



GUIDANCE DOCUMENT ON THE NELSON MANDELA RULES

**IMPLEMENTING THE UNITED NATIONS REVISED STANDARD
MINIMUM RULES FOR THE TREATMENT OF PRISONERS**



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INTRODUCTION

The *Standard Minimum Rules for the Treatment of Prisoners* (SMR) were first adopted in 1955 and approved by the United Nations (UN) Economic and Social Council in 1957.

Since their adoption, the SMR have become the key international standard governing the treatment of prisoners and the key framework for monitoring and inspection bodies engaging in assessment activities. In many countries, the SMR have been used as the “blueprint” for national prison rules; in others, they are the only document directly regulating the treatment of prisoners.

Yet, 60 years after the initial adoption of the SMR, correctional science had – unsurprisingly – evolved considerably, and the Rules had become outdated. In some parts they even became inconsistent with the international human rights framework created since 1955.

In recognition of these developments, the UN engaged in a four-year process of revision and, on 17 December 2015, the UN General Assembly unanimously adopted the *Revised Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules).¹ The revised SMR, hereafter referred to as the “Mandela Rules”, were named to honour the legacy of Nelson Mandela, the late President of South Africa, who spent 27 years in prison.

The international community decided not to redraft the entire SMR but, instead, opted to carry out a “targeted revision” of terminology and of eight particular areas in which the SMR had become most outdated.² These included:

- Respect for prisoners’ inherent dignity;
- Medical and health services;
- Disciplinary measures and sanctions;
- Investigations of deaths and torture in custody;
- Protection of vulnerable groups;
- Access to legal representation;
- Complaints and independent inspection; and
- Training of staff.

The scope of the SMR was not changed in the course of the review, meaning that it still covers “the general management of prisons, (...) applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to ‘security measures’ or corrective measures ordered by the judge” (Preliminary observation 3(1)), as well as “persons arrested or detained without charge” (Rule 122).

As part of their commitment to treating individuals in detention with humanity and respecting their inherent dignity, OSCE participating States have committed to observing the internationally recognized standards relating to the administration of justice and the human rights of detainees, including the SMR.³

1. *The United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), General Assembly resolution 70/175, annex, 17 December 2015. The Mandela Rules are referred to and directly quoted on a regular basis in this document. Each mention of the Rules clearly specifies the individual Rule being discussed. If a not specified otherwise, the reference to a Rule or Rules always refers to the Mandela Rules throughout the document. As such, all references to and quotes from the Mandela Rules in this document can be tied back to this bibliographic reference www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

2. The review was initiated on 21 December 2010, resolution 65/230 at the *Twelfth United Nations Congress on Crime Prevention and Criminal Justice* which, among other things, requested the Commission on Crime Prevention and Criminal Justice to establish, “... an open-ended intergovernmental expert group (...) to exchange information on best practices, as well as national legislation and existing international law, and on the revision of existing United Nations Standard Minimum Rules Treatment Prisoners so that they reflect recent advances in correctional science and best practices, with a view to making recommendations to the Commission on possible next steps.” A/RES/65/230, para. 10, p. 3.

3. Vienna 1989 Questions Relating to Security in Europe: Principles (23.2): “OSCE participating States will observe the United Nations Standard Minimum Rules for the Treatment of Prisoners as well as the United Nations Code of Conduct for Law Enforcement Officials”.

This guidance document seeks to provide comprehensive and practical guidance on the implementation of the revised Rules. Its intended audience is primarily prison staff, management and other relevant practitioners in prisons, and has been designed to help understand and implement the Mandela Rules in practice. Given that a number of Rules require adjustments in laws and policies that stretch beyond the reach of individual prison administrations, recommendations for policymakers have also been included. Promising practice examples from the OSCE region have been collected to illustrate possible approaches to implementation. For a few areas, those examples have been complemented with promising practices from around the world.

Rather than going through the Rules chronologically, the document is arranged in seven thematic chapters, grouping inter-related provisions and reflecting on them comprehensively.

Recognizing the wealth of existing guidance on the previous SMR, the document reflects only the revisions of the SMR and does not elaborate on thematic areas and Rules that have not been changed as part of the revision process.

This document only provides guidance for the implementation of minimum standards for the treatment of prisoners. It incorporates existing international legal and practical tools, “soft law” principles and opinions of authoritative bodies, as well as promising national practice examples providing guidance for the interpretation and effective implementation of the revised Rules. It should in no circumstances obstruct the implementation and development of higher standards of prison management, treatment of prisoners or prison conditions.

It is essential to apply a gender perspective to all aspects of prison management to protect the human rights of persons deprived of their liberty. This document therefore points out provisions and situations where a gender perspective is particularly relevant. Issues specifically relating to female prisoners are highlighted in the document with reference to the more comprehensive guidance provided by the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). This should not distract from the fact that in the typically male-dominated prison environment, men and boys who do not conform to dominant gender perceptions are also exposed to risks. Specific risks and needs are also associated with lesbian, gay, bisexual, trans- and/or intersex (LGBTI) prisoners. Prison administrations need to take into account the differential impact of measures of prison management and of detention conditions on men and women, boys and girls, as well as on LGBTI individuals, in order to create humane and safe facilities.

This *Guidance Document on the Nelson Mandela Rules* has been produced following detailed desk research and consultation and outreach with practitioners. A wide range of inter-governmental institutions, prison experts and representatives of civil society with practical experience have kindly contributed their time and expertise, and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Penal Reform International (PRI) would like to thank all of them for their crucial input and generous contributions. The document also draws on the *Essex paper*, which provided initial guidance based on the deliberations of a meeting of experts, known informally as the “Essex expert group”, in April 2016.⁴

We hope that the *Guidance Document on the Nelson Mandela Rules* will provide useful insights for prison administrations, staff, policymakers and other practitioners when implementing the revised *Standard Minimum Rules for the Treatment of Prisoners*.

Full implementation of the Mandela Rules will ensure that prisoners’ human rights are respected and they are treated with dignity. This in turn creates safer environments for prison staff to carry out their duties effectively. It will also mean that prison authorities are able to contribute to achieving the primary purpose of criminal justice systems, namely the rehabilitation and reintegration of prisoners for the benefit of society as a whole.

4. *Essex paper 3: Initial guidance on the interpretation and implementation of the Nelson Mandela Rules*, Penal Reform International and the Essex Human Rights Centre at the University of Essex, 2017, at www.penalreform.org/resource/guidance-on-implementation-the-nelson-mandela-rules.

ACRONYMS AND ABBREVIATIONS

ACRONYMS

ACLU	American Civil Liberties Union
APT	Association for the Prevention of Torture
BPUFF	UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
CAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CoE	Council of Europe
CRC	UN Convention on the Rights of the Child
CPT	European Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment
CRPD	UN Convention on the Rights of Persons with Disabilities
ECHR	The European Convention on Human Rights
ECtHR	The European Court of Human Rights
EPR	The European Prison Rules
EU	European Union
EuroPris	The European Organisation of Prison and Correctional Services
IACHR	Inter-American Court on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICPA	International Corrections and Prisons Association
ICPS	International Centre for Prison Studies
ILO	International Labour Organization
LGBTI	Lesbian, gay, bisexual, trans- and/or intersex
NGO	Non-governmental organization
NPM	National Preventative Mechanism
ODIHR	Office of Democratic Institutions and Human Rights (ODIHR)
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE	Organization for Security and Co-operation in Europe (OSCE)
PRI	Penal Reform International
SMR	Standard Minimum Rules for the Treatment of Prisoners (1955); throughout the document “revised SMR” refers to the updated version (2015) as a synonym for Nelson Mandela Rules or Mandela Rules.
SPT	UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
TIJ	Thailand Institute of Justice
UDHR	Universal Declaration of Human Rights
UN	United Nations

UNAIDS	The Joint United Nations Programme on HIV/AIDS
UNCAT	UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNCRC	UN Committee on the Rights of the Child
UNHCR	The Office of the UN High Commissioner for Refugees
UNODC	UN Office on Drugs and Crime
UNOPS	UN Office for Project Services
WHO	World Health Organization
WMA	World Medical Association

ABBREVIATIONS

Bangkok Rules	The UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
Beijing Rules	The UN Standard Minimum Rules for the Administration of Juvenile Justice
Essex paper	Essex paper 3: Initial guidance on the interpretation and implementation of the Nelson Mandela Rules
Havana Rules	UN Rules for the Protection of Juveniles Deprived of their Liberty
Istanbul Protocol	Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Istanbul Statement	Istanbul Statement on the use and effects of solitary confinement
Mandela Rules	Revised Standard Minimum Rules for the Treatment of Prisoners
UN Body of Principles	UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
UN Legal Aid Principles and Guidelines	The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems
UN Special Rapporteur on Torture	The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

A NOTE ON TERMINOLOGY

For convenience and brevity, in this guidance document the revised *Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules) are referred to as the “Mandela Rules”, following the commonly used practice for standards of this nature (e.g., the Bangkok Rules, the Beijing Rules). However, the ODIHR and PRI also encourage the continued use of the title *Revised Standard Minimum Rules for the Treatment of Prisoners* (SMR/Mandela Rules) in order to ensure recognition of the original 1955 Rules.

The terms “ill-treatment” and “torture and other ill-treatment” are used to describe “torture and other cruel, inhuman or degrading treatment or punishment”, as defined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The word “prisoner” is used to describe imprisoned persons regardless of their legal status. Where there is a specific point to be made about the pre-trial status of prisoners, they are referred to as “detainees” or “pre-trial detainees”.

The terms “children in prison”, “child prisoner” or “juvenile” refer to children who are in prison because they have been accused or convicted of a criminal offence. Children living in prison with an adult are referred to as such.

The term “gender” refers to the roles, behaviours, activities, and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes.⁵

The term “principle of non-discrimination” or any other references to discrimination refer to Rule 2 of the Mandela Rules as well as Articles 2 para. 1 and Article 26 of the ICCPR stating that “there shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status” and subsequent interpretative instruments.

5. See for example: *Gender Equality Glossary*, UN Women, at trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G.

BASIC PRINCIPLES

The Mandela Rules contain a set of five Basic Principles that underpin the entire set of Rules. These are:

RULE 1

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

RULE 2

1. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.

2. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.

RULE 3

Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

RULE 4

1. The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.

2. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.

RULE 5

1. The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

2. Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.



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PRISON MANAGEMENT

1.1 PRISONER FILE MANAGEMENT

1.2 CLASSIFICATION, RISK AND NEEDS ASSESSMENTS

1.3 ALLOCATION

1.4 ACCESS TO INFORMATION

1.5 REQUESTS AND COMPLAINTS

1.6 TRANSFERS

1.7 STAFF RECRUITMENT AND TRAINING

1.8 INTERNAL INSPECTIONS

1. PRISON MANAGEMENT

1.1. PRISONER FILE MANAGEMENT

- 01 The Mandela Rules reflect the crucial importance of good prisoner file systems in protecting human rights, ensuring good prison management and strategic planning, and ensuring public trust in the prison system. The revised SMR were changed substantially in relation to file management and now provide detailed guidance to prison administrations on how to manage their files and the type of information a prisoner file should contain, including the information that should be recorded throughout the term of imprisonment. The creation and management of prisoner files should be regulated by law and accompanied by specific policies or guidelines.



RELEVANT RULES: PRISONER FILE MANAGEMENT [1.1]

Rule 6: There shall be a standardized prisoner file management system in every place where persons are imprisoned. Such a system may be an electronic database of records or a registration book with numbered and signed pages. Procedures shall be in place to ensure a secure audit trail and to prevent unauthorized access to or modification of any information contained in the system.

Rule 7:

No person shall be received in a prison without a valid commitment order. The following information shall be entered in the prisoner file management system upon admission of every prisoner:

- (a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender;
- (b) The reasons for his or her commitment and the responsible authority, in addition to the date, time and place of arrest;
- (c) The day and hour of his or her admission and release as well as of any transfer;
- (d) Any visible injuries and complaints about prior ill-treatment;
- (e) An inventory of his or her personal property;
- (f) The names of his or her family members, including, where applicable, his or her children, the children's ages, location and custody or guardianship status;
- (g) Emergency contact details and information on the prisoner's next of kin.

Rule 8:

The following information shall be entered in the prisoner file management system in the course of imprisonment, where applicable:

- (a) Information related to the judicial process, including dates of court hearings and legal representation;
- (b) Initial assessment and classification reports;
- (c) Information related to behaviour and discipline;
- (d) Requests and complaints, including allegations of torture or other cruel, inhuman or degrading treatment or punishment, unless they are of a confidential nature;
- (e) Information on the imposition of disciplinary sanctions;
- (f) Information on the circumstances and causes of any injuries or death and, in the case of the latter, the destination of the remains.

Rule 9: All records referred to in rules 7 and 8 shall be kept confidential and made available only to those whose professional responsibilities require access to such records. Every prisoner shall be granted access to the records pertaining to him or her, subject to redactions authorized under domestic legislation, and shall be entitled to receive an official copy of such records upon his or her release.

Rule 10: Prisoner file management systems shall also be used to generate reliable data about trends relating to and characteristics of the prison population, including occupancy rates, in order to create a basis for evidence-based decision-making.



WHY IT IS IMPORTANT

Effective prison management

- 02 Prison authorities need to have information about those held in custody to plan and provide for general living conditions, plan and provide for rehabilitative programmes within the facility and to plan and assign resources, including fulfilling staffing and budgeting requirements. Such information can also be useful in planning individual staffing responsibilities, identifying recruitment priorities and assessing staff training needs.
- 03 Effective prisoner file management is an essential prerequisite for the proper classification and allocation of prisoners, as well as for carrying out their individual needs and risk assessments, all of which contribute to prisoner rehabilitation, reintegration and the reduction of recidivism. Information about the nature of the offence, sentence length and ongoing behaviour in prison should therefore be taken into account in ongoing personal support and training programmes for prisoners and for responding to physical and mental health needs.
- 04 On a broader scale, such information can be helpful in determining prison-wide budgets, health and safety considerations and the overall delivery of vocational training, education, and rehabilitation programmes. Prisoner filing systems can also greatly assist with day-to-day planning of meal requirements, cell allocation and transportation needs, including if a prisoner is due to attend a court hearing or hospital appointment.
- 05 On a national level, the data collected from prisoner files can help prison managers and policy-makers identify trends, including country-wide issues and disaggregation by sex, age and other features, which need attention. This might include, for example, trends in prison populations, including overcrowding, the use of particular types of punishment, rises in incidents of suicide, self-harm and inter-prisoner violence, or an increase in the number of requests or complaints related to a particular matter.

Fairness and due process

- 06 If prisoner files are inaccurate, or if they are not regularly updated and consulted, prisoners might miss court hearings, deadlines for filing appeals and other matters related to the case against them. Prisoner file management systems play an important role in preventing errors that might lead to violations of due process and fair trial rights.
- 07 The UN Subcommittee on Prevention of Torture (SPT) has emphasized that the maintenance of complete and reliable records of persons deprived of their liberty is “an essential condition for the effective exercise of due process guarantees, such as the right to challenge the legality of detention (*habeas corpus*), and the right of the detainee to be brought before a judge promptly.”⁶
- 08 Failure to maintain accurate files and the absence of a valid commitment order, can lead to situations in which detainees are held in excessive pre-trial detention, are detained beyond their due release dates or miss the opportunity to apply for sentence reductions and pardons.
- 09 Proper file management plays a key role in ensuring that prisoners are held lawfully, that they are never tried twice for the same offence (double jeopardy) and that they are not punished more than once for the same disciplinary offence. For more information on disciplinary procedures, see **Chapter 4, paragraphs 01–41**.
- 10 Information related to the judicial process, including details about legal representation can assist prison authorities in identifying prisoners who are in need of legal aid, and enable them to facilitate this access.

6. Report on the visit of the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment in Punishment to Ukraine (SPT), 16 March 2016, CAT/OP/UKR/1, para. 50.

Protection against human rights violations

- 11 As the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated, “[t]here is no surer way to facilitate torture, disappearances or extrajudicial killings than failing to keep adequate records of detainees.”⁷ When prison records are poor or non-existent, prisoners can easily become “lost in the system” either inadvertently or as a part of a deliberate effort to harm them without the knowledge and intervention of others. Accurate record keeping is particularly important when prisoners are transferred from one facility to another.
- 12 The UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) has stressed that maintaining an official register of prisoners belongs to those basic guarantees that apply to all persons deprived of their liberty and forms part of the obligation to take effective measures to prevent torture.⁸ The International Convention for the Protection of All Persons from Enforced Disappearance recognizes that prisoner files are a key protection against enforced disappearances, obliging state parties to keep a register of all persons deprived of liberty.⁹ The UN Special Rapporteur on torture has also highlighted the crucial role of prison registers in torture prevention, noting that “[g]iven that torture often takes place during incommunicado detention, a proper prison register is a very effective tool for the prevention of incommunicado detention and therefore for the prevention of torture”.¹⁰
- 13 Human rights violations are less likely to occur if perpetrators are aware that any injuries will be on record, that the location of prisoners is officially recorded, and that any prisoner death or disappearance will be tracked and analysed. In this regard, accurate record keeping is important, not only for the prevention of human rights violations, but also for facilitating a response, investigation and prosecution.

Maintaining contact with the outside world

- 14 As is discussed in more detail in **Chapter 5, paragraphs 02–89** of this guidance document, regular contact with the outside world plays an important role in prisoner rehabilitation and reintegration. Therefore, authorities should facilitate such contact where possible. Provided the principles of confidentiality are maintained, this will be much easier for prisons to manage if the prisoner file contains accurate information about the names and location of prisoners’ family members. The accuracy of contact details is also particularly important in case of prisoner death, injury, illness or transfer.

Transparency and building trust in the prison system

- 15 As the UN Office on Crime and Drugs (UNODC) notes, “[t]he presence of an effective and functioning system for creating and maintaining prisoner files has implications for public confidence in the criminal justice system. It sends out important signals regarding the prison system’s commitment to improving transparency and accountability and in turn, supports the fair and impartial delivery of justice. It also marks a public commitment to monitor and prevent human rights violations in places of detention.”¹¹
- 16 Good prisoner file management demonstrates a commitment to preventing human rights violations and combatting discrimination. Files can demonstrate that a prisoner has been treated in accordance with the law, that action was taken when signs of ill-treatment were detected, and that authorities are committed to monitoring the use of disciplinary punishments and restraints, as well as the details of any deaths in custody. Importantly, the data can help in monitoring the administration’s compliance with international human rights standards.

7. *Handbook on Prisoner File management*, United Nations Office on Drugs and Crime (UNODC), 2008, p. 8.

8. United Nations Committee against Torture, *General Comment No.2, Implementation of Article 2 by States parties*, 24 January 2008, CAT/C/GC/2, para. 13.

9. *International Convention for the Protection of all Persons from Enforced Disappearance*, General Assembly resolution, A/61/177, adopted on 20 December 2006, Article 17(3).

10. *Handbook on Prisoner File Management*, UNODC, *op. cit.*, note 7, p. 10, quoting, inter alia, the United Nations Special Rapporteur on torture. See also: United Nations Human Rights Committee, *General Comment No. 20: Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment (article 7 ICCPR)*, 10 March 1992, para. 11, 10 March 1992.

11. *Handbook on Prisoner File Management*, UNODC, *op. cit.*, note 7, p. 4.

- 17 Accurate data can help provide the media and public with a true picture of prison life, including the challenges faced by prison administrations. This is particularly important because many people are ill-informed about the situation in prisons and public and political discourse about such institutions is often based on fear-mongering, stereotypes and broader political agendas. Proper record keeping can, in turn, lead to increased public awareness about the problems faced by prisoners and prison staff, and lead to a shift towards more evidence-based decision-making.
- 18 Information in individual files, as well as the data generated from filing systems, is important for internal inspection and external monitoring bodies to fulfil their role effectively. As international organizations have pointed out, “[g]aps and inconsistencies in register entries can alert monitoring teams to potential risks for torture or ill-treatment”.¹²



PUTTING IT INTO PRACTICE

- 19 Different types of filing systems are required in prisons. There should be an overall prison register, referred to in the Mandela Rules as the “registration book”, as well as individual prisoner files and separate medical files, which should be prepared, maintained and securely stored by the prison health-care service. There should also be a separate inventory of personal property signed by the prisoner and kept by prison management.
- 20 UNODC has pointed out that “[t]he presence of complete, accurate and accessible prisoner files” is “a prerequisite for effective prison management and strategic planning” and noted that, although many prison systems have limited resources, “effective prisoner file management is not entirely dependent on financial investment; it is more about having a clear and workable system for recording information, accompanied by procedures that are respected and followed by prison staff.”¹³

Commitment orders

- 21 Rule 7 of the Mandela Rules provides that, upon admission, prison authorities need to seek a valid commitment order. Commitment orders should include, at the very minimum, the dates, time and place of arrest and the name of the person and authority ordering the commitment. The orders must be issued and signed by a judicial authority or other competent agency, and any commitment order lacking the required information should automatically be considered invalid.¹⁴
- 22 Given that the lack of a valid commitment order renders the deprivation of liberty unlawful, prison administrations must, at the very minimum, immediately inform the judge or other competent authority if there is any doubt as to the existence or validity of a commitment order. Similarly, prison authorities must, at a minimum, immediately inform judicial authorities upon expiry of a commitment order for any individual held at their facility.

What type of information should be recorded?

