals, efforts have been made to stop such serious violations of fundamental rights uncovered during visits by dealing directly with the local authorities concerned.

**2** - What was observed during a surprise visit by four inspectors to Nouméa prison, called Camp Est, in New Caledonia<sup>1</sup>, from Tuesday 11<sup>th</sup> to Monday 17<sup>th</sup> October 2011, is a clear example, by its extent, of a serious violation of the fundamental rights of a significant number of people. The *Contrôleur Général* thus deemed it appropriate to invoke the above-mentioned emergency procedure and, in consequence, sent his findings to the Ministry of Justice in a letter dated 25<sup>th</sup> October, 2011. The Ministry was asked to respond with its observations by 18<sup>th</sup> November of the same year, thus allowing a period of slightly more than three weeks. These observations were received on 2<sup>nd</sup> December, some fifteen days after the deadline fixed. The *Contrôleur Général* therefore decided to publish the following recommendations, which in no way prevents the usual procedure from following its course - the situation uncovered during the visit to the prison will naturally be the subject of a full report in the coming days, a report that will be sent to the usual authorities and follow the usual procedure.

**3** - The way the establishment is run and its current state can be described as follows.

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<sup>1</sup> Local overseas territory for which the *contrôle général* has jurisdiction according to article 16 of the law of 30<sup>th</sup> October, 2007 as well as the 1<sup>st</sup> paragraph of article 6-2 of the modified organic law no. 99-209 of 19<sup>th</sup> March, 1999.

Prisoners are crammed into filthy cells where they suffer from chronic overcrowding that is close to 200% in the long-term detention centre and partial release section and reaches 300% in the remand prison. At the time of the visit, there were 438 persons incarcerated and accommodated<sup>2</sup> in an institution designed for 218 people<sup>3</sup>.

**3.1** - The remand prison building consists of 12 m<sup>2</sup> cells accommodating up to six people, whereas the prisons administration norms allow for just two. Each cell has three bunk beds on one side, two bunk beds on the other side and frequently a mattress in between the two sets of beds, simply placed on the filthy, damp floor where rats and cockroaches abound. At the time of the inspectors' visit, twenty-seven of the thirty-four cells that comprise the remand prison section had such a mattress on the floor, giving a total population of 204 for a nominal capacity of sixty-eight places. At night, the person occupying the mattress risks being trodden on by a fellow prisoner getting up to go to the toilet, which is squat type, and situated in a corner of the cell with no possibility of privacy, despite the efforts of the prisoners to hang some fabric around it. The heat inside the cells rapidly becomes unbearable; fans either do not work or are non-existent in some cells, where they are frequently not replaced if the prison management believes that the prisoners are responsible for the damage. The usual practice to combat the excessive heat is to periodically flood the cells. The pipes bringing water to the toilets have been by-passed to provide a shower without the slightest protection for the electrical installations, which are frequently damaged (exposed wires, broken switches). Many washbasins - which only provide cold water - have no permanent means for evacuating the water; a bucket under the plughole suffices. Cells have no refrigerator, no kettle and no heating stove. The ventilation grills are often obstructed to prevent rats from entering the cells. Nonetheless, these rodents do manage to get in and feed on the the left-overs from meals which, through a lack of any closed space, are left on shelves or in door-less cupboards. Frequent backing up of sewage produces a disgusting stench in the cells. All the cells are encumbered with clothes drying on improvised clothes' lines made from cut-up sheets.

**3.2** - The open detention centre section comprises five 'units'. Each unit consists of rooms measuring 8 m<sup>2</sup>, each occupied by two people, with no more separation than thin walls 2.5 m high topped with, for a ceiling, a grating placed beneath the roof of the building. To protect themselves from the rats that roam around above, the prisoners have suspended sheets beneath the grating. In each room, a toilet occupies a corner separated on just one of the open sides by a small 'wall' 90 cm high. Prisoners are free to walk around in the unit. In the absence of any door, they place soiled linen at the entrance to the rooms. Electrical circuits are in large part damaged: absence of lamps, broken switches, exposed wires. Several of the drainage pipes for dirty water from the washing area - three showers without shower-heads and three toilets - were blocked. In front of each unit there is a 120 m<sup>2</sup> (12 m by 10 m) garden enclosed by wire netting which prisoners can use for a few hours each day. The rest of the time, prisoners amble around inside the unit, with no other distraction available than watching the sole television screen provided. These buildings have no video surveillance system. At the time of the visit, some 113 individuals were accommodated in this section, designed for fifty-seven people.

**3.3** - The long-term closed detention centre section houses people serving long sentences - including life - and comprises two units with two-person cells of between 8 and 10 m<sup>2</sup> and one unit with communal sections comprising three contiguous cells, which means that seven or eight people are housed in a space of some 24 m<sup>2</sup>. Almost all cells have several clothes' lines strung across them. The striking lack of storage furniture means that the prisoners pile their personal belongings where they can, mainly under the beds. Storage space is built using whatever is found to be suitable: the protective wire casings of electric fans are used as suspended baskets to hold food

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<sup>2</sup> *The prison also handles people under electronic tagging or placed in an external facility.*

<sup>3</sup> *The occupation rate by section was as follows: 300% in the men's remand prison, 198% in the open detention centre, 188% in the closed detention centre, 100% in the general services section, 61% in the young offenders' unit, 57% in the women's prison and 200% in the partial release centre.*

out of the reach of rats, and planks of wood have been attached to the window bars to act as shelving. The communal sections benefit from very little natural light and are generally in an extremely untidy state caused by the overcrowding. The toilet area is in the central part and there is clear evidence of damp from the leaking sanitary installations. There is no possibility for single occupation of cells. At the time of the visit, sixty individuals were accommodated in this section, designed for thirty-two people.