- 23 Rule 7 provides the details of the information that needs to be entered in the prisoner file management system upon admission of every prisoner, and Rule 8 sets out the information that should be entered in the course of imprisonment, as applicable. Prison authorities must also keep appropriate records of searches, in accordance with Rule 51.
- 24 While information about personal data should be recorded upon admission to prison, it is important to note that this may not always be possible, particularly when staff have to deal with large numbers of admissions at the same time. In this situation, the information must still be entered as soon as reasonably possible.

12. *Preventing Torture: An Operational Guide for National Human Rights Institutions*, Asia Pacific Forum of National Human Rights Institutions/Association for the Prevention of Torture/OHCHR National Institutions and Regional Mechanisms Section, May 2010, p. 33, at www.ohchr.org/Documents/Publications/PreventingTorture.pdf.

13. *Handbook on Prisoner File Management*, UNODC, *op. cit.*, note 7, p. 1.

14. *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 27.

- 25 Admissions staff should clearly explain to prisoners, in a language they understand, why they need to record the information. If prisoners refuse to provide certain information, this fact should be recorded in the file. Some information may already be available to authorities from paperwork related to the case against the prisoner.
- 26 The prisoner's personal information should be regularly reviewed and updated during the course of imprisonment, including, for example, the location of a prisoner's children and their emergency contact details. This may be particularly important as families, and particularly children, are often required to move homes following the arrest of a close family member. Similarly, the information recorded in the course of imprisonment, as detailed in Rule 8, must be regularly updated to reflect relevant changes and developments.
- 27 Recorded information concerning the behaviour and discipline of a prisoner should include the details of security measures undertaken. This should include records of searches, in particular strip and body-cavity searches. Every instance where the use of force, or arms, or when instruments of restraint have been used on a prisoner, should be recorded and the record be made available to the prisoner.¹⁵
- 28 Record keeping should not be misinterpreted as intrusive information gathering and should be guided by what is relevant and necessary to record for the purposes of prison management. The level of detail included will largely depend on how comprehensive assessment and classification reports are, as discussed later in this chapter.
- 29 There must be safeguards in place to ensure that information is not omitted or entered erroneously. One such safeguard could include, for example, a system of randomized checks on files to ensure data is accurately recorded.
- 30 Rule 67(1) relates to the inventory of personal property and states that a separate file should be kept by prison management, which is also referred to in Rule 7(e). This file contains information about prisoners' property kept by the prison authorities, including any money or effects that are received for a prisoner on her or his admission. This is important to ensure restitution upon release, which may be months or years in the future. Rule 67 requires prison administrations to keep all personal items in good condition and to return the items to the prisoner on release.

CONTEXT: RECORDING OTHER USEFUL INFORMATION [1.2]

In addition to the information required by Rules 7 and 8 of the Mandela Rules, it will be useful for prison authorities to record other relevant information in the prisoner file, including for example:

- Visits by legal representatives
 - Visits by embassy and consular representatives
 - Level of education and literacy level
 - Languages spoken by the prisoner
 - Dietary requirements
 - Prisoners' participation in work, educational and vocational training programmes
 - Notable good behaviour
-

How should the information be recorded?

- 31 Prisoner file management systems may be electronic or manual. The filing system and procedures around it should be comprehensive but not overly bureaucratic.

15. See for example: European Committee for the Prevention of Torture and other Inhumane or Degrading Treatment or Punishment (CPT) in the context of psychiatric establishments for adults, *CPT Standards*, 21 March 2017, CPT/Inf(2017)6, para. 11 and CPT/Inf/E (2002) 1 Rev. 2011, para. 53.

- 32 Manually entered information should be written in pen rather than pencil to provide basic protection against unauthorized changes to entries in prisoner files. Written information must also be legible and any modifications should be signed, initialled and dated by the person making the changes. Electronic filing systems should be designed so that they cannot be changed or modified by unauthorized persons.
- 33 Both manual and electronic files must be backed up in case they are lost, damaged or destroyed.

CONTEXT: UNDERSTANDING TECHNOLOGICAL DISPARITY ACROSS PRISON SERVICES [1.3]

A joint research initiative published in 2016 and conducted by the International Corrections and Prisons Association (ICPA) and the European Organisation of Prison and Correctional Services (EuroPris), on *Technological Disparity across Prison Services* provides information on the status of offender information management systems in 36 prison services in 33 different countries around the world.¹⁶

The aim of the survey was to “establish the different stages of technological innovation across prison services globally, to identify where gaps were present, and ultimately allow the ICT [information and communication technology] experts within ICPA and Europris networks to see where future efforts may be directed to assist those who require help or advice”.¹⁷

Most prison services examined use some form of electronic prisoner information management system, sometimes in combination with paper-based systems. Most services have a functionality that enables them to share and aggregate information at the local, regional and national levels. Most prison services involved in the survey also indicated that they share information with third parties, mostly police, courts and probation services. In some systems there were dysfunctions that resulted in records appearing twice in the system. In many places, improvements to technology infrastructure needed to be made and the systems extended to automate and centralize information management pertaining to country-wide prisoner statistics. Ageing computer systems were highlighted as a serious concern for many prison administrations worldwide.

Security and confidentiality of information

- 34 Information in prisoner files must not only be protected from access by unauthorized staff but also from other prisoners and prison visitors, including service providers. Prisoners should never be allowed to work in the prison records office as this poses a major risk for the security and confidentiality of prisoner files. Security and confidentiality of files must equally apply when files are transferred with a prisoner to another facility, as discussed further in **Chapter 1, paragraphs 166–186** of this guidance document.
- 35 A secure audit trail involves carefully kept records, which include the identity of the staff member who enters or modifies information in the system, as well as the date and time of any additions and revisions. Audits should be carried out periodically by an identified oversight authority.
- 36 Prisoner files must be securely locked in a safe area and, if stored electronically, protected. There must be clear systems and procedures in place for how the files are accessed and shared, who can access them and who has the keys or password. UNODC points out that prisoner files should be stored in “lockable, fireproof, waterproof and vermin-proof cabinets”.¹⁸
- 37 The confidentiality of the information in the prisoner file is important for protecting the prisoners’ right to privacy, but can also be crucial for ensuring their personal safety and, in some cases, the safety of their family. This is particularly important given the requirement to record children’s details, including their location, in the prisoner file.

16. For more information, see for example: Toon Molleman and Rianne von Os, *Technology Disparity Across Prison Services*, International Corrections and Prisons Association (ICPA) and European Organisation of Prison and Correctional Services (EuroPris), October 2016 at www.europris.org/news/technology-disparity-across-prison-services; See also: *Handbook on Prisoner File Management*, UNODC, *op. cit.*, note 7, p. 58.

17. *Technology Disparity Across Prison Services*, ICPA/EuroPris, *op. cit.*, note 16, p. 3.

18. *Handbook on Prisoner File Management*, UNODC, *op. cit.*, note 7, p. 58.

- 38 Risks to the prisoner or to their family members may be particularly acute in gang-related cases, high-profile cases or those where the prisoner is accused or convicted of particularly egregious crimes. Risks may also be particularly high for those prisoners who have previously been victims of ill-treatment, including sexual abuse.
- 39 In addition to the risk of violence and retaliation, if sensitive information about a prisoner becomes known to unauthorized persons, there is the danger that prisoners can become stigmatized or ostracized. Such reactions can come from staff members as well as from other prisoners, and may be based not only on the crime or alleged crime of the individual, but also on the personal background or social status of an individual.
- 40 The confidentiality of information is particularly important in relation to behaviour and discipline, requests and complaints if a prisoner has alleged that they have been subjected to abuse by another prisoner or staff member, and also where records identify her/him as a witness to such abuse.



PROMISING PRACTICE: SECURITY OF PRISONER INFORMATION IN CANADA [1.4]

The online offender management system in Canada locks information once it has been entered, ensuring that information in the file cannot be tampered with. If a prisoner believes that there is an error or omission in the information collected, he or she may request that the information be corrected. If an inaccuracy, error or omission in the file is confirmed, then a staff member enters the new information, indicating at the beginning of the report the date

the information has been changed, the date of the original report, what is being changed, the reason, by whom and the name of the supervisor who approves the changes. The original information in the file is not changed but the corrected information is inserted in capital letters directly below the original. The hard copy of the file is replaced with the corrected or updated version and a copy of the corrected report is provided to the prisoner.¹⁹

Who should register, access and use the files

- 41 Managers and staff must be aware of the importance of good prisoner file management, and relevant staff should be properly trained in how to file information, including issues of confidentiality. Staff must receive updated training on any changes to the filing system.
- 42 Only staff that have been trained and authorized to use prisoner file systems should be allowed to access and use the files. In many facilities there will be staff members who are specifically responsible for creating and maintaining files and registers.
- 43 Access to information in the prisoner file should be on a strictly “need-to-know” basis. This could mean that only designated staff are able to access the entire file or that staff can access only parts of the file that are relevant to them.
- 44 Decisions regarding who should access what type of information about particular prisoners will differ from one jurisdiction to another. In some countries prison staff do not know the crimes committed by prisoners, whereas in others it is deemed important that they know such information in order to improve dynamic security approaches. In all cases, the safety and privacy of the individual needs to be respected.
- 45 It should be possible for prisoners to request updates to the information in their file, as well as the correction of false information in their file.
- 46 Prisoners may want access to their files for different reasons, including to check the accuracy of the information, to check on their legal status, including upcoming court dates, sentence length and due release date, or to find contact details for their lawyer and family members. They may also wish to access their files in order to submit requests or complaints, or any other matter of personal concern. If they wish to do so, prisoners should be allowed to take copies of their files with them when they attend court hearings (see Rule 53).

19. See: Annex B: Commissioner's Directive on Information Sharing, Correctional Service Canada, 26 May 2016.

- 47 Prisoners must be made aware that they have the right to access the files pertaining to them during detention and upon release. Access must be allowed without discrimination, including to those who are illiterate and those who cannot understand the language or are otherwise unable to read and comprehend the file. Access could also be provided through a legal representative.
- 48 In order to facilitate prisoners' access to the records pertaining to them, all prisons should be equipped with a photocopier.
- 49 Redactions of information in a prisoner file in the course of granting access to records are permissible if necessary to protect other individuals who may be named in the file, for example from incident reports or intelligence received from other prisoners. Redactions may also be necessary for information affecting the security of the facility or to secure the conduct of investigations.
- 50 Prisoners are entitled to receive copies of their files upon release. This can be important for ongoing legal proceedings, for continuity of medical treatment or to demonstrate that they completed particular educational or vocational training courses. Some prisoners might need copies of their files so that they can locate their family members after release.
- 51 Prisoners may want copies of their files on release so that they can follow up on outstanding requests and complaints, including complaints of torture and other ill-treatment. In such cases, former prisoners will also require access to their medical files.
- 52 Internal inspectors and external monitoring bodies should also have access to prisoner files, but are required to respect the confidentiality of the information included in them.²⁰

20. For NPMs, see: *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, Article 20 (b), which requires they have "access to all information referring to the treatment of those persons as well as their conditions of detention", and Article 21(2), relating to confidential information collected by the NPM ("[n]o personal data shall be published without the express consent of the person concerned."), General Assembly resolution A/RES/57/199, adopted on 22 June 2006.





PROMISING PRACTICE: OFFENDER MANAGEMENT INFORMATION SYSTEM [1.5]

The Offender Management Information System (OMIS) of the Namibian Correctional Service (NCS) has been described as a system that “has potential and realistic applicability for any corrections and prison service in the developing world... [b]ecause it has been designed in modular format to be easily customisable, it represents an affordable solution to address the information needs of correctional and prison systems in any developing nation.”²¹

The OMIS is a web-based electronic data management system that allows prison staff to both electronically store and retrieve prisoner details throughout the term of their imprisonment. It was developed by the NCS with limited resources. An article about the system suggests that “other African jurisdictions, as well as other developing nations in other parts of the world, could easily emulate the experience of the Namibian Correctional Service.”²²

Recognizing that, in many jurisdictions, information about prisoners is still recorded manually on pieces of paper or manual registers, the article notes that most developing correctional systems find it hard to implement reforms because they are not able to conduct operational and strategic analysis of prison trends, which could identify areas for improvement.

In the case of Namibia, before the introduction of OMIS, prison administrations found it difficult to verify the reliability or accuracy of data on each prisoner or to track their behaviour during imprisonment.

In summary, the identified benefits of OMIS are that it:

- Reduces the redundancy and inconsistency of information;
- Increases the accuracy of information;
- Minimizes the possibility of data loss;
- Ensures that all entries to the system are recorded and monitored;
- Avoids the possibility of duplication and misidentification of prisoners;
- Enables controlled or restricted access;
- Allows for regular production of monitoring reports;
- Enables automated alerts, for example court dates and medical appointments;
- Assists in rehabilitation, for example by tracking participation in training programmes; and
- Allows access to critical information at any time, including through smart devices.²³

OMIS was first implemented in 2013 and is operational in all 13 correctional facilities in Namibia, covering around 4,500 prisoners. It was developed as part of a broader correctional reform initiative, endorsed by the Namibian government, which emphasized proper risk and needs assessments, and improved rehabilitation and reintegration of prisoners.

OMIS consists of core modules including, for example, admissions, reception and assessment, health management, case management, rehabilitation activities, institutional incidents, visits, transfers, pre-release, sentence changes and release. Recognizing that not all users within correctional facilities know how to use a computer, relevant staff also received comprehensive training on how to use the system.

Collecting and publishing data on prison trends

- 53 In order for data to be useful in informing criminal policy and preventing human rights violations, they must include reliable data on a broad range of trends, such as the numbers of deaths and serious injuries, and data on the profile of prison populations, including, for example, the changing age profile of the population and levels of overcrowding.²⁴
- 54 It is good practice to keep a central register of restrictions placed on prisoners for security reasons, in particular the use of solitary confinement and other forms of involuntary separation from the general prison population.²⁵

21. Kathuria Porporino, *Change in African Corrections: From incarceration to reintegration, Implementing Information Technology for Corrections in Africa: A Case Example of the Namibian Correctional Service Automated Offender Management Information System*, *Acta Criminologica: Southern African Journal of Criminology*, Special Edition, No. 2, 2015, pp. 1–21.

22. *Ibid.*

23. A smart device is an electronic device, generally connected to other devices or networks via different wireless protocols that can operate to some extent interactively and autonomously. Several notable types of smart devices are smartphones and tablets, smartwatches, smart bands and smart key chains.

24. *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 34.

25. See for example: *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of torture and Inhuman or Degrading Treatment or Punishment (CPT)*, 8 December 2005, CPT/Inf (2005) 18, para. 89.

- 55 Each prison should be required to submit trend information to the central prison administration on a regular basis. Prisons therefore need to have the systems and staff in place to do this. The relevant government department dealing with prisons should also allocate sufficient resources to analysing the data and providing recommendations for follow-up action.
- 56 Data on the trends in prisons should be made available to the public to ensure transparency and to allow public scrutiny. Published information about prison trends should not include any information about individual prisoners. Any data that could identify individual incidents or persons should be omitted.



PROMISING PRACTICE: DOCUMENTING DEATHS IN CUSTODY – THE TEXAS JUSTICE INITIATIVE [1.6]

The Texas Justice Initiative “seeks to build narratives around who is dying in the Texas criminal justice system, bring attention to the lives that have been lost, and provide a foundation for research toward solutions that will save lives.”²⁶

In Texas, law-enforcement agencies, local jails and the Texas Department of Criminal Justice are required to report to the Office of the Attorney General every time a person dies in custody, including deaths by natural causes, deaths by suicide and those caused by police shooting during arrest.

In order to make this information publicly available, the Texas Justice Initiative, through public information requests, obtained the details of deaths that occurred between 2005 and 2015. The information is presented in an online database, which includes the name of each victim, time and place of death, cause of death, time in custody and a description of the circumstances surrounding the death. The data have been used to identify trends, including racial disparities in custodial mortality.

Children in prison

- 57 With regard to the “need to know” basis for accessing prisoner files, Rule 21.1 of the *UN Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules) state that, in relation to juveniles, records “shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.”
- 58 Rule 21(d) of the *UN Rules for the Protection of Juveniles Deprived of their Liberty* (the Havana Rules) specifies that the records of juveniles in detention must include details of the “notifications to parents and guardians on every admission, transfer or release of the juvenile.”

Foreign nationals/ National minorities

- 59 If prisoners wish to access their files but cannot understand the language they are written in, they should be provided with translation services, if possible. For foreign nationals, this could be organized via their consular representatives. With the prisoner’s consent, consular officials may facilitate the access of foreign nationals to information in their file.

Gender-related issues

- 60 The requirement in Rule 7(a) to include in a prisoner’s file “precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender” is relevant to lesbian, gay, bisexual, trans- and/or intersex (LGBTI) prisoners, particularly trans and intersex persons. However, the provision is intended as a means of protection and hence, information about the gender identity of prisoners should only be included in the files with explicit consent.

26. For more information, see: texasjusticeinitiative.org.

- 61 While Rule 7(a) recognizes the right of prisoners to self-identify their gender, individual prisoners may fear that identifying their gender as other than man or woman may lead to ill-treatment by staff, other prisoners or both. This Rule must therefore not be interpreted as allowing staff to force or coerce any prisoner into self-identifying their gender in any particular way, or at all.²⁷
- 62 Information about self-perceived gender can be important in informing decisions about prisoner allocation, risk and needs assessments, body searches and health-care. However, record keeping does not replace the requirement for prison officials to consult regularly with prisoners about their allocation, the risks they face and what gender of prison staff they prefer to be searched by.
- 63 Data collection and other research should be conducted in order to identify gender-specific background, characteristics and needs for women, girls, men, boys and LGBTI prisoners.²⁸

1.2. CLASSIFICATION, RISK AND NEEDS ASSESSMENTS

- 64 The rules dealing specifically with prisoner classification and with risk and needs assessments were not changed during the review of the SMR. However, the provisions of these Rules relate directly to other revised areas of the SMR.

For example, Rule 2 notes that prison administrations shall take into account the individual needs of prisoners. Similarly, Rule 4(2) stipulates that programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.

Rule 11 deals specifically with the separate allocation of prisoners based on their sex, age, criminal record and the legal reason for their detention. The Rule also requires that different categories be kept in separate institutions based on “the necessities of their treatment”. Other principles contained in the Mandela Rules also rely on good classification and assessment procedures, including prisoner searches, allocation, the application of disciplinary measures and supervision requirements during family visits.



RELEVANT RULES: CLASSIFICATION, RISK AND NEEDS ASSESSMENTS

Rule 89:

1. The fulfilment of these principles requires individualization of treatment. For this purpose a flexible system of classifying prisoners in groups. It is therefore desirable that such groups should be distributed in separate prisons suitable for the treatment of each group.
2. These prisons do not need to provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open prisons, by the very fact that they provide no physical security against escape

but rely on the self-discipline of the inmates, provide the conditions most favourable to the rehabilitation of carefully selected prisoners.

3. It is desirable that the number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed 500. In open prisons the population should be as small as possible.
4. On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

27. For more guidance on LGBTI prisoners, see for example: *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, Penal Reform International/Association for the Prevention of Torture, second edition, 2015; the *Ninth Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)*, 22 March 2016, CAT/C/57/4, Section V; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report to the Human Rights Council*, 5 January 2016, A/HRC/31/57.

28. Rules 67-70 of the *UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules) encourage result-oriented research in order to inform programmes designed for women offenders and prisoners, including, for example, the offences committed by women, the reasons that trigger women’s confrontation with the criminal justice system, the impact of secondary victimization and imprisonment on women and the characteristics of women offenders. See: *General Assembly resolution 65/229*, annex, adopted on 20 December 2010. See: www.penalreform.org/priorities/women-in-the-criminal-justice-system/international-standards for a copy of the rules in multiple languages.

Rule 93:

1. The purposes of classification shall be:

- (a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;
- (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

2. So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.

Rule 94: As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him or her in the light of the knowledge obtained about his or her individual needs, capacities and dispositions.



WHY IT IS IMPORTANT

Safety and security

- 65 Risk assessments are important for the safety of staff, prisoners and prison visitors. If, following assessment, prisoners are appropriately classified into different security levels (usually as high, medium or low security risks), they can be allocated to an appropriate prison facility. Appropriate classification and allocation is key to preventing prisoner flight or other threats to prison and public security.
- 66 Effective security classification makes it easier for prison administrations to manage staff responsibilities, organize staffing schedules and manage other resources. It also enables them to better manage daily prison life, including out-of-cell time, recreational and vocational activities.
- 67 Conversely, if prisoners are not properly classified, they may be placed in prisons that are not equipped to properly address the risks associated with them, or they may be grouped with other prisoners who could exercise a bad influence on them.
- 68 If prisoners are properly classified, resources can be used efficiently. As the International Centre for Prison Studies (ICPS) has pointed out, “security is expensive and the higher the level, the greater the cost. It makes financial sense not to have more prisoners in a higher security category than is necessary.”²⁹ Assigning prisoners an unnecessarily high security level can also compromise rehabilitation prospects as “over-classification” usually has an impact on prisoners’ contact with their families, participation in rehabilitation programmes, the amount of time spent outside of the cell, and so on.³⁰

Meeting the needs of individual prisoners

- 69 Individual prisoner assessments are important to ensure that prisoners are housed in facilities, or parts of facilities, that are equipped to meet their particular needs, including their social, legal, health-care and rehabilitation needs. Failing to identify or neglecting a prisoner’s specific needs may contribute to the ill-treatment of prisoners.³¹
- 70 Effective risk and needs assessments are crucial in ensuring the personal safety of prisoners and establishing the levels of security required for particular individuals. Prisoners deemed to be at risk of bullying, violence or exploitation should never be held with perpetrators of such acts. Appropriate assessments are also crucial for those identified at risk of suicide or self-harm.

29. *A Human Rights Approach to Prison Management: Handbook for prison staff*, International Centre for Prison Studies (ICPS), 2009, p. 62.

30. Olivia Rope, *Implementing the Mandela Rules with scarce resources: discussions from a gathering of prison authorities from South East Asia*, Penal Reform International blog, 17 August 2016 at www.penalreform.org/blog/implementing-mandela-rules-scarce-resources-discussions-gathering-prison.

31. Jim Murdoch and Vaclav Jiricka, *Combating Ill-treatment in Prison, A handbook for prison staff with focus on the prevention of ill-treatment in prisons*, Council of Europe, April 2016, p. 32.



PUTTING IT INTO PRACTICE

71 Prisoner assessments should be comprised of three different considerations: determination of the risk a prisoner poses, an assessment of a prisoner's individual needs, and what is often called "sentence planning", which includes the activities, such as rehabilitation programmes, that a prisoner should undertake during their sentence. The purpose of each of these considerations is different and should be assessed on an individual basis using appropriate tools. Each prisoner's assessment should be regularly reviewed and updated as part of an ongoing process. Reviews allow a prisoner's risks, needs, sentence planning and classification to be reassessed at regular intervals.

Prisoners should be classified according to the results of their assessments. The security measures they are subjected to should be the minimum necessary to ensure their safe custody. Assessments are usually a two-tiered process: first, they ensure that prisoners are allocated to a prison facility that has an appropriate security level (classification); and, second, they determine the allocation of a prisoner within a specific facility (risk and needs assessments and sentence planning).

CONTEXT: RESPONSIBILITY FOR DETERMINING SECURITY REQUIREMENTS [1.7]

The ICPS has noted that "[i]n some countries the judge who passes sentence specifies the security of the regime in which the prisoner should be held. In other countries prisoners who are sentenced to life imprisonment or who are sentenced under a particular law are automatically held in the highest security conditions, regardless of any personal risk assessment. This is not the best way of determining levels of security. It is for the judicial authority to determine the appropriate length of sentence for an individual crime but it is better that the prison authorities should be responsible for determining the security requirements using professionally agreed criteria."³²

Classification should not be based solely on the nature of the crime committed or the sentence handed down (e.g., life imprisonment).

Risk assessments

- 72 Risk assessments should effectively detail the risk a prisoner poses, including the danger he or she poses to others or to the overall safety and security of the prison, violence, and her or his risk of escape. Risk assessments should also include risks prisoners are exposed to themselves.
- 73 Assessment tools cover four main areas of interest: criminal history, factors relating to lifestyle, personality and issues relating to drug or alcohol dependency. However, care must be taken to ensure that prisoners' needs are not misinterpreted as risk factors. For example, mental health needs are often wrongly interpreted as risk factors, leading to a higher than necessary security classification. Additional assessment factors might be added depending on the crime committed by the prisoner, for example sexual offences or partner violence.
- 74 Elements of risk assessments include "the nature of the offence; the risk of the prisoner escaping, or attempting to escape; the risk of the prisoner committing a further offence and impact on the community; any risk the prisoner poses to prison management, security and good order; any risk the prisoner poses to the welfare of himself or herself and any other person; the length of the prisoner's sentence or the maximum sentence applicable to the offences in respect of which the prisoner has been charged; and any other matter considered relevant to prison management, security and good order and the safe custody and welfare

32. *A Human Rights Approach to Prison Management*, ICPS, *op. cit.*, note 29, p. 63.

of the prisoner”.³³ The prisoner’s ability to adapt to regime rules, their personality (history of violence, suicide attempts, substance abuse, cognitive skills, etc.) and social contacts should all be subjects of particular interest in the risk assessment process.³⁴

- 75** Risk assessments should be based on all available information about the prisoner, including from interviews with the prisoner. Decisions on risk factors must not be subject to bias or stereotyping, including in relation to gender. Assessments should take into account that perceptions of what is “appropriate” behaviour for men/women in society do not cease to exist at the prison wall and may lead to female or male prisoners experiencing particular risks or having certain needs. This is particularly relevant for LGBTI prisoners, who face an increased risk of being subjected to violence, harassment or intimidation.
- 76** In the Council of Europe’s publication, *A Handbook for Prison Staff with a focus on the Prevention of Ill-treatment in Prison*, it is suggested that the initial risk assessment is carried out as soon as possible after a prisoner is admitted to a prison facility. This is a particularly important step for detainees in remand prisons, since the first 48 hours of imprisonment are more risky in terms of suicidal behaviour, poor adaptation to the prison environment or other safety risks. In particular, the risk is high for prisoners who belong to vulnerable groups, such as juveniles and young prisoners, elderly prisoners, mentally ill prisoners or prisoners with histories of drug abuse.³⁵

Needs assessments

- 77** The purpose of assessments is not only to identify and deal with the risks a prisoner poses, but also to identify and address their specific needs and vulnerabilities, including, for example, mental health conditions, previous instances of victimization, protection from violence and suicide prevention. As with risk assessments these needs assessments must be individualized, regularly reviewed and updated, and the prisoner should be involved in the process.

Sentence planning

- 78** Sentence plans are designed to rehabilitate a prisoner for re-entry into society by addressing the root cause of their criminal activity. They are primarily designed to facilitate the rehabilitation and reintegration of prisoners. They can include, for example, educational and training programmes as well as access to drug or alcohol dependency programmes. They can also focus on issues such as personal relationships, family reconciliation and anger management. Sentence plans should be regularly reviewed. According to Rule 94, a sentence plan should be put together “as soon as possible” following a prisoner’s admission.

Other considerations

- 79** A prisoner’s assessment and classification should never be based solely on the offence of which he or she is accused or convicted or the length of the sentence. Prisoners serving life sentences or having received death sentences “must not be subjected to higher security measures merely on the basis of their sentence.”³⁶
- 80** Most assessment tools have been designed to predict antisocial behaviour by men, and do not, therefore, account for women-specific factors associated with the risk of re-offending.³⁷ Rules 40 and 41 of the Bangkok Rules require that prison administrators develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners to ensure appropriate and individualized planning and implementation towards early rehabilitation, treatment and reintegration into society.
- 81** Prison administrations need specific tools for carrying out risk and needs assessments and they should be used consistently and according to agreed criteria, including dynamic factors that are currently present and can be influenced, and static factors based on the history that

33. Jim Murdoch and Vaclav Jiricka, *op. cit.*, note 31, p. 34.

34. *Ibid.*

35. *Ibid.*, p. 35.

36. *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 24.

37. For example: Breanna Boppre & Emily Salisbury, *The Women’s Risk Needs Assessment: Putting Gender at the Forefront of Actuarial Risk Assessment*, Penal Reform International, 12 April 2016 at www.penalreform.org/blog/womens-risk-needs-assessment-putting-gender-forefront-actuarial.

are fixed and cannot be changed.³⁸ Those conducting the assessments must be properly trained to avoid classifications being influenced by stereotyping, profiling and personal assumptions about a prisoner.³⁹

- 82 Risk assessments should be regularly reviewed so that prisoners are housed in an appropriately secure environment at all times. Regular reviews can facilitate the transfer of relevant prisoners to lower or higher security institutions as appropriate. Such reviews can act as a strong incentive for better behaviour.
- 83 Prisoner classification must never be used to discriminate or impose harsher or less adequate conditions on certain individuals or groups of prisoners. The application of assessment and classification tools must, therefore, be subject to scrutiny by the central prison administration and to review by policy-makers.
- 84 Prisoners must be able to challenge their assessments and classifications through agreed procedures. Such a procedure is particularly important in cases where a particular security classification bars individuals from applying for early release or sentence reduction.
- 85 The CPT has stated that large-capacity dormitories make the appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, almost impossible. In such environments the risk of intimidation and violence is high and offender subcultures are more likely to develop.⁴⁰
- 86 While Rules 89, 93 and 94 fall under the section of the Mandela Rules that deal specifically with prisoners under sentence, pre-trial detainees must also be subject to careful, ongoing assessments and classifications. The assessment and classification of pre-trial detainees necessarily differs in some ways because the individual may be – and must be presumed to be – innocent. Even if convicted, the eventual sanction is not foreseeable. However, individualized assessments still need to be undertaken with regard to risks and needs, and care must be taken to ensure that pre-trial detainees are not held in worse conditions than convicted prisoners due to their status. Pre-trial detainees should not be excluded from educational and vocational programmes but are also not required to participate in them.
- 87 Pre-trial detainees may have particular needs and present particular risks on account of their pre-trial status. Pre-trial detainees could, for example, present a higher risk of suicide and self-harm,⁴¹ have greater mental health needs and suffer from substance withdrawal symptoms.

CONTEXT: RISK ASSESSMENTS OF POTENTIALLY HIGH-RISK PRISONERS [1.8]

The UNODC Handbook on the Management of High-Risk Prisoners sets out guidelines on the assessment of prisoners who are potentially high-risk, noting that such assessments “should be more in-depth and comprehensive and therefore usually of longer duration than for most other offenders, such as those who have committed petty offences or who face short terms of imprisonment”. This is due to the complex risks and needs associated with such offenders, as well as their generally long prison sentences.⁴²

The *Recommendation of the Committee of Ministers of the Council of Europe to member states concerning dangerous offenders* suggests the following steps should be undertaken in relation to risk assessment principles during the implementation of a sentence:⁴³

38. *Combating Ill-treatment in Prison A handbook for prison staff with focus on the prevention of ill-treatment in prisons*, Jim Murdoch and Vaclav Jiricka, *op. cit.*, note 31, p. 36: “The examples of static factors include history of previous sentences, sex, type of offence, family criminality, or motivation for committing previous offences. The age at which the offender committed the first offence is a very good predictor of future behaviour, and it is a risk factor that cannot be changed: if an offender was first arrested at age of twelve, this fact will always exist. Typical dynamic factors include financial situation, employment, attitudes encouraging the likelihood of criminal conduct, addictions, family relations, criminal friends and acquaintances, or leisure time activities. In some literature sources these dynamic factors are also called ‘criminogenic needs’, ie crime-producing factors that are strongly-correlated with risk”.

39. *Ibid.*, p. 32-42.

40. *CPT Standards*, CPT/Inf/E (2002) 1 Rev. 2011, *op. cit.*, note 15, para. 29.

41. See for example: *Presumption of Guilt: The Global Overuse of Pre-trial Detention*, Open Society Justice Initiative, September 2014 at www.opensocietyfoundations.org/publications/presumption-guilt-global-overuse-pretrial-detention.

42. *Handbook on the Management of High-Risk Prisoners*, United Nations Office on Drugs and Crime (UNODC), 2016, p. 34.

43. Committee of Ministers to Member States Concerning Dangerous Offenders, Council of Europe, 19 February 2014, *Recommendation CM/REC (2014) 3* at pjp-eu.coe.int/documents/3983922/6970334/CMRec+%282014%29+3+concerning+dangerous+offenders.pdf/cec8c7c4-9d72-41a7-act2-ee64d0c960cb.

- The depth of assessment should be determined by the level of risk and be proportionate to the gravity of the potential outcome.
- Risk assessments should involve a detailed analysis of previous behaviours and the historical, personal and situational factors that led to and contributed to it. They should be based on the best reliable information.
- Risk assessments should be conducted in an evidence-based, structured manner, incorporating appropriate validated tools and professional decision-making. Those persons undertaking risk assessments should be aware of and state clearly the limitations of assessing violence risk and of predicting future behaviour, particularly in the long term.
- Such risk-assessment instruments should be used to develop the most constructive and least restrictive interpretation of a measure or sanction, as well as to an individualized implementation of a sentence. They are not designed to determine the sentence although their findings may be used constructively to indicate the need for interventions.
- Assessments undertaken during the implementation of a sentence should be seen as progressive, and be periodically reviewed to allow for a dynamic re-assessment of the offender's risk:
 - a. Risk assessments should be repeated on a regular basis by appropriately trained staff to meet the requirements of sentence planning or when otherwise necessary, allowing for a revision of the circumstances that change during the execution of the sentence.
 - b. Assessment practices should be responsive to the fact that the risk posed by an individual's offending changes over time: such change may be gradual or sudden.
- Assessments should be coupled with opportunities for offenders to address their special risk related needs and change their attitudes and behaviour.
- Offenders should be involved in assessment, and have information about the process and access to the conclusions of the assessment.
- A clear distinction should be made between the offender's risks to the outside community and inside prison. These two risks should be evaluated separately.

1.3. ALLOCATION



RELEVANT RULES: ALLOCATION

Rule 59: Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.



WHY IS IT IMPORTANT?

Rehabilitation and reintegration

- 88 Prisoners who are located close to their families and friends have a better chance of establishing and maintaining regular contact with them. This is something that aids their rehabilitation and reintegration prospects. If a prisoner is located close to her or his family, longer family visits and possibly even home visits will also be much easier to arrange. Location and accessibility, including transport options, should therefore be significant factors in the planning of new detention facilities. Planners should also consider the availability of nearby accommodation for visitors who have to travel long distances to visit incarcerated family members.

- 89 The focus of work and training programmes is more likely to be relevant for rehabilitative purposes if prisoners are located close to the place they will live after their release. For example, rural-based skills programmes may have no long-term benefit for those who will return to city life and vice-versa. Programmes led by external organizations may also eventually lead to work opportunities after release if the prisoner lives in the area where the training was provided.
- 90 On a practical level, allocation of prisoners to facilities close to home makes it easier for prison administrations to prepare prisoners for release, particularly those who have no money or access to transport to enable them to return home. Prisoners are often extremely disorientated upon their release and it can be particularly hard for them if they do not know the local region where they are released or have no family or friends nearby to assist them.

Support services

- 91 In heterogeneous societies, allocating an individual in a prison close to her or his home or family will also reduce the potential of cultural, religious and linguistic differences among prisoners and staff. This can lessen the isolation felt by a prisoner, but can also reduce prison costs and assist in the smooth running of the facility itself. At the same time, prisons further afield should be considered in instances where placing a prisoner in an institution close to her or his home could increase the risk of violence or stigmatization.
- 92 Prisoners who receive support from local non-governmental organizations (NGOs), community organizations or individuals may benefit from continued post-release support and services if they live in the same region as the prison. Similarly, if they are from the local area, they or their families and friends may be aware of local agencies and services that can assist them in their social rehabilitation.
- 93 In some situations, doctors, psychologists and psychiatrists who have been working with an individual before her or his arrest may be able to provide continued treatment and medication in prison. Similarly, once a prisoner is released, he or she may require immediate or long-term physical or mental health-care that will be much easier to access if the individual or her or his family already know specialists working in the local area. Immediacy and continuity of post-arrest and post-release medical care, including psychological or psychiatric care, is particularly important when individuals require specific forms of medication, especially if they are not easily available.
- 94 Allocation close to home can also be useful when it comes to accessing legal services, because families and friends can often assist in facilitating access to a lawyer. Family and friends are also more likely to attend court hearings and keep up-to-date with legal developments if the proceedings are taking place in a court near to them.



PUTTING IT INTO PRACTICE

Decisions based on individual needs and preferences

- 95 Successful rehabilitation and reintegration of individual prisoners should be considered from the beginning of a person's imprisonment and should, therefore, play a key role in determining their allocation, along with security and other practical considerations. Unfortunately, in some countries, allocation is determined by levels of overcrowding in prisons rather than individual needs and security assessments. Allocation of prisoners far from their home and family support networks must never be employed as a form of punishment.
- 96 Security classifications and personal circumstances may change during the course of imprisonment meaning that reallocation may be beneficial. Allocation decisions should be based on ongoing individual assessments and consultations with relevant stakeholders, including the prisoners themselves. For example, a prisoner may serve a part of her or his sentence in the facility best suited to their rehabilitation needs, but could be transferred to a prison closer to her or his family as the end of the prisoner's sentence nears, to assist with their reintegration.

- 97 When determining the allocation of a prisoner, authorities should consult with prisoners themselves about where they consider their homes or their places of social rehabilitation to be, especially given that individual living arrangements may vary. The *European Prison Rules* (EPR) stipulate explicitly, in Rule 17.3, that “[a]s far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another”. It may be that, for some, their place of social rehabilitation is not their previous home, but another place that would best aid their rehabilitation. Consideration should also be given to the best arrangements for those who do not have a permanent place of residence.
- 98 Decisions on prisoner allocation are not always made at the level of the prison administration. However, in their communications with judicial authorities, prison officials can emphasize the importance of allocating a prisoner close to home. They must also consider the location of family or other contacts when making decisions on transferring a prisoner.
- 99 The availability of appropriate rehabilitation programmes and services should also be taken into account when allocating a prisoner. For example, those who have specific health-care needs, including mental health needs, should be located in prisons where the necessary care is available, while those with specific rehabilitation needs should be allocated to prisons where such programmes are available. Likewise, those with physical disabilities should be allocated to the prisons most suited to their needs, while also taking into consideration the location of family and friends.
- 100 Even if prison authorities are not responsible for decisions on allocation, they can still play an important role in advising other relevant authorities on the most appropriate allocation for individual prisoners.
- 101 In exceptional situations, security considerations may override the preference for allocating a prisoner close to her or his home or place of social rehabilitation. This could be, for example, due to high level gang affiliations or if the safety of staff or their family members is at risk from doing so.
- 102 In order to allocate prisoners close to their home or place of social rehabilitation, it is important to record relevant information in the prisoners’ files. More information on prisoner file management can be found in **Chapter 1, paragraph 01–63** of this guidance document.

Women

- 103 Rule 4 of the Bangkok Rules specifically states that the allocation of women prisoners should take into account their caretaking responsibilities, the individual woman’s preference and the availability of appropriate programmes and services. This is particularly important because women are usually the main care-givers in their family and are more likely to be located far from their families due to the smaller number of women’s facilities.
- 104 In instances where fathers are the main caretakers of children, the principle applies “equally to male prisoners and offenders who are fathers”, as stated in paragraph 12 of the preliminary observations to the Bangkok Rules.
- 105 Special consideration should be given to the rights of children, and their best interests, when it comes to the allocation of their care-givers. As the UN Committee on the Rights of the Child (UNCRC) has noted, “[t]he rights of affected children should be regarded as a relevant factor in determining the security policy concerning incarcerated parents, including with regard to the proportionality of the measures in relation to areas that would affect the interaction with affected children”.⁴⁴

Children in prison

- 106 Children in prison have a specific need to be located close to their families and friends, yet, as with female prisoners, they may be located far from these contacts in countries where there are fewer dedicated facilities to accommodate them.

44. *Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”*, Committee on the Rights of the Child, 30 September 2011, para. 14 at www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDRReport.pdf.

- 107** Children in prison should be allocated to facilities where they can continue their education, or where they can undertake appropriate vocational training. As noted in Rule 37 of the Bangkok Rules, “[j]uvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners”.
- 108** Children in prisons should also be allocated to facilities where they “have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. Girls shall receive education on women’s health-care and have regular access to gynaecologists, similar to adult female prisoners.”⁴⁵
- 109** Rule 30 of the Havana Rules states that “[d]etention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community”.

LGBTI prisoners

- 110** LGBTI prisoners report higher rates of sexual, physical and psychological violence in detention on the basis of sexual orientation and/or gender identity than the general population.⁴⁶ Measures to protect and promote the human rights and address the specific needs of LGBTI prisoners are required.⁴⁷ The Special Rapporteur on torture called on states to take individuals’ gender identity and choice into account prior to placement and to provide opportunities to appeal placement decisions and to ensure that protective measures do not involve the imposition of more restrictive conditions on LGBTI persons than on other inmates”.⁴⁸
- 111** The Special Rapporteur on Torture noted that “transgender persons tend to be placed automatically in male or female prisons without regard to their gender identity or expression.”⁴⁹
- 112** The SPT has noted with concern that “the absence of appropriate means of identification, registration and detention leads in some cases to transgender women being placed in male-only prisons, where they are exposed to a high risk of rape, often with the complicity of prison personnel”.⁵⁰

Foreign nationals

- 113** In general, foreign nationals should be allocated to prisons that alleviate their isolation. When foreign nationals from bordering countries are detained, authorities should consider allocating them in an appropriate prison near the border of their home country, but this is only beneficial in cases where a prisoner can receive more visits from family and friends, and provided that the facility is not so isolated that it would deter visits from consular representatives and others who can provide support.
- 114** In general, consular representatives are more likely to visit prisoners regularly if they are held in facilities in the capital city or other large urban centres. Similarly, families and friends may be more likely to visit if prisoners are housed in prisons close to international transport facilities, or are otherwise easy to access.
- 115** Depending on individual needs and risk assessments, it may be beneficial to allocate foreign nationals to facilities where there are other prisoners who speak their own, or a common language, or are of the same nationality, culture or religion, while avoiding segregation and discrimination. Consideration should also be given to the availability of staff members, and local NGOs or other support networks that can communicate effectively with prisoners and who have some knowledge and understanding of their culture.

45. *The Bangkok Rules*, *op. cit.*, note 28, Rule 38.