**3.4** – The partial release section is a unit similar to those in the long-term detention centre. Five door-less rooms of less than 6 m<sup>2</sup>, each containing two or three bunk beds without a ladder, adjacent to the toilet from which they are separated by a low barrier one metre high. Various fabric materials have been stretched across the doorways and in front of the toilet. Four cells with two beds each have been added in metallic structures similar to those used temporarily on construction sites. At the time of the visit, for a theoretical capacity of nine there were eighteen people accommodated here. At the end of the building there is an area for ablutions with a single zinc washbasin and two shower cubicles, none of which has hot water. In the middle of the unit there is a space, taking the whole width of the building, which serves as a 'common room'. It is furnished with a large table and a metallic sink. There is also the the only television as well as a hammock and two mattresses which have been removed from another room, which is now used as the toilet by all the prisoners.

**4** - The punishment and solitary confinement cells are in a quite disgusting state. At the end of each cell there is the 'toilet corner': the walls are abominably filthy with excrement and marks of damp, and the toilet bowls are indelibly stained. In the solitary confinement cells showers are taken with no protection on the floor although the 'cubicle' is fully contiguous with the squat toilets. Sewage smells are particularly strong and persistent. The cells are frequently flooded.

There are almost no activities available: there is no workshop employment and the only vocational training on offer attracts no more than a dozen people. In the remand prison, exercise sessions are for just half an hour per half day, which means that prisoners spend between 22 and 23 hours a day confined to their cells. The poor state of the sports field - uneven and full of stones - causes frequent injuries, especially since most of those who use it have no financial resources and so play either barefoot or wearing just flip-flops.

Prisoners have no access to a telephone, contrary to the requirements of article 39 of the Prisons Act of 24<sup>th</sup> November, 2009<sup>4</sup>. The institution has no telephone booth and has never arranged for any prisoner to use the department's telephones.

It is impossible to make an appointment to use the visiting rooms. Families arrive having sometimes made very long journeys, for example from the Northern Province - a few hundred kilometres by coach - or even from the Loyalty Islands.

They have to wait outside and are admitted to the visiting room on a first come first served basis. Lengthy conversations are not always granted to those who come from afar – there are even cases of some having to leave without having seen the person concerned.

The medical centre is situated within the remand prison. This creates problems for transiting prisoners and for women and minors to gain access and, coupled with the shortage of medical staff and the small capacity of the waiting rooms, means that access to healthcare is problematic - to such an extent that there is frequently a greater than 60% of absenteeism among those expected to attend. Drugs, medicines and other medical supplies are given to prisoners in their cells without any guarantee that they are given to the correct person, due largely to the overcrowding and the frequent reallocation which render proper identification uncertain.

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<sup>4</sup> *Applicable throughout New Caledonia, according to article 99.*

**5** - The running and the physical state of the prison thus appear to constitute a serious violation of the rights of the prisoners; the staff – remarkably dedicated and committed – are clearly both exhausted and very concerned about the absence of any perspective for the establishment.

The *contrôle général* shares the opinion given concerning the drama that occurred during the present mission<sup>5</sup> which stated that it "could not be dissociated from the inevitable consequences brought about by the overcrowding and the prevailing conditions of detention".

**6** - Such circumstances are clearly not unknown to the local representatives of the State, and the people to whom the inspectors spoke did not hide their concerns. Some of these people had also made these concerns known on several occasions to the municipal authorities in Nouméa. At a national level, the Chancery made public on 5<sup>th</sup> May, 2011 a project for "the restoration and extension of the Nouméa prison bringing the capacity to close to 500 places, with the first stage being ready in 2016".

**7** - The situation is all the more worrying in that today there is no alternative solution available for a rapid alleviation of the current serious difficulties.

As has already been notified to the Minister of Justice, it is possible to address the current situation by a phased programme of replacing the existing dilapidated buildings one by one with new ones. The first operation would be the already planned new centre for reduced sentence prisoners within the grounds of the existing institution.

However, this construction is currently blocked. According to the 17<sup>th</sup> paragraph of article L. 122-20 of the New Caledonian urban code, the granting of building permits is the responsibility of the City of Nouméa. To date the permit for this operation has not been granted. According to the information at hand, this permit will only be granted if the State commits to relocate the prison elsewhere, since the current site is considered as a prime location for urban development.

Thus, the High Commission, working with the the local authorities, has been actively seeking appropriate alternative sites. It has become apparent, though, that none of the seven possible sites identified offers any real solution, either because of the institution's way of working or because of the likely budget.

**8** - Whatever the situation, rebuilding on the existing site is in no way equivalent to moving to another site. The first option will enable a solution, albeit gradual, that can start immediately, something that offers much-needed respite for prisoners and prison staff alike. The second option, even supposing it to be feasible, means a much larger project and a probable lead-time of around a decade before any new facility would see the light of day.

The current imbroglio, implicating both the State and the Nouméa city authorities, results in a continuation of the serious violations of the rights of the prisoners of Camp Est.

**9** - In the current circumstances, the *Contrôleur général des lieux de privation de liberté* is obliged to conclude that the stated violations have not ceased.

Jean-Marie Delarue

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<sup>5</sup> A murder was committed during the night in one of the remand prison's cells occupied by six people.