46. UN Special Rapporteur on torture, A/HRC/31/57, *op. cit.* 27, para. 34; see also: *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, PRI/APT, *op. cit.* note 27.

47. UN Special Rapporteur on torture, A/HRC/31/57, *op. cit.* note 27 para. 13.

48. *Ibid.*, para. 70 (s) and (t).

49. *Ibid.*, para. 34.

50. *Eighth Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)*, 26 March 2015, CAT/C/54/2, para. 68.

1.4. ACCESS TO INFORMATION



RELEVANT RULES: ACCESS TO INFORMATION

Rule 54: Upon admission, every prisoner shall be promptly provided with written information about:

- (a) The prison law and applicable prison regulations;
- (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;
- (c) His or her obligations, including applicable disciplinary sanctions; and
- (d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.

Rule 55:

1. The information referred to in rule 54 shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner does not understand any of those languages, interpretation assistance should be provided.
2. If a prisoner is illiterate, the information shall be conveyed to him or her orally. Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs.
3. The prison administration shall prominently display summaries of the information in common areas of the prison.



WHY IS IT IMPORTANT?

- 116 As soon as possible after admission, all prisoners should be provided with information about the prison rules, regulations, procedures and other relevant information, including the process for making a complaint. Prisoners should be made aware of their rights and obligations from the outset, and they should also know what to expect from staff and management.
- 117 Prisoners are less likely to break prison rules and regulations if they are aware of the consequences of doing so and if they know their rights and how to exercise them. Providing information to prisoners at an early stage reminds them that they still have rights and reduces feelings of powerlessness, can lessen stress levels and reduce risk of suicide and self-harm among prisoners.
- 118 Prisoners need access to information in order to exercise their rights if they are treated unfairly. The knowledge that they can challenge unfair treatment can, in itself, lead to a more peaceable prison environment and aid the smooth running of the facility.



PUTTING IT INTO PRACTICE

What information needs to be communicated?

- 119 Rule 54 details the information that every prisoner should receive upon being detained. The Rules are clear that relevant information must be provided to all newly arrived prisoners regardless of their legal status. Pre-trial prisoners must, therefore, receive the same level of information as convicted prisoners.
- 120 Rule 54 also states that prisoners must be briefed on the “prison law” and the “applicable prison regulations”. This includes all regulations that in any way relate to the rights and duties of prisoners, including, for example, regulations on the use of force and restraint by prison staff.
- 121 The provision in Rule 54(d), that all prisoners should be briefed on matters to enable them to adapt themselves to life in prison, should be interpreted broadly to include, for example, educational and vocational training opportunities, access to medical services, visiting rights, information about religious services, meal times and other schedules and the use of library facilities and recreational spaces.

- 122 The information provided to prisoners should include positive measures aimed at preventing problems before they occur, including, for example, information on any available peer support programmes, anti-bullying initiatives and other measures they can take to protect themselves or others.

How should the information be communicated?

- 123 Rule 55 details the way in which information should be communicated to prisoners. Prison authorities are obligated to ensure that all prisoners receive such information in a language and format they can understand.
- 124 Arriving to prison is confusing and disorientating for many, and prisoners may not be able to take in all the information presented to them at this time. It may also be that prison staff cannot provide all relevant information immediately on admission, particularly if they are dealing with large numbers of arrivals. If it is not possible to provide information immediately on admission, it should be made available as soon as possible thereafter.
- 125 If prisoners have questions or need clarifications, they should be able to ask for, and receive, more information at any time during their detention.
- 126 Staff should receive training on how to impart information to prisoners, including how to do so clearly and with sensitivity to newly arrived prisoners. Information should be provided to prisoners via conversation rather than simply handing out pamphlets or giving lectures.⁵¹
- 127 All information should also be provided in writing, and in an accessible format, so that every prisoner has a copy. It may not be necessary to provide all prisoners with every potentially applicable rule and regulation, particularly as this information may be overwhelming for some. However, prisoners should, at the very least, be given copies of the most relevant rules and regulations, or a summary version, and be offered the opportunity to receive copies of other regulations upon request.
- 128 Those who require the assistance of an interpreter, who are illiterate or who cannot understand the rules and regulations for other reasons, should be given the opportunity to have the information presented to them, and to ask questions, at a later time. It is likely that interpreters will not be available immediately upon admission, and it could take some time to find an appropriately skilled person. In these circumstances, prisons should make efforts to find a way to explain the most essential rules and regulations, including through other prisoners who speak the language or through telephone interpretation. However, prison administrations should be aware of the dangers of using non-independent, un-vetted interpreters.
- 129 Any changes to prison laws and regulations, the rights and obligations of prisoners and other relevant matters, must also be communicated to each prisoner during the course of her or his detention, in a language or format he or she understands.



PROMISING PRACTICE: PICTURE IT IN PRISON – DICTIONARY FOR FOREIGN NATIONAL PRISONERS [1.9]

The organization Prison Watch⁵² developed a universal picture dictionary for foreign national prisoners who do not speak the main language of the prison they are held in, to help both prisoners and staff overcome common language obstacles. The booklet known as *Picture it in Prison* consists of over 460 pictures that are arranged by theme.

Sixty basic words and sentences have been translated into Arabic, Albanian, Chinese, Dutch, English, French, German, Greek, Hindi, Italian, Japanese, Persian, Polish, Portuguese, Romanian, Russian, Turkish, Spanish, Swahili and Swedish. To date *Picture it in Prison* has been used in prisons in Belgium, Germany, Luxembourg, Sweden and the United Kingdom.⁵³

51. *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 28.

52. Prison Watch is an independent organisation that carries out research and provides training on prison related topics. Prison Watch specialises in foreign national prisoners and independent monitoring, see: www.prisonwatch.org/about-prison-watch.html.

53. *Picture it in Prison*, Prison Watch at www.prisonwatch.org/picture-it-in-prison.html.

**CONTEXT: PRISONERS' A-Z OF RIGHTS AND OBLIGATIONS –
A GUIDE PRODUCED BY THE GREEK MINISTRY OF JUSTICE [1.10]**

The Greek Ministry of Justice, Transparency and Human Rights has produced a guide that summarizes prisoners' rights and obligations in an easily accessible format. The guide includes information on a broad range of subjects, including clothing, complaints, wages, discipline, education, food, health, legal aid and visiting hours. The guide also lists the relevant provisions of the Greek Penitentiary Code and internal regulations for those who want more information.⁵⁴

1.5. REQUESTS AND COMPLAINTS



RELEVANT RULES: REQUESTS AND COMPLAINTS

Rule 56:

1. Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorized to represent him or her.
2. It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present.
3. Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power.
4. The rights under paragraphs 1 to 3 of this rule shall extend to the legal adviser of the prisoner. In those cases where neither the prisoner nor his or her legal adviser has the possibility of exercising such rights, a member of the prisoner's family or any other person who has knowledge of the case may do so.

Rule 57:

1. Every request or complaint shall be promptly dealt with and replied to without delay. If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.
2. Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.
3. Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71.



WHY IS IT IMPORTANT?

130

A good system for making requests or complaints is an integral part of every professional prison administration, allowing for the identification of systematic failures, while also detecting individuals that are abusing their positions of power.⁵⁵ Well-functioning complaints systems also protect staff from wrongful allegations and safeguard the reputation of the institution itself.

54. *Prisoners' A-Z of rights and obligations*, The Greek Ministry of Justice, February 2017, in Greek at www.ministryofjustice.gr/site/el/ΥΠΟΥΡΓΕΙΟ/ΓΕΝΙΚΗΓΡΑΜΜΑΤΕΙΑΑΝΤΙΕΓΚΛΗΜΑΤΙΚΗΣΠΟΛΙΤΙΚΗΣ.aspx.

55. The Mandela Rules do not distinguish between requests and complaints procedures.

- 131** Effective requests and complaints systems are also beneficial for prison staff for a number of reasons. This is because the problems affecting prisoners will inevitably also impact staff, either directly or as a result of tensions within the prison community. When these issues are resolved quickly and satisfactorily, staff-prisoner relations are likely to improve, leading to better, safer working conditions for staff members.
- 132** Requests or complaints systems help prison administrations identify structural or practical problems that they might not otherwise notice, but which are likely to be extremely important to prisoners. These might include, for example, problems with telephones, food service or noise levels at night time. If dealt with promptly and effectively, prison administrations can prevent seemingly minor problems from escalating into bigger issues, saving time and resources in the long-run. Clear procedures for making requests and complaints also mean that frontline staff do not have to spend their time dealing with individual complaints.
- 133** It is particularly important for prisoners to be able to make requests or complaints as part of a clear set of procedures because, unlike in the community, there may be no alternative ways to deal with problems they face.
- 134** If a complaints system is working effectively, it can play a significant role in the prevention of torture and other ill-treatment. If victims can safely report problems and know that their complaints will be taken seriously, perpetrators are more likely to be deterred in the first place.
- 135** A functioning complaints system ensures that perpetrators of torture and other ill-treatment are identified and held to account. It can also prevent such issues recurring and protect prison staff from wrongful accusations.



PUTTING IT INTO PRACTICE

Identifying the reasons why prisoners do not make requests or complaints

- 136** When developing good practices on requests and complaints mechanisms, it is crucial for prison administrations to understand the potential barriers to making requests or complaints within prisons. Some of the more common obstacles are:
- The absence of an effective complaints system;
 - The slow or bureaucratic nature of complaints procedures and response mechanisms;
 - Feeling that the problems faced in prison are inevitable;
 - Lack of information about the complaints process, including what prisoners can complain about;
 - Distrust in the effectiveness of complaints and response procedures;
 - Feelings of shame, embarrassment or guilt;
 - Fear of retaliation and reprisals, or of being punished for making a complaint;
 - The lack of safeguards in place for those making complaints;
 - Concern that the complaint will lead to other negative consequences (e.g., transfer to another facility);
 - Fear of being ostracized; and
 - An institutional culture that is based on retribution rather than rehabilitation.
- 137** There may also be specific barriers to making requests that impact different groups of prisoners more than others, including, for example, women, children, LGBTI individuals or foreign nationals.



PROMISING PRACTICE: IMPROVING ACCESS TO COMPLAINTS THROUGH PRISONER CONSULTATION [1.11]

The Prisons and Probation Ombuds Institution (PPO) for England and Wales published a report in May 2015 that addressed the reasons why levels of formal complaints to the PPO from women and young children in custody were lower than expected based on the proportion of the prison population they represented.⁵⁶

Using focus groups to enquire into prisoners' experiences with the complaints procedure, the PPO found that lack of trust was the main reason why prisoners did not use the internal complaints system and were not bringing their problems to the PPO. The survey also showed that there was confusion concerning the eligibility criteria for bringing complaints to the PPO and circumstances in which prisoners could make complaints.

As a result of the research, the PPO initiated a series of actions to improve access to the complaints mechanism for women and young children, including:

- Broadcasting radio advertisements on National Prison Radio (NPR) aimed at dispelling myths about complaints not getting to the PPO and to counter the fear of reprisals. The advertisements explained that prisoners need to go through the internal complaints system first and stressed the PPO's independence from the prison service;
- Following the launch of the radio advertisements, a postcard explaining how to complain to the PPO was included in prisoners' canteen delivery over a one-week period;

- An advertisement about the PPO on the 2015 year planner wall chart in the prisoners' newspaper, *Inside Time*. Prisoners were able to display the wall chart in their cell throughout the year showing details about the PPO, including eligibility and contact details; and

- Working with the Independent Monitoring Boards (IMBs) – part of the National Preventive Mechanism (NPM) for England and Wales – to ensure prisoners were better informed about how they can access the PPO.

As part of its findings, the PPO also identified a series of learning points for the prison service's internal complaints system, including the following recommendations:

- To redesign the prison complaint forms to make the process clearer and include a receipt section that is given to the prisoner when his or her complaint has been submitted;
- To ensure that prison staff deal with problems when they arise, to ensure a quick and efficient resolution that avoids the need for a complaint;
- To ensure that all prisoners and prison staff understand the internal complaint system, at what stage complaints can be sent to the PPO, and are informed when complaints reach the PPO; and
- To ensure that prison governors/directors monitor the timeliness and quality of replies to internal complaints.

What makes a good requests/complaints system?

- 138** Request and complaint procedures should be designed in a way that best mitigates against the most common barriers to making complaints identified in each jurisdiction. This will be most effective if prisoners themselves have the opportunity to input into how the systems are designed and implemented.
- 139** Prisoners must be able to make requests and complaints confidentially and without fear of reprisals or other negative consequences. Procedures should also mitigate against the risk of complaints being tampered with or ignored.
- 140** In order to be effective, mechanisms dealing with requests and complaints must be transparent and non-discriminatory.
- 141** The UN Special Rapporteur on torture has pointed out that complaint mechanisms must be simple and accessible, including through the installation of telephone hotlines or confidential complaint boxes. The Special Rapporteur has also pointed out that “[t]he threshold for a complaint must be as low as possible, in particular in the context of detention.”⁵⁷

56. *Learning from PPO Investigations: Why do women and young people not complain?*, Prison and Probation Ombudsman for England and Wales, March 2015 at www.ppo.gov.uk/wp-content/uploads/2015/03/Why-do-women-and-young-people-in-custody-not-make-formal-complaints_final.pdf.

57. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report to the General Assembly*, 9 August 2013, A/68/295, para. 80.

- 142 Complaint forms should be easy to understand and accessible to all. Every prisoner should have access to the necessary tools to make complaints, including writing equipment or access to computers in the case of electronic complaints systems. Those who cannot afford writing materials, stamps or telephone calls should be provided with them free-of-charge.
- 143 Prisoners should not be required to request a complaints form, rather they should be available in common areas of the facility. Where complaints can be made over the telephone, authorities should ensure that the phone lines are in working order and accessible to all. Prisoners must also be able to inquire about the status and outcome of any requests and complaints they have made.
- 144 Requests and complaints systems are only effective if they lead to the problem actually being addressed. Prisoners must be confident that their complaints will be dealt with fairly and effectively and that anyone found responsible for wrong doing will be held to account.

Informing prisoners about their rights

- 145 In order to exercise their right to make requests and complaints, all prisoners must know how they can do so. This information should be provided to all prisoners in accordance with Rule 54. The UN Special Rapporteur on torture has stressed that information about requests and complaints should be made available “in both written and oral form, in Braille and easy-to-read formats, and in sign languages for deaf or hard-of-hearing individuals”, and it should be displayed “prominently in all places of deprivation of liberty”.⁵⁸ More information on access to information for prisoners can be found in **Chapter 1, paragraphs 116-129** of this guidance document.
- 146 In addition to information about how to make requests and complaints, prisoners should be informed about what to expect when they make a complaint, and the procedures to be followed once the request or complaint has been lodged, including protective measures, timelines for response and the procedures for follow-up. Procedures and timelines will depend on the nature of the complaint, but should be determined in the prison rules and made clear to prisoners.

Who can make a request or complaint?

- 147 The Mandela Rules are clear that all prisoners should be able to make requests and complaints. Authorities must therefore seek to rectify disadvantages faced by some groups of prisoners, including those who do not speak the main language of the prison, illiterate prisoners and those with learning disabilities or mental health conditions, by putting practical measures in place to ensure equal access to the procedures. The principle of non-discrimination must apply equally to both internal and external complaints mechanisms.
- 148 Request and complaint procedures must not be discontinued once the complainant has been released, and prisoners should also be able to raise requests and complaints within a reasonable time period after they have been released from prison.
- 149 The Mandela Rules also make it clear that the right to make requests and complaints extends to the legal adviser of the prisoner, family members or any other person who has knowledge of the case. For foreign national prisoners, this right should extend to embassy or consular representatives. The right for other parties to issue requests and complaints is particularly important, given the many barriers to reporting faced by prisoners themselves.
- 150 Rule 78 of the Havana Rules points out that, in addition to making requests and complaints themselves, “[e]very juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations that provide legal counsel or that are competent to receive complaints.”

58. *Ibid*, para. 79.

- 151 All staff should be properly trained in dealing with requests and complaints, including those of a sensitive nature. However, prisoners should have a choice about who they make requests and complaints to, in order to allow for safe disclosure. It may be, for example, that women only feel comfortable reporting problems to female staff members. This can be particularly important in cases of sexual abuse.
- 152 Requests and complaints must equally be accessible to prisoners under any form of disciplinary punishment, including involuntary separation, and those undergoing medical treatment, even if they are in hospital.
- 153 As noted by the ICPS, “[p]rison administrations will also need to be sensitive to any cultures or traditions where concerns are raised through a group or family leader rather than individually.”⁵⁹ The option of collective or delegated requests or complaints can also mitigate some of the common barriers for making such representations, including the fear of retaliation.



PROMISING PRACTICE: PEER MENTORSHIP AMONG FEMALE PRISONERS IN CANADA [1.12]

Recognizing the role that relationships play in a person’s life, peer mentorship in Canada is a confidential, non-judgmental approach used by a community of women prisoners to assist each other in coping effectively with their present circumstances. The role of a peer mentor does not include counselling, which should only be provided by professionals. It does, however, include supporting women by listening, empathizing, providing information and guiding women to appropriate resources.

Those in a peer mentor role also acquire and strengthen transferable skills, such as communication, problem-solving and teamwork. The benefits of peer mentorship within an institutional setting include the opportunity for prisoners to problem solve at the lowest level, support within the institution for women prisoners to cope with various situations and the personal development of inmates who are trained as peer mentors.

Different levels of requests or complaints

- 154 It is important to be clear about the different severity levels of requests and complaints as they are likely to be dealt with differently. The SPT has documented problems with such procedures due to lack of “distinction between a request and a complaint, both being submitted on the same forms and processed in the same way”, stating that “[a]s a result, simple requests are not dealt with quickly, and serious complaints can be trivialized”.⁶⁰
- 155 Whatever the type and nature of a request or complaint, they must be taken seriously by authorities. Some will be easy to manage, others will not require any action and some will be rejected. Others might lead to formal investigations and prosecutions.
- 156 The Mandela Rules suggest that a complaints and requests mechanism should escalate through various stages. However, the wording makes clear that there is no limitation or specific order for these different types of escalation:
1. To the prison director (or the person appointed by him/her, each day, Rule 56(1));
 2. To the inspector of prisons during his/her inspections (Rule 56(2));⁶¹
 3. To the central prison administration (Rule 56(3));
 4. To a judicial or other competent authority, including those vested with reviewing or remedial power (Rule 56(3)); and
 5. To an independent national authority in case of allegations of torture or other cruel, inhuman or degrading treatment or punishment (Rule 71(1) and (2)).

59. *A Human Rights Approach to Prison Management*, ICPS, *op. cit.*, note 29, p. 115.

60. UN Subcommittee on Prevention of Torture, *Visit to New Zealand undertaken from 29 April to 8 May 2013: observations and recommendations addressed to the State party*, 10 February 2017, CAT/OP/NZL/1, para. 44.

61. The opportunity to make requests and complaints to the “inspector of prisons” applies to members of any monitoring body, including both internal and external bodies and also applies outside of prison inspections, including via writing and over the telephone. However, it is important to note that monitoring bodies are not responsible for dealing with individual complaints as this is the role of the prison administration. Instead monitors can use individual testimony to identify systematic problems. More guidance on internal inspections and external monitoring can be found in chapters one and seven of this publication respectively. For more information on the role of NPMs in relation to complaints, see: *Establishment and Designation of National Preventive Mechanisms*, Association for the Prevention of Torture, 2006, pp. 27-28 at www.apt.ch/content/files_res/NPM.Guide.pdf.

- 157 Prisoners must be able to make requests and complaints to any or all of the individuals or bodies listed above, in any order. There should be no requirement to exhaust one avenue of request or complaint before accessing another. Clear information must be provided to prisoners on who they should address their requests and complaints to and how they can do so.

FIGURE 1: DIFFERENT TYPES OF REQUESTS AND COMPLAINTS AND RESULTING PROCEDURES



Day-to-day requests and complaints

- 158 Complaints refer to a wide range of issues of different severity. The majority of complaints will, most likely, relate to day-to-day matters and, while they may seem relatively minor to authorities, such matters are extremely important to prisoners themselves and can have a major impact on their daily lives. Complaints could include, for example, complaints about food, noise levels, problems with contacting families and lost or stolen property. Such issues are also likely to affect large numbers of prisoners and can often be dealt with quickly with few resource requirements. If dealt with effectively, the response to such complaints can significantly reduce levels of anger and stress within a prison facility.
- 159 The UN Special Rapporteur on torture has noted that day-to-day complaints can be addressed by empowering independent, dedicated persons to receive and handle minor complaints and ensure that steps are taken within a reasonable period of time to set aside the funds required to give effect to these rights.⁶²

62. Special Rapporteur on torture, A/68/295, *op. cit.* note 57, para. 78.

CONTEXT: INFORMAL COMPLAINTS [1.13]

The UN Special Rapporteur on torture and others have pointed out that prisoners should be able to make more informal, verbal requests and complaints to prison staff. The opportunity to make representations in this way can mitigate against some of the common barriers to making requests and complaints, including where the procedures are overly bureaucratic or slow. Such informal procedures are also more accessible to particular groups of prisoners, including those who are illiterate or have learning disabilities.

In prisons that successfully operate a dynamic security approach to prison management, prisoners are more likely to feel that they can approach prison staff about the problems they face without fear of reprisals, and with the confidence that their requests or complaints will be taken seriously.

More serious complaints

- 160** More serious complaints should be dealt with through formal complaints procedures. Such allegations are likely to be less common but will require more complex, and urgent, investigations and responses.

Allegations of torture and other ill-treatment

- 161** Special procedures must be applied to deal with allegations of torture and other ill-treatment in line with the UNCAT and the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Istanbul Protocol).
- 162** Allegations of torture and other ill-treatment must be dealt with immediately and in accordance with Rule 71. Independent, prompt, impartial and effective investigations must be carried out whenever there are reasonable grounds to believe that an act of torture or other ill-treatment may have been committed, irrespective of whether a complaint has been received. In those cases, measures should be taken immediately to avoid any contact of the potentially involved persons with witnesses, the victim, or the victim's family and any involvement of the alleged perpetrator(s) in the investigation. For more information on investigations see **Chapter 3, paragraphs 68–101** of this guidance document.

Outcome of complaint procedures

- 163** In all cases, the outcome of the request or complaint, and any follow up action, must be properly communicated to the prisoner who initiated the procedure in an easily understandable format. If families or other representatives initiated the complaint, then they should also be informed of the process and any outcome.
- 164** Requests and complaints should be recorded in a prisoner's file in accordance with Rule 8(f). It is also good practice to maintain a centralized register of requests and complaints. In this regard the UNCAT has called for "a centralized register of complaints that includes information on the corresponding investigations, trials and criminal and/or disciplinary penalties imposed".⁶³
- 165** As Rule 57(1) makes clear, if a request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to bring it before a judicial or other authority.

63. *Observations of the UN Committee against Torture on the Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, 16 December 2013, CAT/C/51/4, para. 53.

CONTEXT: PROTECTION AGAINST REPRISALS [1.14]

Rule 57(2) of the Mandela Rules places an obligation on prison authorities to take effective measures to protect complainants against any risk of retaliation, intimidation or other negative consequence as a result of having submitted a request or complaint. Beneficiaries of protective measures include the prisoner, but also family members and other individuals who are entitled to issue complaints on behalf of a prisoner according to Rule 56(4).

The UN Special Rapporteur on torture has emphasized that “[m]easures in this regard include the transfer of the complainant or the implicated personnel to a different detention facility or the suspension from duty of the personnel.”⁶⁴ The UNCAT has also recommended “[p]rotective measures including relocation, on site security, hotlines, and judicial orders of protection to prevent violence and harassment against complainants, witnesses, or close associates of such parties”.⁶⁵

1.6. TRANSFERS

- 166** The subject of the transfer and transportation of prisoners was not revised as part of the SMR review. However, changes in areas such as safety and security, the use of restraints and provisions on health-care have a bearing on transfers and are therefore included in this guidance document.



WHY IS IT IMPORTANT?

- 167** All the fundamental protections in the Mandela Rules apply to prisoners at all times, including during transfer and transportation. These periods of detention are often overlooked and the dangers underestimated, despite the heightened risk of torture or other ill-treatment during periods of transfer. Prison transfers might also be applied discriminatorily or with the deliberate intent of harming or punishing prisoners, or to impact their family members.
- 168** The increased risk of ill-treatment during transfer stems from the lack of oversight of conditions of detention and treatment during the process, including access by monitoring bodies. In addition, prisoners usually have no means of contacting the outside world during the transfer itself and there may be no other persons present to witness ill-treatment. The safeguards in place in detention facilities, including with regards to the separation of different categories of prisoners, may also be less strictly applied during transfers, and those in charge of transporting prisoners may not have been vetted and trained to the same standards as regular prison staff.
- 169** The period of transfer can also be a particularly stressful time for prisoners, including if they are being taken to court hearings, to hospital or to an unknown and potentially distant detention facility.
- 170** On the other hand, authorities and staff also face heightened risks during transfers, such as prisoner escapes or attacks on the vehicle during transit, particularly if the staff-prisoner ratio for the transfer is low.

64. *Report of the Special Rapporteur on torture, A/68/295, op. cit.* note 57, para. 77.

65. UN Committee Against Torture, CAT/C/51/4, *op. cit.*, note 63, para. 55.



PUTTING IT INTO PRACTICE

What constitutes prisoner transfer?

- 171 The period of prisoner transfer includes the time of transit itself, as well as the time spent waiting, for example in court rooms, hospitals and airports.

Who is responsible for safety and security during transfer?

- 172 Rule 73(3) makes it clear that the transport of prisoners “shall be carried out at the expense of the prison administration and equal conditions shall apply to all of them”. The responsibility of prison administrations to protect the safety of staff and prisoners during transfer is also emphasized in Rule 1, which makes it clear that their safety shall be ensured “at all times”.
- 173 Regulations and safeguards must apply regardless of who is in charge of the transportation. This is important to note because in some jurisdictions prisoner transfer is carried out by other state agencies or even private companies. Even if the state outsources prisoner transfers it retains the ultimate responsibility for protecting the human rights of prisoners under its control. As the *Guiding Principles on Business and Human Rights* make clear, “[s]tates must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.” The Principles also require that, “[s]tates should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights”.⁶⁶

Safeguards

- 174 Prisoners should never be transferred to another facility as a form of punishment.
- 175 Security classification, risk and needs assessments also have a bearing on how prisoner transfers are conducted. This implies separation of prisoners depending on their risk assessment, and separate transport if necessary. This will usually imply the use of different vehicles but, depending on the context and rationale for separation it may be implemented using vehicles with a separating screen/wall.
- 176 When prisoners are transferred to another facility their possessions should be transferred with them and should be protected from loss or damage during the transfer itself. The issue of prisoner property is dealt with in Rule 67.
- 177 When prisoners are transferred to another facility, their files, including their medical files, should also be transferred. This is particularly important to protect against missing key dates related to their case and continuity of medical care. Principles of confidentiality with regard to prisoner files must also apply during transfer.
- 178 The day and hour of any prisoner transfer must be entered into the prisoner file management system, as stipulated by Rule 7(c). Night-time transfers should be avoided unless they are absolutely necessary.
- 179 Transfer to other prisons should not entail a loss of training and education opportunities, and must not result in deterioration of access to any specialized health-care required by the prisoner. Recognizing that it may not be possible to continue the exact course a prisoner may have started, efforts should be made to transfer prisoners to facilities that can offer comparable opportunities.

66. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, United Nations, 2011, Foundational Principle 1 and Principle 5 at www.unglobalcompact.org/library/2.

Conditions of transfer

- 180** Rule 73(2) states that the “transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited”.
- 181** The separation of different types of prisoners by reference to their sex, age, criminal record, legal reason for detention and treatment needs, as stipulated in Rule 11, also applies during prisoner transfer. The requirement for female prisoners to be supervised by female staff is also equally important during transfer.
- 182** Conditions of transfer must comply with Rule 42, which states that general living conditions addressed in the rules “shall apply to all prisoners without exception.” This includes the applicable provisions relating to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health-care and adequate personal space.
- 183** As is noted in **Chapter 3, paragraphs 02 and 33–34** of this guidance document, the Mandela Rules provide that instruments of restraint shall only be used during transfer as a precaution against escape, provided they are removed when the prisoner appears before a judicial or administrative authority. The Essex group of experts suggested that restraints may only be used when deemed necessary, rather than automatically during every transfer and that “[p]recautions need to be taken to prevent physical harm of passengers who are restrained in vehicles in case of brake action or accident, in particular as restraints compromise the ability of prisoners to protect themselves from falling forward”.⁶⁷
- 184** Rule 73(1) stresses that “[w]hen prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.”

CONTEXT: OTHER CONSIDERATIONS DURING TRANSFER [1.15]

Special provisions may need to be made when transferring certain categories of prisoners, including pregnant women, persons with disabilities, elderly prisoners and those with particular physical or mental health conditions. In some cases, medical staff may need to be present during transfer and they may also need to advise whether a prisoner is fit to travel or any adjustments that need to be made. Other considerations include:

- Checking that vehicles meet safety standards;
- Checking that vehicles used for medical transportation are suitably equipped, including for those with disabilities. This could include, for example, the provision of wheelchair ramps;
- Checking that prisoners have access to medication or hygiene articles they may need during the transfer;
- Checking that prisoners are transferred in appropriate vehicles. Cellular vehicles, which may be small and often have no windows, may not be suitable for prisoners with certain conditions, including those affected by claustrophobia or trauma;
- Checking that prisoners are not be kept in vehicles for longer than is necessary;
- Ensuring there are adequate breaks during long journeys, including to use the toilet;
- Ensuring adequate food and water is provided to prisoners;
- Ensuring there is a contingency plan in case of the need for emergency evacuation due to natural emergencies such as floods, fires and hurricanes.

Information to prisoners

- 185** Prisoners should be informed in advance of any transfer, including the reasons for the transfer, the scheduled date and time of the transfer and the place they will be going to.

67. *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 57.

186 Another key safeguard in relation to prisoner transfer is the right of prisoners to inform family members and other contacts, including legal representatives, about their transfer to another facility or to hospital. This is particularly important to protect against enforced disappearance. Prisoners should be given the opportunity to inform such persons before the transfer actually takes place. The issue of notifications is dealt with in more detail in **Chapter 5, paragraphs 129–133** of this guidance document.

1.7. STAFF RECRUITMENT AND TRAINING

187 Those who work in prisons perform an important public service, and they often work in difficult, stressful and sometimes dangerous conditions. They are required to work with individuals who have multiple needs, including mental health conditions, suicidal or self-harm tendencies and histories of abuse, deprivation and addiction. Therefore, it is likely that they will encounter violent and abusive prisoners, some of whom have posed major threats to public security in the past. In poorly managed facilities, staff might also be subjected to discrimination by colleagues or managers.

The role and functions of prison staff are often misunderstood or subject to negative stereotyping. The media and public might perceive their role as simply to lock people up. In fact, prison staff also play a key role in the rehabilitation and reintegration of prisoners and their job is complex and multi-faceted, requiring a specific and diverse skill set, including good interpersonal skills and the ability to deal with many different and often challenging situations and individuals.

The provisions of the SMR that relate to staff recruitment and training were updated to make it clear that staff require training before they assume their duties and require continuous in-service training. This training should reflect evidence-based best practice. The Rules also now specify the minimum requirements for training, including the concept of dynamic security and techniques for preventing and defusing violent situations and dealing with violent offenders.



RELEVANT RULES: STAFF RECRUITMENT AND TRAINING

Rule 74:

- 1.** The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends.
- 2.** The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.
- 3.** To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison staff and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

Rule 75:

- 1.** All prison staff shall possess an adequate standard of education and shall be given the ability and means to carry out their duties in a professional manner.
- 2.** Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties, which shall be reflective of contemporary evidence-based best practice in penal sciences. Only those candidates who successfully pass the theoretical and practical tests at the end of such training shall be allowed to enter the prison service.
- 3.** The prison administration shall ensure the continuous provision of in-service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.



RELEVANT RULES: STAFF RECRUITMENT AND TRAINING (CONTINUED)

Rule 76:

1. Training referred to in paragraph 2 of rule 75 shall include, at a minimum, training on:

(a) Relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates;

(b) Rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment;

(c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation;

(d) First aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.

2. Prison staff who are in charge of working with certain categories of prisoners, or who are assigned other specialized functions, shall receive training that has a corresponding focus.



WHY IS IT IMPORTANT?

Professional prison management

- 188 Prison management have a duty to ensure that staff are carefully selected, properly trained and supported. If they fail to recruit and retain staff who can work to professional standards they must themselves be held accountable to the government and the public.
- 189 The CPT has pointed out that high levels of stress in staff can “exacerbate the tension inherent in any prison environment”.⁶⁸

Impact on institutional culture

- 190 The attitude and behaviour of prison staff shapes the culture within a detention facility and determines a prisoner’s overall experience of detention. Studies have shown that prison officers “who feel valued, trusted and respected at work are more likely to apply these values to the treatment of prisoners”.⁶⁹ Prison officers who are happy in the job will perform their functions to a higher standard than those who feel undervalued.
- 191 Training and prison leadership need to prevent prison officers from developing an *esprit de corps* that emphasizes a repressive approach to prisoners, and solidarity with fellow officers over accountability. There can be significant peer pressure among prison officers about not “siding with” or being “soft” on prisoners.⁷⁰ Officers who do not conform to this group mentality may suffer intimidation, harassment or be ostracized. “In extreme cases, prison officers can suffer violence from colleagues as part of their training or initiation rites as a way of “socializing” them into a punitive culture”.⁷¹
- 192 The overall ethos of a detention facility can greatly influence the conditions in which prison officers work and the way they are treated. Recruitment and training programmes need, therefore, to reflect on the role of prison staff, the purpose of imprisonment (see Rules 4 and 5), ethical issues and the institutional climate.⁷² Given the closed nature of prisons and the focus on security and control, they can often become overly hierarchical structures and bullying of staff is common. Detention facilities can also be characterized by fear, distrust and insularity, and this can greatly impact the experiences and motivation levels of staff, while deterring good candidates from applying to join the service. In general, poorly run facilities are unlikely to attract and retain suitably qualified staff, while abusive and corrupt staff can thrive in such conditions with impunity.

68. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *11th General Report on the CPT’s activities*, 3 September 2001, para. 26.

69. Alison Liebling, *Prisons and Their Moral Performance*, Oxford University Press, 28 July 2005, pp. 375-430; see also: *The Mandela Rules*, op. cit., note 1, Rule 38 (1), encouraging prison administrations “to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts”.

70. Alison Liebling, David Price, & Guy Shefer, *The Prison Officer*, Willan Publishing, 20 February 2011, p. 163.

71. *Staff working conditions: Addressing risk factors to prevent torture and ill-treatment*, Penal Reform International/Association for the Prevention of Torture, second edition, 2015.

72. *Institutional culture in detention: A framework for preventive monitoring*, Penal Reform International/Association for the Prevention of Torture, second edition, 2015.



PUTTING IT INTO PRACTICE

The management of prison staff

- 193** Responsibility for recruiting and retaining suitable prison staff lies with prison management. Once recruited, staff need effective leadership, proper support and supervision to perform their functions effectively. Rule 79 specifies that a prison director “should be adequately qualified for his or her task by character, administrative ability, suitable training and experience.”
- 194** Prison administrations should treat their staff with respect and remind them that the work they do is highly valued. In order to meet the requirements of Rule 74(2), which is to ensure that prison work is of great social importance, prison managers should work closely with policy-makers and relevant ministry staff to develop strategies on how best to educate the public and the media about the role of prison staff.
- 195** As UNODC points out, “[t]he best way to retain an employee is through enrichment and empowerment. If an employee is challenged and satisfied within their role, there is a greater likelihood they will apply themselves and work towards the organizational goals. It is recommended to offer competitive wages, autonomy, sufficient training and development, and advancement opportunities.”⁷³
- 196** Rule 30 of the Bangkok Rules specifies that there should also be a “clear and sustained commitment at the managerial level in prison administrations to prevent and address gender-based discrimination against women staff”. Rule 32 of the Bangkok Rules highlights the need to develop and implement “[c]lear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment”. Rule 29 of the Bangkok Rules also states that “Capacity-building measures for women staff shall also include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women prisoners.”
- 197** In situations where prison staff are employed by private companies, they must be subject to the same standards of recruitment and training as regular prison staff and must be regulated by equally stringent codes of conduct and other procedures.

Staff recruitment

- 198** As with any professional recruitment process, there should be a clear job description for the position being recruited for, including specific duties associated with the role and required education and competencies. The skills required to perform the job should be properly communicated to potential applicants. Management “shall place great emphasis on the need for integrity, humanity, professional capacity and personal suitability for the complex work that they will be requiring to do”.⁷⁴
- 199** UNODC suggests that personnel hiring should be conducted through “a gradual system of application, interview and testing to ensure the best individual receives the position. Within the prison system it would be recommended to implement testing for situational judgement and personal ethics.”⁷⁵
- 200** Selection should take into account factors such as motivation and interpersonal skills, and the ability to stay calm.⁷⁶
- 201** Staff selection should be conducted according to the principle of non-discrimination. Recruitment procedures must be fair and transparent. Staff must be hired based on their suitability for the position, regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.

⁷³ *Handbook for prison leaders: A basic training tool and curriculum for prison managers based on international standards and norms*, United Nations Office for Drugs and Crime (UNODC), 2010, p. 56.

⁷⁴ *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules*, Council of Europe Committee of Ministers, 11 January 2006, Rule 76.

⁷⁵ *Ibid*, p. 55.

⁷⁶ Jim Murdoch and Vaclav Jiricka, *op. cit.*, note 31, p. 75.

- 202 The UNCAT has pointed out that, in order to obtain personnel of the appropriate calibre, authorities must “be prepared to invest adequate resources into the process of recruitment and training and to offer adequate salaries”.⁷⁷
- 203 Staff should “normally be appointed on a permanent basis and have public service status with security of employment, subject only to good conduct, efficiency, good physical and mental health and an adequate standard of education”. Salaries should be adequate to attract and retain suitable staff and with benefits and conditions of employment that reflect “the exacting nature of the work as part of a law enforcement agency”.⁷⁸
- 204 Only candidates with the appropriate qualities and skills should be accepted into the service.

Skills and competencies

- 205 The “adequate standard of education” required by the Mandela Rules will depend on the particular role being recruited for, and may differ from one country or region to another. However, core competencies required by prison staff include good interpersonal and communication skills.
- 206 The CPT has pointed to the importance of good interpersonal skills among prison staff, suggesting that “aptitude for interpersonal communication should be a major factor in the process of recruiting law enforcement personnel”. The CPT adds that “during training, considerable emphasis should be placed on developing interpersonal communication skills, based on respect for human dignity. The possession of such skills will often enable a police or prison officer to defuse a situation which could otherwise turn into violence, and more generally, will lead to a lowering of tension, and raising of the quality of life, in police and prison establishments, to the benefit of all concerned.”⁷⁹
- 207 UNODC has noted that in prison systems “[t]he qualities of the personnel fall into two basic categories, capacity and integrity. Capacity refers to the qualities that enable personnel to fulfil the technical tasks of the institution’s mandate. Integrity relates to the qualities that enable it to fulfil this mandate in accordance with fundamental human rights, professional and rule-of-law standards.”⁸⁰

CONTEXT: STAFF ACCOUNTABILITY [1.16]

All prison staff must be held accountable for their actions. Those found to have violated laws or policies should be subject to disciplinary proceedings and, where appropriate, subject to criminal proceedings. Policy-makers should develop a staff code of conduct and other policies and mechanisms to regulate staff behaviour and prevent and address abusive or discriminatory behaviour. Such mechanisms must be applied in a fair and transparent manner and should provide procedural safeguards for the prison staff subject to them. Disciplinary or even criminal proceedings may be required against staff members who have:

- Applied disciplinary measures against prisoners that are prohibited or in a manner that is prohibited;
- Used prohibited means of restraint, force and arms, or used permitted means unnecessarily or disproportionately;
- Failed to report deaths, disappearances and serious injuries for investigation;
- Committed or failed to document and denounce acts of torture or other ill-treatment;⁸¹
- Demanded or accepted money or other goods from prisoners (corruption);
- Smuggled prohibited items into prison;
- Failed to comply with laws and procedures in relation to prisoner file management, including in relation to confidentiality;

77. UN Committee Against Torture, CAT/C/51/4, *op. cit.*, note 63, para. 63.

78. Jim Murdoch and Vaclav Jiricka, *op. cit.*, note 31, p. 75; with reference to *European Prison Rules*, Council of Europe, *op. cit.*, note 74, Rules 76-79.

79. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *2nd General Report on the CPT’s activities*, 13 April 1992, para. 60 at rm.coe.int/1680696a3f.

80. *Handbook for Prison Leaders*, UNODC, *op. cit.*, note 73, p. 54.

81. The World Medical Association (WMA) has pointed out that “the absence of documenting and denouncing acts of torture may be considered as a form of tolerance thereof and of non-assistance to the victims”.

- Were found to have sexually harassed, abused or exploited prisoners, condoned or facilitated such abuse; and
- Interfered with the work of those providing legal support or undermined access to legal aid.*

* Please note that this is an illustrative list only and is not intended to cover all situations in which staff members might be subject to disciplinary or criminal proceedings.

CONTEXT: THE EUROPEAN CODE OF ETHICS FOR PRISON STAFF⁸² [1.17]

The Committee of Ministers of the Council of Europe (CoE) adopted a European Code of Ethics for Prison Staff drafted and negotiated by prison experts within the Penological Council (PC-CP) which applies to staff at all hierarchical levels of the prison system. The Committee of Ministers has recommended that governments of Member States give the widest possible circulation to the text and national codes of ethics based upon it, and oversee their implementation by appropriate bodies. The guidelines for prison staff conduct in the Code of Ethics are:

A. Accountability

- Prison staff at all levels shall be personally responsible for, and assume the consequences of, their own actions, omissions or orders to subordinates; they shall always verify beforehand the lawfulness of their intended actions.

B. Integrity

- Prison staff shall maintain and promote high standards of personal honesty and integrity. Prison staff shall endeavor to maintain positive professional relationships with prisoners and members of their families.
- Prison staff shall not allow their private, financial or other interests to conflict with their position. It is the responsibility of all prison staff to avoid such conflicts of interest and to request guidance in case of doubt.
- Prison staff shall oppose all forms of corruption within the prison service. They shall inform superiors and other appropriate bodies of any corruption within the prison service.
- Prison staff shall carry out all legal instructions properly issued by their superiors, but they shall have a duty to refrain from carrying out any instructions that are seriously and manifestly infringing the law and to report such instructions, without having to fear sanctions.

C. Respect for and protection of human dignity

- Prison staff shall at all times respect and protect everyone's right to life.
- In the performance of their daily tasks, prison staff shall respect and protect human dignity and maintain and uphold the human rights of all persons.
- Prison staff shall not inflict, instigate or tolerate any act of torture or other inhuman or degrading treatment or punishment, under any circumstances, including when ordered by a superior.
- Prison staff shall respect and protect the physical, sexual and psychological integrity of all prisoners, including against assault by fellow prisoners or any other person.
- Prison staff shall at all times treat prisoners, colleagues and all other persons entering prison with politeness and respect.
- Prison staff shall only interfere with individual's right to privacy when strictly necessary and only to achieve a legitimate objective.
- Prison staff shall not use force against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order, and always as a last resort.
- Prison staff shall carry out personal searches only when strictly necessary and shall not humiliate prisoners in the process.
- Prison staff shall use instruments of restraint only as provided for by Rule 68 of the European Prison Rules. In particular, they shall never use them on women during labour, during birth and immediately after birth.

82. Recommendation CM/Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff, Council of Europe, 12 April 2012. The Council of Europe is also developing a new Code of Conduct for Prison Staff.

D. Care and assistance

- Prison staff shall be sensitive to the special needs of individuals, such as juveniles, women, minorities, foreign nationals, elderly and disabled prisoners, and any prisoner who might be vulnerable for other reasons, and make every effort to provide for their needs.
- Prison staff shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.
- Prison staff shall provide for the safety, hygiene and appropriate nourishment of persons in the course of their custody. They shall make every effort to ensure that conditions in prison comply with the requirements of relevant international standards, in particular the European Prison Rules.
- Prison staff shall work towards facilitating the social reintegration of prisoners through a programme of constructive activities, individual interaction and assistance.

E. Fairness, impartiality and non-discrimination

- Prison staff shall respect plurality and diversity and not discriminate against any prisoner on the basis race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status or the type of offence alleged or committed by that prisoner. Prison staff shall pay particular attention to the provisions of Rule 29 of the European Prison Rules.
- Prison staff shall take full account of the need to challenge and combat racism and xenophobia, as well as to promote gender sensitivity and prevent sexual harassment of any form both in relation to other staff and to prisoners.
- Prison staff shall carry out their tasks in a fair manner, with objectivity and consistency.
- Prison staff shall respect the presumption of innocence of prisoners who have not been convicted or sentenced by a court.
- Prison staff shall apply objective and fair disciplinary procedures as provided for by the European Prison Rules. Moreover, they shall respect the principle that prisoners charged with disciplinary offences shall be considered innocent until proven guilty.

F. Co-operation

- Prison staff shall ensure that prisoners can exercise their right to have regular and adequate access to their lawyers and families throughout their imprisonment.
- Prison staff shall facilitate co-operation with governmental or non-governmental organizations and community groups working for the welfare of prisoners.
- Prison staff shall promote a spirit of co-operation, support, mutual trust and understanding among colleagues.

G. Confidentiality and data protection

- Information of a confidential nature in the possession of prison staff shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.
- Particular attention shall be paid to the obligation to respect principles of medical confidentiality.
- The collection, storage and use of personal data by prison staff shall be carried out in accordance with data protection principles and, in particular, shall be limited to the extent necessary for the performance of lawful, legitimate and specific purposes.

V. General

- Prison staff shall respect the present code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of it.
 - Prison staff who have reason to believe that a violation of the present code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities.
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Composition of prison staff

- 208** When recruiting staff members, prison authorities should ensure there is an adequate prisoner-staff ratio to ensure the safety of the facility and all those within it at all times.
- 209** There should also be an active policy-level commitment to hiring diverse staff, including people from minority racial or ethnic groups and, where possible, reflecting the diversity of the prison population itself.
- 210** Authorities should make particular efforts to recruit female staff, taking into account the requirement of Rule 81(3), which states that female detainees shall be attended and supervised only by female staff members.
- 211** For health-care staff, who should be independent of prison staff, see see Rule 25 (2).

Staff terms and conditions

- 212** UNODC recommends that prison staff compensation “be based on local standards and market factors and be commensurate with the difficulty of the function to be performed, the level of responsibility assigned to the position and the experience and skills of the individuals”. UNODC also notes the importance of systems of advancement to encourage employee development and provide career opportunities in the service.⁸³
- 213** The United Nations Office for Project Services (UNOPS) highlights the need to consider the design of facilities to support personnel in fulfilling their role, including the need for the functional areas used by prison staff to be completely separate from areas used by prisoners. UNOPS also points out that staff facilities must include sufficient changing rooms for both female and male prison staff and that facilities should include sinks, toilets and shower installations.⁸⁴

Training opportunities and methodology

- 214** In addition to training prior to entering service, continuous, in-service training is important, not only to maintain and improve the existing knowledge of prison staff, but also to ensure they are made aware of any changes to policy and practice, including new developments in good practice. With this in mind, the training curricula should be regularly updated, including to incorporate the new provisions of the Mandela Rules. It is also important to ensure that new and updated training programmes are available to existing staff as well as those who have been newly recruited into the service.
- 215** Staff training and promotion opportunities should be made available to all staff members on an equal basis, without discrimination, and in accordance with the requirements of their particular roles and functions. Rule 32 of the Bangkok Rules specifies that female prison staff should receive equal access to training as male staff. The UNODC *Handbook for Policy Managers and Policymakers on Women and Imprisonment*⁸⁵ also identifies the need to empower female staff within prison systems and provides further suggestions on the particular training needed by female staff and those working with female prisoners.
- 216** In order for training to be effective, training providers should themselves be carefully selected. They should know their subject matter well, but must also be familiar with the prison environment and understand the challenges facing prison staff and prisoners.
- 217** The availability of e-training courses is positive but cannot replace the benefit of face-to-face education. Training programmes could be carried out jointly with specialist community organizations.

⁸³. *Handbook for Prison Leaders*, UNODC, *op. cit.*, note 73, p. 56.

⁸⁴. *Technical Guidance for Prison Planning*, United Nations Office for Project Services (UNOPS), 2016, p. 203.

⁸⁵. *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, United Nations Office on Drugs and Crime (UNODC), 2008 at www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf.

Content of training

- 218** Training programmes should include human rights and need to cover, as a minimum, all areas stipulated in Rule 76. This includes relevant national legislation, regulations and policies, applicable international and regional instruments, the rights and duties of prison staff (including respecting the dignity of prisoners), safety and security (including dynamic security) and first aid (including the detection of mental health conditions).
- 219** Training relating to the use of force and instruments of restraint should include guidance on de-escalation techniques, conflict prevention and mediation, as well as training in the use of control techniques that obviate the need for the imposition of instruments of restraint or reduce their intrusiveness, as stipulated in Rule 49.
- 220** Training should not be limited to the theoretical presentation of laws and regulations, but should be practical and include scenario-based training.⁸⁶ This is particularly important, for instance, when it comes to training in the use of force, instruments of restraint and the management of violent offenders.

CONTEXT: SPECIALIST TRAINING FOR STAFF WORKING WITH SPECIFIC GROUPS OF PRISONERS [1.18]

It is important to remember that the training suggested in Rule 76 of the Mandela Rules should be regarded as a minimum, and other international guidance provides additional recommendations regarding the type of training required. The requirement for prison staff to receive specialist training corresponds with the obligation of prison administrations to take account of the individual needs of prisoners, and to protect and promote the rights of prisoners with special needs, as set out in Rule 2(2). If a staff member is transferred from one function to another they should be retrained accordingly.

The UNODC *Handbook on Prisoners with Special Needs*⁸⁷ provides guidance on working with prisoners with mental health conditions, those with disabilities, ethnic and racial minorities and indigenous peoples, foreign national prisoners, LGBTI prisoners, older prisoners, those suffering from terminal illnesses and prisoners under sentence of death. The Handbook identifies the training required for working with these groups and provides key recommendations on how this can be implemented. Training should also include identifying the signs and responding to allegations of sexual and gender-based violence in prisons.

The Bangkok Rules call for specific training on the background and needs of female prisoners (see Rule 33). For example, Rule 32 calls for all staff involved in the management of women's prisons to receive training on gender sensitivity and prohibition of discrimination and sexual harassment. Rule 29 of the Bangkok Rules notes that capacity building for staff employed in women's prisons "shall enable them to address the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities".

Rule 34 of the Bangkok Rules also identifies the need for capacity building programmes on HIV/AIDS prevention, treatment, care and support and "issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination".

Specific training needs also arise for prison staff dealing with children and juveniles. Rule 85 of the Havana Rules require that personnel working in juvenile detention facilities should "receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child...".

Rule 33 of the Bangkok Rules provides that, in cases where children stay with their mothers in prison, prison staff need to be provided with training to raise their awareness "on child development" and be given "basic training on the health-care of children...in order for them to respond appropriately in times of needs and emergencies".

86. *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 38.

87. *Handbook on Prisoners with Special Needs*, United Nations Office on Drugs and Crime (UNODC), 2009.

1.8. INTERNAL INSPECTIONS

221 Rules 83, 84 and 85 deal with different forms of oversight, including internal inspections and external monitoring.⁸⁸ Both internal and external oversight mechanisms are tools of professional prison management and serve “to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected”.⁸⁹ Internal and external oversight mechanisms are meant to complement each other.

Internal inspection mechanisms refer to inspections conducted by central prison administrations in order to monitor compliance with prison regulations. They are not tailored or limited to assessing human rights compliance or to prevent torture or other forms of ill-treatment, but can cover a wide range of topics, such as security, finance or staff training.

External monitoring mechanisms,⁹⁰ by comparison, must be independent from the prison administration although their mandates may overlap in parts with those of internal inspectors. External monitoring is dealt with in **Chapter 7** of this guidance document.



WHY IS IT IMPORTANT?

222 While independent, external monitoring has proven highly effective in identifying and assessing systemic deficiencies in places of detention, in particular when it comes to preventing torture or other forms of cruel, inhuman or degrading treatment, central authorities have a duty to scrutinize whether prisons are acting in compliance with national laws and regulations more broadly. In many countries, therefore, there is a separate internal or administrative inspection mechanism in place.

223 Rule 83 of the Mandela Rules suggests that internal inspections and external monitoring mechanisms are required for professional prison management.



PUTTING IT INTO PRACTICE

Scope of inspections

224 ICPS have noted that an internal inspection “is a more formal type of inspection which is carried out on individual prisons by staff from the central prison administration. This type of inspection often takes the form of an audit of procedures. It can cover a wide range of topics, such as security, finance, activities for prisoners, staff training or discrimination. In many administrations these procedures will be measured against standards which have been developed centrally so as to ensure consistency between prisons. Some administrations also appoint supervisors to their prisons who are responsible for monitoring compliance with prison regulations. These audits frequently concentrate on administrative processes. This form of inspection or audit is very important but is not in itself sufficient.”⁹¹

⁸⁸. Rules 83 (1)(b), 84 (2) and 85 (2) apply only to external monitoring whilst Rule 83 1(a) applies only to internal inspections.

⁸⁹. *The Mandela Rules*, UNGA, *op. cit.*, note 1, Rule 83 (2).

⁹⁰. Essex paper 3, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 38, notes, that: “there is no clear differentiation between the terms ‘inspection’ and ‘monitoring’. ‘Inspection’ may be used more often amongst criminal justice actors describing internal prison inspections, whereas the term ‘monitoring’ may be in use more in the human rights community and referring to enquiries by an external, independent body”.

⁹¹. *A Human Rights Approach to Prison Management*, ICPS, *op. cit.*, note 29, p. 122.

- 225 The scope of internal inspections will differ from one jurisdiction to another, but it is likely that, while external monitoring will focus more on the rights of prisoners and the prevention of ill-treatment, internal inspections will assess compliance with national laws and regulations more broadly. This can include technical aspects of prison management, staff rules and procedures, compliance of the working conditions of prison staff with national policies, anti-corruption policies and management of public finances by the prison administration. However, as Rule 83(2) makes clear, the scope of internal inspections also includes the protection of the rights of prisoners.

Who conducts internal inspections?

- 226 Internal inspections are generally conducted by state departments managed by the administrative authority or the ministry in charge of national detention facilities. However, as the commentary to the EPR clarifies, a governmental agency responsible for inspecting prisons ‘can be part of one ministry, for example, the ministry of justice or the ministry of the interior, or can be an agency under the control of more than one ministry. The essential point is that such an agency or inspectorate is established by, and reports to, the highest authorities’.⁹²
- 227 The EPR state that “[p]risons shall be inspected regularly by a governmental agency”.⁹³

Methodology of inspections

- 228 Just like external monitoring mechanisms, internal inspectors must have access to all relevant information about the prison infrastructure, including on the numbers of prisoners and places and locations of detention (Rule 84(1)). They must be able to freely choose which prisons they want to visit and which prisoners they want to interview. They should be able to conduct private and fully confidential interviews and be permitted to make unannounced visits. The authority of the inspectors is detailed in Rule 84.
- 229 The commentary to the EPR elaborates that “[t]he ways in which governmental inspection is organized will vary from mere checking of the bookkeeping of prisons to in-depth and on-the-spot audits, which take into account all aspects of prison administration and of the treatment of prisoners. What is important is that the results of these inspections are reported to the competent authorities and made accessible to other interested parties without undue delay”.⁹⁴
- 230 Internal inspections and external monitoring visits must take place frequently enough to enable effective monitoring of conditions, and changes and developments in the prison system, while allowing enough flexibility to prioritize inspections in more problematic prisons.⁹⁵
- 231 Rule 85 requires that every inspection is followed by a written report, which should be submitted to the competent authority. However the findings of internal inspections are not usually made public.⁹⁶
- 232 UNODC has published a checklist for internal inspection mechanisms, providing a tool that can be used to assess compliance with the Mandela Rules at a national level and to enhance the effectiveness and efficiency of internal inspection systems. The checklist consists of seven chapters with a total of 36 expected outcomes that prisons should strive for and a list of 241 indicators to assist in determining whether or not the expected outcomes have been achieved, or whether progress is being made towards achieving them.⁹⁷

92. *Commentary to Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules*, Council of Europe, June 2006.

93. *Ibid.*, p. 32.

94. *Ibid.*, pp. 92–93.

95. *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 39.

96. *The Mandela Rules*, UNGA, *op. cit.*, note 1, Rule 85(1): specifies that due consideration shall be given to making the reports of external inspections publicly available.

97. *Assessing Compliance with the Nelson Mandela Rules: a checklist for internal inspection mechanisms*, United Nations Office on Drugs and Crime (UNODC), August 2017.





2

20

SAFETY, SECURITY AND DIGNITY FOR ALL

2.1 SEARCHES OF PRISONERS AND CELLS

2.2 SEARCH AND ENTRY PROCEDURES FOR VISITORS

2.3 CHILDREN IN PRISON WITH THEIR PARENT

2.4 PRISONERS WITH DISABILITIES

2.5 DEALING WITH THE BODY OF A DECEASED PRISONER

2.6 SLAVERY

2. SAFETY, SECURITY AND DIGNITY FOR ALL

01 Basic Principle 1 of the Mandela Rules makes clear that “[a]ll prisoners shall be treated with the respect due to their inherent dignity and value as human beings”. The Rule also stipulates that prison authorities are not only responsible for ensuring the safety and security of prisoners, but also that of staff, service providers and visitors at all times. In all situations, the need to uphold safety and security must be balanced with principles of fairness, justice and humanity.

To protect the dignity of detainees, prisons must ensure minimum conditions in detention by providing accommodation and clothing, and ensuring hygiene, as detailed in the Mandela Rules.⁹⁸ However, as these sections of the Rules have not been subject to revision, this chapter only focuses on the new provisions of the Rules.

Safety and security questions span from static issues, such as the infrastructure of the detention facility itself, to dynamic issues, such as interactions between individuals within that facility. The concepts of static and dynamic security are described in more detail in **Chapter 3, paragraph 01** of this guidance document.

2.1. SEARCHES OF PRISONERS AND CELLS

02 The Mandela Rules provide guidance on how to search prisoners and cells in a manner that helps ensure the good order of the prison facility while respecting the dignity and privacy of the individuals concerned and protecting their rights. The Rules also clarify the role of health-care professionals in carrying out body cavity searches.

Searches are usually conducted when prisoners are first admitted to prison, after contact visits, upon returning from court hearings, hospital appointments, or from working outside the prison. Searches may also be conducted if staff suspect a prisoner to be in possession of a prohibited item.

National laws and regulations governing searches of prisoners and cells should be in line with international standards. There must be clear regulations at a national level defining when different types of searches are permissible, particularly for strip searches and invasive body searches. These regulations should include details on who is authorized to carry out such searches and the manner in which they should be conducted. The circumstances under which strip searches and invasive searches can be carried out should be clearly defined by law. There should be specific guidelines in place regarding searches of female and child prisoners. (For searches of visitors see **Chapter 2, paragraphs 54–72** of this guidance document).

Searches of prison staff are common in most prison systems given there is also a risk that prison staff bring prohibited items in from the outside world. Due to their scope, the Mandela Rules do not include provisions for searches of prison staff and service providers. However, the safeguards of ensuring the necessity and proportionality of searches laid out in the Mandela Rules should apply equally to staff, and searches should be as unobtrusive as possible.

⁹⁸ *The Mandela Rules*, UNGA, *op. cit.*, note 1, Rules 12-23. These rules deal with prisoner accommodation, personal hygiene, clothing and bedding, food, exercise and sport.



RELEVANT RULES: SEARCHES OF PRISONERS AND CELLS

Rule 50: The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.

Rule 51: Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.

Rule 52:

1. Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.

2. Body cavity searches shall be conducted only by qualified health-care professionals other than those primarily responsible for the care of the prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety.



WHY IS IT IMPORTANT?

Ensuring safety and security

- 03 Prison officials need to search prisoners and their cells to ensure the security of the prison and to protect the safety of all those within the facility, including staff members. Searches are necessary to prevent the smuggling of prohibited items into the prison, such as drugs, weapons or other items that could be harmful, or which could aid escape from prison.
- 04 If search procedures and safeguards are well regulated and conducted with respect for the dignity and privacy of the individual being searched, then staff will be better equipped to perform their functions well and maintain good relationships with prisoners and prison visitors.
- 05 By detecting contraband items during searches, authorities can also reduce levels of illicit trade which take place within prisons. In addition, searches can play an important preventative function against the smuggling of contraband.

Respecting human dignity and privacy

- 06 Searches must be well regulated because they are sometimes used as a tool to harass, intimidate or punish particular prisoners. The Mandela Rules, therefore, cover when and how different types of searches can be carried out, and how they should be regulated. Searches can be humiliating, distressing and traumatic for all prisoners, and are often carried out when prisoners are at their most vulnerable, such as when they have first arrived at a detention facility.
- 07 Searches can be particularly humiliating for women, especially if they have previously experienced sexual or gender-based violence. Body searches can also be particularly distressing for prisoners of particular religious or cultural backgrounds.



PROMISING PRACTICE: AN END TO ROUTINE STRIP SEARCHING OF WOMEN IN ENGLAND AND WALES [2.1]

A 2006 review of women with particular vulnerabilities in the criminal justice system in England and Wales, entitled the *Corston Report*, noted that “the regular, repetitive and unnecessary use of strip searching is humiliating, degrading and undignified for a woman and a dreadful invasion of privacy. For women who have suffered past abuse, particularly sexual abuse, it is an appalling introduction to prison life and an unwelcome reminder of previous victimization. It is unpleasant for staff and works against building good relationships with women, especially new receptions.”⁹⁹

The *Corston Report* summarized surveys with women prisoners who stated that strip searching made them feel “embarrassed, invaded, degraded, uncomfortable, vulnerable, humiliated, ashamed, violated and dirty”.¹⁰⁰

The report also revealed that it was very rare for anything illicit to be found as a result of strip-searching women, noting that “[t]his is a dreadful waste of staff time.

Routine strip-searching on transfer to another location or on return from court, when a woman has at all times been under escort and in sight of staff, cannot be justified. In the case of the woman returning from work, common sense alone should prevail.”

The *Corston Report* recommended that strip searching in women’s prisons be reduced to the absolute minimum compatible with security and that the prison service pilot the use of ion scanning machines¹⁰¹ as a replacement for strip searching women for drugs.

The practice of routine strip searching of women in England and Wales came to an end in 2009, after the publication of the *Corston Report*. Strip-searching now needs to be “intelligence-led”,¹⁰² meaning that officers should only conduct strip searches based on well-founded suspicions.¹⁰³



PUTTING IT INTO PRACTICE

08

When discussing the safeguards required when carrying out a search, it is important to clearly distinguish between the different types of searches in use. Terminology may differ from one country to another. There are, however, some key principles that are applicable for all types of searches:

- All searches must be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched;
- All searches must be carried out in accordance with the principles of legality, necessity and proportionality;
- Searches should not be used to harass, intimidate or unnecessarily intrude upon a prisoner’s privacy;
- The prison authorities should keep appropriate records of all searches, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches;
- Safeguards must be in place to prevent the overuse or discriminatory use of all types of searches; and
- All searches should be carried out only by trained personnel.

99. *The Corston Report: A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system*, Home Office United Kingdom, 2007, p. 31 at www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf.

100. *Ibid.*, p. 31.

101. Ion Mobility Spectrometry (IMS) devices are also known as ion scanners. An IMS unit is a type of trace detecting device that measures the deflection of particles after they are exposed to an electric field. The speed at which the particles move helps to determine the substance of origin.

102. *Corston +10, The Corston Report 10 years on: How far have we come on the road to reform for women affected by the criminal justice system?*, Women in Prison, 2017, p. 7 at www.womeninprison.org.uk/perch/resources/corston-report-10-years-on.pdf.

103. See also: *Body Searches*, Detention Focus, Association for the Prevention of Torture at www.ap.t.ch/detention-focus/en/detention_issues/6/.

09 Generally, there are three main types of body searches: pat down or frisk searches, strip searches and body cavity searches.¹⁰⁴ Other types of searches include cell searches and searches of the prisoner's property. Searches carried out with the assistance of dogs may reduce the use of intrusive searches, but, depending on social and cultural context, can be even more degrading and threatening. Dogs should never be present during strip or body cavity searches.

- **Pat down searches**, sometimes known as **frisk searches**, are performed over clothing, and require physical contact, but no nudity. It may sometimes be useful to randomize such searches to ensure that they work well as a preventative measure for smuggling items, while also providing protection against any claims that searches are conducted in a discriminatory manner, targeting only certain individuals or a specific group of prisoners.
- **Strip searches** involve the removal or reorganization of some or all clothing. Strip searches do not usually require physical contact but all parts of the body can be inspected, including areas such as the mouth and genital areas where contraband items could be hidden. It should be noted that whereas body cavity searches are often more tightly regulated than strip searches, strip searches can also be intrusive and humiliating, especially when they involve inspection of body orifices.

Strip searches should never require the person undergoing the search to be fully naked at any one time, to avoid the potential for humiliation. Such searches can, for example, be carried out in two steps, with the upper and lower clothes being removed in separate stages so the prisoner does not have to be fully naked in front of prison staff at any one time.

- **Body cavity** searches are the most intrusive form of body search and involve a physical examination of body orifices, such as the vagina and anus. Cavity searches are often referred to as invasive or intimate searches.¹⁰⁵ Prison staff themselves often find it unpleasant to conduct such searches.

Health-care staff should examine prisoners after body-cavity searches, and pay close attention to the potential physical and psychological consequences of such procedures.

- **Cell searches** involve inspecting a detainee's cell for evidence of contraband items. Cell searches invade the personal space and privacy of prisoners and there is a risk of property being damaged during such searches. When searches are conducted by a single staff member there is also a heightened risk of ill-treatment.

When conducting searches of a prisoner's cell or belongings, staff should bear in mind that the cell is the prisoner's home, and that their belongings may hold particular importance to them. They should, therefore, treat the space and belongings with care and respect. In women's prisons, male guards need to be accompanied by female guards for cell searches, in accordance with Rule 81(2).



PROMISING PRACTICE: RELIGIOUS AND CULTURALLY APPROPRIATE SEARCHES [2.2]

Prison Service instructions in England and Wales contain specific provisions on religious and cultural arrangements for searching prisoners. These include guidelines on strip searches of Muslims and procedures for searching prisoners that have religious or cultural headwear.¹⁰⁶

In Canada, if prison authorities need to search Aboriginal medicine bundles, religious and spiritual or other sacred objects, the owner

is allowed to hold the object for visual inspection. If the owner is not present then an Elder, an Elder's representative or a religious representative can inspect or manipulate the contents for inspection. These procedures are specifically set out in the *Commissioner's Directive on Searching Offenders*.¹⁰⁷

¹⁰⁴ For more details on body searches, see: *Body searches: Addressing risk factors to prevent torture and ill-treatment*, PRI/APT, Penal Reform International/Association for the Prevention of Torture, second edition, 2015.

¹⁰⁵ *Ibid.*, p. 1.

¹⁰⁶ For more information, see: www.justice.gov.uk/offenders/psis.

¹⁰⁷ For more information, see: www.csc-scc.gc.ca/politiques-et-lois/566-7-cd-eng.shtml.

Specific protections for strip and body cavity searches

- 10** The Mandela Rules use the term “intrusive searches” to include both strip and body cavity searches and make it clear that such searches should only be undertaken when absolutely necessary. Here, the term “absolutely necessary” should be understood to mean situations in which there is a concrete risk of the prisoner carrying a prohibited item. The World Medical Association (WMA) has recommended that body cavity searches be used only as a last resort.¹⁰⁸
- 11** The Mandela Rules stipulate that intrusive searches should be conducted in private and by trained staff of the same sex as the prisoner.
- 12** The CPT has stressed that “[a] strip search is a very invasive - and potentially degrading - measure. Therefore, resort to strip searches should be based on an individual risk assessment and subject to rigorous criteria and supervision. Every reasonable effort should be made to minimise embarrassment; detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and to get dressed before removing further clothing.”¹⁰⁹
- 13** Searches need to be conducted by staff of the same sex. Since LGBTI prisoners may face abuse and humiliation when searched by staff of the same sex, those who identify as LGBTI should, if possible, be given a choice of being searched by a male or female officer.¹¹⁰
- 14** While the Mandela Rules allow for intrusive searches under specific circumstances, Rule 52 makes it clear that prison administrations should be encouraged to develop and use appropriate alternatives to intrusive searches of prisoners.



PROMISING PRACTICE: BODY CAVITY SEARCHES IN GREECE – SAFEGUARDS [2.3]

According to the Correctional Code in Greece, all body searches should be carried out in a separate room and by at least two officers of the same sex as the prisoner. If there is a reasonable cause to justify body cavity searches or for part of the body to be x-rayed, then this can only be carried out by a doctor following a prosecutor’s order.

Any vaginal searches must be recorded in a specific register, including details of the incident, the name of the doctor who conducted the search, justification of the search and the date and time of the search, and with reference to the prosecutor’s order.

Body cavity searches – the role of health-care professionals

- 15** Rule 52(2) specifically addresses body cavity searches and the role of qualified health-care professionals in carrying them out. Most importantly, the Rule stipulates that body cavity searches should be conducted by qualified health-care professionals other than those primarily responsible for the care of the prisoner – a position that is also held by the WMA and the CPT.¹¹¹ The rationale for this position is that such searches contradict the duty of care of doctors towards a patient and could jeopardize the trustful relationship that has been built with a patient. Therefore, health-care personnel should not be involved in such searches if they either currently provide, or might subsequently be involved in, the provision of health-care to the prisoner.
- 16** Recognizing that it may not always be possible to find another health-care professional to conduct the search, the Mandela Rules suggest that in such instances body cavity searches can be carried out “at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety.” The WMA has asserted that body cavity searches must only be carried out by personnel who possess the requisite medical skills to safely perform the search.¹¹²

^{108.} *Statement on Body Searches of Prisoners*, World Medical Association, October 1993 (revised May 2005, October 2016) at www.wma.net/policies-post/wma-statement-on-body-searches-of-prisoners.

^{109.} *Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture*, 9 August 2012, CPT/Inf(2012) 21, Para. 32.

^{110.} *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, PRI/APT, *op. cit.*, note 27, p. 10.

^{111.} *Statement on Body Searches of Prisoners*, World Medical Association, *op. cit.*, note 108, para. 9; and *Report to the Estonian Government on the Visit to Estonia carried out by the European Committee for the Prevention of Torture*, 21 January 2014, CPT/Inf(2014) 1, Para. 83.

^{112.} *Statement on Body Searches of Prisoners*, World Medical Association, *op. cit.*, note 108, para. 12.

- 17 The WMA also clarifies that body cavity searches may be performed by a physician to protect the prisoner from the harm that might result from a search by a non-medically trained examiner. Potentially harmful situations include non-medically trained staff examining prisoners that are pregnant or suffer from conditions such as severe haemorrhoids.¹¹³ Similarly, the CoE has stated that "...an intimate medical examination should be conducted by a doctor when there is an objective medical reason requiring her/his involvement".¹¹⁴
- 18 When health-care professionals conduct body cavity searches, they should clearly explain to the prisoner that the search is a non-medical procedure, and that the usual conditions of medical confidentiality do not apply, because authorities will be informed of the results of the search.
- 19 There may also be emergency situations in which health-care professionals working in the prison have to intervene in body cavity searches. This includes situations in which items hidden inside body cavities are likely to cause serious injury to the prisoner.
- 20 Health-care professionals may also be called to attend to a prisoner following a cavity search if it has resulted in injury.

CONTEXT: WHEN BODY SEARCHES CONSTITUTE TORTURE OR OTHER ILL-TREATMENT [2.4]

Body searches can amount to torture when they are carried out with the intention of inflicting severe mental or physical pain or suffering on the person being searched. The risk of torture and other ill-treatment is particularly high when searches are conducted systematically, when not strictly necessary, when they disproportionately target particular groups of prisoners and when carried out by a member of the opposite sex.

Searches might also violate the prohibition of torture and other ill-treatment when conducted using force. They can also result in physical injuries, especially if conducted by an untrained member of staff.

The following examples of searches have been qualified as constituting torture or other ill-treatment by regional and international bodies:

- The SPT has asserted that intrusive vaginal and anal inspections shall be prohibited.¹¹⁵
- The European Court of Human Rights (ECtHR) has found that strip searches can constitute degrading treatment when not justified by compelling security reasons and/or due to the way they are conducted.¹¹⁶ The Court has also recognized that for searches to be degrading or humiliating, "it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others".¹¹⁷
- The Inter-American Court on Human Rights (IACHR) considered a finger vaginal inspection carried out by several hooded staff members at the same time, in a very abrupt manner, "constituted sexual rape that due to its effects constituted torture".¹¹⁸
- The UN Special Rapporteur on torture has found that body searches, in particular strip and invasive body searches, can constitute ill-treatment when conducted in a disproportionate, humiliating or discriminatory manner. The Special Rapporteur has also identified other prohibited practices to include: inappropriate touching, handling amounting to sexual harassment during searches and routine vaginal examinations of women charged with drug offences. These practices have a disproportionate impact on women, particularly when conducted by male guards. When conducted for a prohibited purpose or for any reason based on discrimination and leading to severe pain or suffering, strip and invasive body searches amount to torture.¹¹⁹

113. *Ibid.*, para. 8.

114. *Recommendation Concerning the Ethical and Organizational Aspects of Health Care in Prison*, Council of Europe, 8 April 1998, No. R (98) 7, para. 72.

115. See: the *United Nations Subcommittee on the Prevention of Torture (SPT) reports on the visits to Argentina*, 27 November 2013, CAT/OP/ARG/1, para. 72; and to Brazil, 5 July 2012, CAT/OP/BRA/1, para. 119.

116. *Iwanczuk v. Poland*, Application no. 25196/94, 15 November 2001; *Shennawy v. France*, Application no. 51246/08, 20 January 2011; *Valasina v. Lithuania*, Application no. 44558/98, 24 July 2001; *Frerot v. France*, Application no. 70204/01, 12 June 2007.

117. *Tyrer v. UK*, Application no. 5856/72, 25 April 1978, para. 32.

118. *Miguel Castro-Castro Prison v. Peru*, Inter-American Court of Human Rights, 25 November 2006, para. 312 at www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf. See also: para. 309 to 312: In para. 310, the Court considers that "sexual rape does not necessarily imply a non-consensual sexual vaginal relationship, as traditionally considered. Sexual rape must also be understood as act of vaginal or anal penetration, without the victim's consent, through the use of other parts of the aggressor's body or objects".

119. *Report of the Special Rapporteur on torture, A/HRC/31/57, op. cit.* 27, para. 23.

- The WMA has described invasive searches as “serious assaults on a person’s privacy and dignity” and has pointed out that also they carry some risk of physical and psychological injury.¹²⁰ The WMA has specifically recommended that the practice of “squatting over mirrors to examine the anus while making the prisoner bear down ... constitutes a degrading procedure with questionable reliability and must be banned”.¹²¹

CONTEXT: ALTERNATIVES TO INTRUSIVE SEARCHES [2.5]

Rule 52 makes it clear that prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches of prisoners. Prison administrations should also think more broadly about their search methods given the possibility of smuggling items through other means than the body, such as by using drone technology or prison staff members.

The use of laxatives is not an appropriate alternative to body cavity searches. The CPT has expressed particular concern about the use of irritant laxatives as this can cause the lining of ingested drug parcels to burst and result in death of the prisoner. Instead, the CPT has suggested that “[a] prisoner for whom there are reasonable grounds to suspect of attempting to smuggle drugs into the establishment could be placed in a separate cell for 48 to 72 hours, which is sufficient time for all foreign objects to pass through the body naturally”.¹²²

Understanding the problem of smuggling: Prison authorities should consider why items are smuggled into prison and try to tackle the root cause of the problem. In many instances, items are smuggled in for criminal purposes. However, there is not always a criminal intent. For example, in some prisons, mobile phones were found to have been smuggled in because prisoners were not given enough opportunities to contact their families. Some prisoners may also be pressurized into smuggling items, indicating bullying in the prison, which should be tackled.

Ending unnecessary searches: Prison authorities should consider their existing risk assessment procedures in relation to body searches, to see if there is room for improvement and to reduce the use of unnecessary searches. Unnecessary searches can also be reduced by ensuring that all searches are recorded, thus avoiding duplication of the process by different staff members, and the discriminatory application of search procedures.

Natural means: The WHO has noted that, when a prisoner is hiding something in a body cavity, “[i]n many cases it may suffice to keep the prisoner under close surveillance and wait for the illicit object to be naturally expelled”.¹²³ Some prisons have “dry cells” for this purpose – rooms with no internal sanitation facilities such as a sink or toilet, but which contain receptacles for prisoners to defecate or urinate into.

Cell searches: While cell searches can also infringe on prisoners’ rights, in some circumstances cell searches may be more effective at detecting smuggled items than intrusive body searches.

Body scanners and metal detectors: Electronic body scanners and metal detectors, including hand-held devices, are a useful alternative to body searches.

Ultrasound devices: The WMA has suggested ultrasound and other scans as possible alternative method to body cavity searches.¹²⁴ These devices can, for instance, be used as an alternative to vaginal searches for female prisoners, with the proviso that health-care staff performing such scans must not be involved in prison management.

Anoscopes, otoscopes and vaginal speculums: The Commentary to Rule 19 of the Bangkok Rules states that “[c]avity searches should be restricted to digital intrusion and the use of instruments such as anoscope, otoscope, vaginal speculum, nasal speculum, tongue blade, and simple forceps.” As with other devices, if health-care staff are involved in such prison management-related activities, they must not be the ones providing health-care to prisoners.

120. *Statement on Body Searches of Prisoners*, World Medical Association, *op. cit.*, note 108.

121. *Ibid.*

122. *Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture*, 10 January 2012, CPT/Inf(2012) 1, Para. 51.

123. *Health in prisons*, A WHO guide to the essentials in prison health, WHO Europe, 2007, p. 36.

124. *Statement on Body Searches of Prisoners*, World Medical Association, *op. cit.*, note 108.

Intelligence-led searches

- 21 Searches must be based on the principles of legality, necessity and proportionality. The decision to use an intrusive search method should be based on an individual assessment and/or process as a result of specific, reliable intelligence. Applying dynamic security approaches will facilitate such decision-making.
- 22 Prison staff should base their decision about the most appropriate type of search in a given situation on an agreed set of transparent criteria that are employed consistently. Regular monitoring processes should be in place to ensure compliance with the agreed criteria.
- 23 As part of these criteria, prison staff should ask themselves what the specific purpose of each search would be, and which method would be the least intrusive to achieve this purpose. They should consider whether they are making their determination based on the specific risk posed and scrutinize whether their action may be influenced by stereotypes linked to particular groups of prisoners.

Putting safeguards in place

- 24 All staff members conducting searches must be carefully selected and properly trained. Searches must be monitored effectively to ensure the rules and regulations governing searches are applied fairly and consistently, and to protect against ill-treatment and discrimination.
- 25 It is considered good practice to have two staff members present during searches as a safeguard for prisoners and staff. The CPT has also asserted this position, stating that “[i]n addition, more than one officer should, as a rule, be present during any strip search as a protection to detained persons and staff alike”.¹²⁵ However, care must be taken that this does not lead to further humiliation of the person being searched. When two staff members are present, one should conduct the search and the other should observe.
- 26 Before conducting any type of search it is good practice for prison staff to explain to prisoners the reasons for the search and where and how the search will be conducted. Staff should also be careful about their use of verbal and body language before and during the search, as these factors have a significant impact on the prisoner’s experience of the search procedure. Respectful and professional handling of searches and considerate language help avoid unnecessary friction to the benefit of both prisoners and prison staff.
- 27 Prisoners should always be given the opportunity to disclose or hand over hidden items before the search is conducted, and it should be made clear to prisoners that they have this opportunity. If a prisoner refuses to undergo a body search, the use of force to conduct a search should be the last resort, in line with the principles of legality, necessity and proportionality, and after other interventions have been tried. Other interventions include de-escalation techniques, such as giving prisoners some time out to consider their options, or a period of negotiation to obtain compliance. The prison director or a designated subordinate should be notified if force is used, and this must be recorded in the prisoner file. The use of force is discussed in more detail in **Chapter 3, paragraphs 41–67** of this guidance document.
- 28 All prisoners should have the opportunity to complain if they feel their privacy, dignity or human rights have been violated during search procedures. More guidance on complaint mechanisms can be found in **Chapter 1, paragraphs 130–165** of this guidance document.
- 29 Prisoners should never be used by prison staff to conduct personal or cell searches of other prisoners.



¹²⁵ Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo carried out by the European Committee for the Prevention of Torture, 6 October 2011, CPT/Inf(2011) 26, Para. 29.

Location of searches

- 30 Strip and cavity searches must be carried out in sanitary conditions and in privacy, in a space that is out of view of other prisoners or staff members, but that is not isolated. Expert criminal justice planners and designers have emphasized that the design of search areas “must balance visual privacy and security considerations without provoking a sense of feeling trapped or victimized”.¹²⁶ With this in mind, the use of curtains and other methods of screening within an open room might be more appropriate than a closed or locked door. The search room or area itself should not be located in an isolated part of the prison facility.
- 31 Where men and women are held in separate parts of one prison, there should still be separate search rooms for them. At a minimum, men and women must never be taken to the search area at the same time. The same principle applies for adults and children in prison.

Staff training and supervision

- 32 All staff involved in security procedures should be fully trained in conducting body and cell searches. They should be aware of what types of searches are permissible in a given situation, how to assess the necessity and proportionality of searches, how to determine the most appropriate form of search in each case, how to explain search procedures to prisoners and how to carry out a search with respect for privacy and dignity.
- 33 Relevant staff should also be trained on the heightened vulnerabilities faced by particular groups in relation to searches. This training should include considerations with regard to gender, culture and religion and any specific protocols for search procedures relevant for different groups. This might include, but is not limited to, the situation of women, children in prison, LGBTI individuals and indigenous peoples. It might also include religious and cultural arrangements for searching prisoners.
- 34 PRI and the Association for the Prevention of Torture (APT) have noted that “[t]he video-recording of strip searches as a safeguard and to allow for accountability has been subject to debate, as while it has the potential to prevent abuse, at the same time it infringes a person’s right to privacy and dignity.”¹²⁷ Where a video recording is made, appropriate safeguards must be in place to protect the privacy and dignity of a prisoner.



PROMISING PRACTICE: SAFEGUARDS EMPLOYED WHEN RECORDING STRIP SEARCHES IN CANADA [2.6]

- In Canada strip searches are video recorded with the following safeguards in place to protect the privacy and dignity of the prisoner:
- Two staff members conduct the strip search (the camera operator is not considered one of them);
 - A privacy barrier such as a half-wall, privacy curtain, or portable barrier is used to prevent the recording of the genitalia of the prisoner;
 - Only one of the correctional officers conducts the search and gives instructions to the prisoner;
 - All staff members involved, including the camera operator, are of the same sex as the prisoner;
 - Staff are required to ensure that prisoners diagnosed with gender dysphoria are accommodated for according to their safety and privacy needs; and
 - The camera operator video-records the strip search in such a way that staff members performing the search and the prisoner are filmed simultaneously, while respecting the privacy and dignity of the prisoner. In the event that this is not possible, the camera operator is instructed to fully capture on video the officers conducting the strip search.

126. Laura Maiello and Stephen Carter, ‘Minus the urinals and painted pink?’ *What should a women’s prison look like?*, Penal Reform International blog, 9 December 2015 at www.penalreform.org/blog/10020.

127. See: *Video-recording in police custody: Addressing factors to prevent torture and ill-treatment*, Penal Reform International/Association for the Prevention of Torture, second edition, 2015.

Record keeping

- 35 Rule 51 stipulates that the recording of searches in the prisoner file, including the reasons for the searches, the identities of those who conducted them and any results, is essential for monitoring staff compliance with rules and guidelines on search procedures, and can be used to check that searches are not conducted in a discriminatory manner. Record keeping can also act as a safeguard against staff complicity in the smuggling of goods, by ensuring that all prisoners or visitors are subject to searches.
- 36 The requirement of Rule 51 to keep records of searches links closely with Rule 8, which provides examples of what information should be kept in the prisoner file management system, including information related to behaviour and discipline. For the purposes of accountability and effective monitoring, it is useful if information related to searches, in particular strip searches and body-cavity searches, is not only recorded in the prisoner file but also in a centralized register of searches.
- 37 All prisoner records should be kept confidential and “made available only to those whose professional responsibilities require access to such records”, as specified by Rule 9.

Searches of female prisoners

- 38 Body searches, in particular strip and invasive body searches, can lead to humiliation and abuse for both male and female prisoners. However, given women’s anatomy, how they are socialized, power relations and the high rate of prior abuse women prisoners suffer, the impact of such searches on women is disproportionately greater than on men. Female prisoners are, therefore, at particular risk of ill-treatment during body searches.¹²⁸ The way in which searches of women are conducted may increase the humiliating experience, including if they have to lift their breasts, bend over at the waist and spread their buttocks or if they are menstruating at the time of the search.
- 39 Specific, gender-sensitive guidelines should, therefore, be in place. Rule 19 of the Bangkok Rules clarifies that personal searches of women and girls should “only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures”.¹²⁹
- 40 The Bangkok Rules call on authorities to develop alternative screening methods, such as scans, to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches on women.¹³⁰
- 41 Male staff should be specifically prohibited from performing any type of personal search on women and girls, including pat-down searches, strip searches and invasive searches. Searches of women should be carried out away from the presence and sight of men.
- 42 Pregnant women and girls should never be subjected to vaginal searches.
- 43 Prison management should ensure that there are a sufficient number of trained female staff members available to carry out searches of female prisoners.

Searches of children

- 44 Naturally, all the aforementioned minimum standards and safeguards for searches apply equally to the searches of children in prisons.
- 45 However, due to the unique vulnerability of children, additional measures might be taken into consideration for such searches, taking into account their age, sex and personality. For example, staff performing such searches should be particularly carefully selected and specifically trained in dealing with children.

128. See for example: Andrea Huber in ‘Women and Children as Victims and Offenders: Background, Prevention, Reintegration: Suggestions for Succeeding Generations (Volume 2)’, *Women in Criminal Justice Systems and the Added Value of the UN Bangkok Rules*, Springer International Publishing, 2016, para. 5.9.

129. *The Bangkok Rules*, *op. cit.*, note 28, Rule 19.

130. *Ibid.*, Rule 20.

- 46 Invasive body searches should not be carried out on children, except under very exceptional circumstances, and consent is required from the child and the legal guardian before any invasive search is carried out.¹³¹
- 47 The UN Special Rapporteur on torture has called upon states not to perform strip searches of children in detention unless they have reasonable suspicion that requires them to do so.¹³²
- 48 Children living in prison with a parent should never be treated as prisoners (Rule 29(2)) and should only be searched when it is deemed absolutely necessary to do so. The reasons for any searches of children should be clearly explained to both the child and the parent. The parent should be present during the search and be able to fully view the procedure.
- 49 Girls should never be searched by male staff.
- 50 Rule 21 of the Bangkok Rules stipulates that prison staff “shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners”.

Body searches of LGBTI individuals

- 51 Body searches can be particularly humiliating for LGBTI persons, and they may be at heightened risk of ill-treatment due to their sexual orientation or gender identity. Prison administrations should, therefore, develop specific guidelines for searches of LGBTI prisoners, in particular for transgender and intersex individuals.
- 52 For LGBTI prisoners, the requirement that searches be conducted by staff of the same sex may not provide an appropriate level of safeguards because the risk of harm posed by both male and female officers may be equal. Transgender persons should be asked if they prefer to be searched by a male or female staff member.¹³³
- 53 For transgender and intersex persons, determination of their gender should not depend on their status as recorded in official documents, but on their own self-perceived gender at the time of the search (see Rule 7(a)).



PROMISING PRACTICE: SEARCHING TRANSGENDER PRISONERS – VIDEO PRODUCED BY THE SCOTTISH PRISON SERVICE [2.7]

The Scottish Prison Service has issued a series of short films designed to provide guidance to prison staff on searching transgender prisoners. The films demonstrate a promising practice in that they clearly outline issues around the arrival of a transgender prisoner and make it clear why a gender-sensitive approach is so important. The series includes separate films to demonstrate the search of a trans man and a trans woman, which were produced in conjunction with the Scottish Trans Alliance (scottishtrans.org) and the Equality Network (www.equality-network.org).¹³⁴

The Scottish Prison Service Gender Identity and Gender Reassignment Policy stipulates that people in custody should be body searched in accordance with their wishes. The person in custody must be asked which sex they wish to be searched by, their answer recorded and the body search conducted accordingly.¹³⁵

131. *Resource book on the use of force and firearms in law enforcement*, United Nations High Commissioner for Refugees (UNHCR) and United Nations Office on Drugs and Crime (UNODC), 2017, p. 141, referring to *Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa*, African Commission on Human and Peoples' Rights (ACHPR), May 2014; see also: *Protecting Children against Torture in Detention: Global Solutions for a Global Problem*, American University Washington College of Law's Center for Human Rights & Humanitarian Law, Anti-Torture Initiative, 2017, p. 51.

132. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report to the Human Rights Council*, 5 March 2015, A/HRC/28/68, para. 86(f).

133. *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, PRI/APT, *op. cit.*, note 27.

134. Extracts from the series can be viewed at vimeo.com/99916554.

135. *Gender Identity and Gender Reassignment Policy*, Scottish Prison Service, 12 March 2014 at www.sps.gov.uk/Corporate/Publications/Publication-2561.aspx.

2.2. SEARCH AND ENTRY PROCEDURES FOR VISITORS



RELEVANT RULES: SEARCH AND ENTRY PROCEDURES FOR VISITORS

Rule 60:

1. Admission of visitors to the prison facility is contingent upon the visitor's consent to being searched. The visitor may withdraw his or her consent at any time, in which case the prison administration may refuse access.

2. Search and entry procedures for visitors shall not be degrading and shall be governed by principles at least as protective as those outlined in rules 50 to 52. Body cavity searches should be avoided and should not be applied to children.



WHY IS IT IMPORTANT?

- 54 It may be necessary to search prison visitors in order to safeguard the security of the facility. Visitors may be searched in order to prevent prohibited items from being smuggled into the prison.
- 55 Visitors are not prisoners and hence are not subject to prison rules. This means they can never be forced to undergo searches, even though prison management may make access to the prison subject to certain rules. The search protocol for visitors needs to be at least as strict as for prisoners.
- 56 Prison visitors are likely to feel intimidated, humiliated and scared, especially during their first visit, and it is likely that one of their first interactions with prison staff will be in the context of personal searches. Visitors are likely to find search procedures intrusive and degrading, and only accept them because they are a precondition to visiting the prison.
- 57 Given the importance for prisoners of receiving visits in terms of a prisoner's wellbeing and eventual rehabilitation, staff should be aware that a negative experience of search procedures may deter visitors from returning for future visits.
- 58 If visitors have positive interactions with prison staff, including during search procedures, overall staff-prisoner relations are likely to improve. On the other hand, if visitors tell prisoners about humiliating experiences with staff during search procedures, the level of trust between prisoners and staff is likely to deteriorate.



PUTTING IT INTO PRACTICE

Safeguards

- 59 Rule 60(2) notes that search and entry procedures for visitors must be at least as protective as the procedures outlined for prisoners themselves (Rules 50-52). Visitors must never be treated as prisoners, and prison staff should be particularly sensitive with visiting children. Search procedures should be properly supervised to check they are being applied fairly and consistently.
- 60 Searches must only be applied based on the principles of legality, necessity and proportionality. Where searches are necessary, they must be carried out in a manner that demonstrates due respect of the inherent dignity and privacy of visitors.
- 61 Searches can never be forced upon visitors, who can withdraw their consent to being searched at any time, as Rule 60(1) sets out. The only permissible reaction to a visitor refusing to be searched is to refuse them entry to the prison facility. However, refusing

to be searched need not necessarily mean the visit has to be called off entirely. Instead the visiting arrangement could be amended so that, for example, non-contact visits are set up, so there is no possibility of visitors and prisoners exchanging prohibited items.

- 62 Safeguards and search protocols for particular groups, such as women, children or persons with disabilities, must also be applied for visitors. Rule 60(2) of the Rules reiterates that body cavity searches should be avoided and should not be carried out on children.

Avoiding unnecessary searches

- 63 If visitors are reminded of the possible sanctions and restrictions they face, they may be deterred from attempting to smuggle in prohibited items. Prison authorities should clearly explain what items visitors are allowed to carry on their bodies during visits and what items they are not allowed to give to prisoners. Sanctions for bringing prohibited items should also be clearly explained. This can be done by displaying visible signs at the entrance to the visiting area, and by providing a verbal explanation before the search commences. All visitors should be given the option to handover any prohibited items before the search commences.
- 64 As with searches of prisoners, staff should carefully consider whether carrying out a search on a visitor has a legal basis and is necessary and proportionate. For instance, if the visit is to be a non-contact one, there would be no opportunity for the visitor to hand over illegal items and a search may not be warranted. Similarly, if prisoners are searched as a matter of routine following external visits, the rationale for searching both visitor and prisoner is questionable.

Conduct of searches

- 65 Prison staff should clearly explain to visitors the reason why they need to be searched, how the search will be conducted and what will happen if the visitor refuses to give consent for a search. Prison staff should have friendly, helpful attitudes and carefully consider their verbal and physical body language in their interactions with prison visitors.
- 66 Staff should receive appropriate training in how to deal with prison visitors, bearing in mind that they may be anxious, distressed and fearful. In particular, they should receive training on how to deal with visiting children.
- 67 The UN Committee on the Rights of the Child (UNCRC) recommends putting in place measures “to ensure that the visit context is respectful to the child’s dignity and right to privacy” and urged states to “ensure that security matters and policies on incarcerated parents take into account the rights of affected children”.¹³⁶

Visitor search areas

- 68 Visitor search areas should be designed and located in such a way that they protect the dignity and privacy of the person being searched, and provide safeguards against ill-treatment by staff.

Searches of visiting professionals

- 69 Searches may be necessary not only for those visiting family and friends in prison, but also for service providers and visiting professionals, including lawyers. Searches are particularly necessary if there is a suspicion that these visitors are smuggling contraband items to prisoners, or colluding in escape attempts or other actions that may compromise the security of the prison and the safety of those within the facility.
- 70 Prison monitors and inspectors might also be subject to a security check but, due to their specific mandate and role, search procedures should be minimal and the confidentiality of their documentation must be respected. Ideally, monitors should have prior security clearance to a level appropriate to their role, voiding the need for detailed searches to be carried out.
- 71 If there is a well-founded suspicion that a legal representative is engaged in bringing a prisoner prohibited items, prison authorities have the right to search that person in accordance with the principles of legality, necessity and proportionality. However, prisoners must be able to communicate freely with their lawyer, without interception or censorship.

136. *Children of Incarcerated Parents*, Committee on the Rights of the Child, *op. cit.*, note 44, paras. 38 and 39.

Communications between prisoners and lawyers, including legal paperwork, must remain confidential. Confidential paperwork should only therefore be opened if there is a legitimate reason to suspect that illegal or dangerous items are concealed within that paperwork. However, prison authorities must never read the contents of the documents.

- 72 UNODC has noted that “[c]orrespondence between the prisoners and his or her lawyer should always be treated as confidential and in no circumstances be monitored. Only in exceptional cases, such as there being a reasonable and justifiable suspicion that such correspondence is being used for illegal purposes, should a senior member of staff be permitted to open incoming letters in the presence of the prisoner concerned in order to check for any illegal items. The letter should not be read. Similarly, documents carried by legal representatives into prison must be treated as confidential and the searching of lawyers should be undertaken with particular sensitivity.”¹³⁷

2.3. CHILDREN IN PRISON WITH THEIR PARENT

- 73 The revised SMR incorporate some provisions related to children living in prison with their parent. The Bangkok Rules supplement the Mandela Rules with more detailed guidance on how children and parents in prison should be supported, including in relation to the emotional and developmental needs of children. The Bangkok Rules also provide more guidance on decision-making processes around whether a child should be allowed to stay in prison or be removed. Preliminary observation 12 of the Bangkok Rules states that, “Some of these rules address issues applicable to both men and women prisoners, including those relating to parental responsibilities (...). Accordingly, some of these rules would apply equally to male prisoners and offenders who are fathers.”

Policymakers should develop clear and consistent guidelines on the decision-making process for allowing a child to stay in prison with an adult, as well as guidelines on how long a child can stay in prison. Guidelines should also include when and how a child should be separated from its parent or care-giver, including the consideration of suitable alternative arrangements, and contain provisions to ensure that removal is carried out with due care and sensitivity. Care-givers should be fully informed in advance of the procedures to be followed in this case.

More detail on this subject can be found in guidance published on the Bangkok Rules.¹³⁸



RELEVANT RULES: CHILDREN IN PRISON WITH THEIR PARENT

Rule 29:

1. A decision to allow a child to stay with his or her parent in prison shall be based on the best interests of the child concerned. Where children are allowed to remain in prison with a parent, provision shall be made for:

(a) Internal or external childcare facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent;

(b) Child-specific health-care services, including health screenings upon admission and ongoing monitoring of their development by specialists.

2. Children in prison with a parent shall never be treated as prisoners.

^{137.} *Handbook on the Management of High-Risk Prisoners*, UNODC, *op. cit.*, note 42, p. 139.

^{138.} See for example: *Guidance Document: United Nations Rules on the treatment of Women Prisoners and Non-Custodial measures for Women Offenders* (“Guidance Document on the Bangkok Rules”), Penal Reform International/Thailand Institute of Justice, 2013.



WHY IS IT IMPORTANT?

- 74 In many countries, children are allowed to stay in prison with their parent or main care-giver, which is usually their mother or other female relative.¹³⁹ Children usually end up staying in prison because no alternative care is available, or because they were born while their mothers were in prison.
- 75 Prison environments deprive children of a regular childhood and it can be difficult for prison authorities to cater for their needs. Prison environments pose additional risks, including exposure to violence among prisoners. On the other hand, living in prison with a parent or care-giver may still constitute the best, or only option for the child, and be less harmful than if they were separated.
- 76 Children living with their parent or other care-giver in prison must never be treated as prisoners and prison authorities have a responsibility to protect their health and wellbeing while they are in the facility. They need to plan and cater for their needs accordingly, including through budgetary and resource planning.



PUTTING IT INTO PRACTICE

Decisions on co-habitation

- 77 Decisions on co-habitation should be made on a case-by-case basis by child welfare agencies, in coordination with health-care specialists. The decision-making process should be inclusive of both the care-giver and the child.¹⁴⁰
- 78 As stipulated by Rule 52 of the Bangkok Rules, decisions as to whether and when a child is to be separated from her or his care-giver must be based on individual assessments and with a view to protecting the best interests of the child.
- 79 Individual assessments should be reviewed regularly in recognition of the changing prison environment and the developing needs of the child.
- 80 While the Mandela Rules and the Bangkok Rules refer to mothers (or parents) in connection with care-giver status, children might also live in prison with other care-givers, such as grandparents or older siblings, particularly if their parents are no longer alive or are unable to look after them.

CONTEXT: CHILDREN IN PRISON WITH A PARENT – DECISION-MAKING PROCESSES [2.8]

In assessing whether a child should be housed in prison with or his parent, and when the child should leave, considerations should include:

- The best interests of the child and the right of the child to development opportunities;
- The benefits of a continued parent-child relationship, including if the child is breastfeeding;
- The child’s developing maturity, health and relationship with the parent or care-giver both inside and outside prison;

139. UN Commission on Crime Prevention and Criminal Justice (CCPCJ), *Commentary to the Draft UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders*, E/CN.15/2009/CRP.8, 9 April 2009, page 31 at www.unodc.org/documents/justice-and-prison-reform/Expert-group-meeting-Bangkok/ECN152009_CRP8.pdf. This commentary on the Bangkok Rules makes it clear that some of the rules are applicable to both men and women prisoners, including those relating to parental responsibilities, and that there is therefore a need to recognize the central role of both parents in the lives of children. Accordingly, the rules which relate children living in prison with their parents should apply equally to male prisoners and offenders who are fathers.

140. Article 12 of the UN Convention on the Rights of the Child, adopted by the General Assembly resolution 44/25 of 20 November 1989, provides that: “1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”.

- The conditions in prison, including access to appropriate health-care, education and recreational opportunities;
- The existence and quality of alternative care arrangements outside of prison;
- The remaining length of sentence of the parent or care-giver;
- The views of the child, parents and other relevant family members;
- Possibilities for the child to visit the parent or care-giver in prison; and
- The child’s development and the likely impact of prison and separation on that development.

Living conditions

- 81** Children living in prison with their parent must never be treated as prisoners (Mandela Rule 29(2) and Bangkok Rule 49). They should live in an environment that is as close as possible to that of a child outside of prison (Bangkok Rule 51(2)), for example regarding accommodation, interaction with others, opportunities to play and to be outdoors.
- 82** The safety of a child living in prison with a parent must be a primary consideration when allocating a parent to a specific prison. Care should also be taken that children never come into contact with prisoners who pose a risk to them. Safety must also be ensured during transit and transfer, and when they are in the care of someone other than their parent or main care-giver.
- 83** Prisoners must be provided with the greatest possible number of opportunities to spend time with a child living with them in prison (Bangkok Rule 50).¹⁴¹ However, this does not mean that they have to attend to their babies/toddlers around the clock. Rather, they should still be able to participate in educational or training courses, to attend medical appointments, and to have a break from childcare occasionally.

Child-specific services and protection needs

- 84** Rule 28 states that if a child is born in prison, this fact shall not be mentioned in its birth certificate.
- 85** The Mandela Rules require that in cases where children are allowed to reside in prison with a parent, child-specific health-care services should be available. Authorities should also, where possible, establish links with local specialists in the community, who may be able to visit prisons to assess the impact of imprisonment on the children concerned. Authorities should ensure that babies and children are taken to special clinics for regular check-ups.
- 86** If a child is living in prison with her or his parent or main care-giver, information about the children should be recorded in the prisoner file (Rule 7(f) of the Mandela Rules and Rule 3 of the Bangkok Rules), so that authorities can better respond to and plan for the child’s individual needs. However, this information must be kept confidential.

Staff training and access to other specialists

- 87** Prison staff working in direct contact with children should receive training on child development and their health-care requirements so that they can respond appropriately in times of need and emergencies, as required in Rule 76(2). Specific staff should be designated contact points for children and their parent/care-givers so that they can co-ordinate with relevant specialists as appropriate.

¹⁴¹ *The Bangkok Rules, op. cit.*, note 28, Rule 50.

2.4. PRISONERS WITH DISABILITIES

- 88 The Mandela Rules have been updated to reflect the situation and needs of prisoners with disabilities and to ensure that they have full and effective access to prison life on an equal basis, and are treated in accordance with their health needs.¹⁴²



RELEVANT RULES: PRISONERS WITH DISABILITIES

Rule 5(2): Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

Rule 39(3): Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.

Rule 109:

1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom

staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.

2. If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.

3. The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

Rule 110: It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare.



WHY IS IT IMPORTANT?

- 89 Prisoners with various types of disabilities will have specific disability related needs that prisons might not be adequately equipped to accommodate, including, for instance, the need for wheelchairs, canes and orthotics, sign language interpreters and information in formats that are accessible to persons who are blind or who suffer from visual impairments.
- 90 Prisons are also often unable to fulfil the general accessibility requirements for persons with various types of disabilities. Similarly, prisons and prison staff are not usually equipped to recognize and deal with prisoners who have mental health conditions. The ageing prison population in many countries suggests that the number of persons with disabilities in prison will rise and their needs will increasingly have to be considered.
- 91 The UNODC *Handbook on Prisoners with Special Needs* contains detailed guidance on how to manage prisoners with disabilities, pointing out, that “[t]he difficulties persons with disabilities face in society are magnified in prisons, given the nature of the closed and restricted environment and violence resulting from overcrowding, lack of proper prisoner differentiation and supervision, among others. Prison overcrowding accelerates the disabling process, with the neglect, psychological stress and lack of adequate medical care, characteristic of overcrowded prison. (...) Thus imprisonment represents a disproportionately harsh punishment for offenders with disabilities, often worsening their situation and placing a significant burden on the prison system’s resources.”¹⁴³

142. *The Mandela Rules*, op. cit., note 1: the first sentence of Rule 109 deals with the criminal liability of those with mental disabilities and/or health conditions and therefore goes beyond the remit of prison authorities. Decisions to imprison persons with mental disabilities and/or health conditions are the responsibility of judicial officials.

143. *Handbook on Prisoners with Special Needs*, UNODC, op. cit., note 87, p. 43.

- 92 Discrimination against persons with disabilities is likely to be intensified in prisons. As UNODC points out “[p]risoners with disabilities encounter difficulties in accessing services, complying with rules and participating in prison activities that do not take account of their special needs. Due to architectural barriers, prisoners with mobility impairments may be unable to access dining areas, libraries, sanitary facilities, work, recreation and visiting rooms. Prisoners with visual disabilities cannot read their own mail unassisted or prison rules and regulations, unless they are provided in Braille. They are unable to use the library, unless taped materials or books in Braille are available. Prisoners with a hearing or speaking disability may be denied interpreters, making it impossible for them to participate in various prison activities, including counselling programmes, as well as their own parole and disciplinary hearings. Prisoners with disabilities can be routinely denied participation in work programmes outside prison, sometimes significantly lengthening their periods of imprisonment.”¹⁴⁴
- 93 The ECtHR has ruled that denial of accessible conditions and/or reasonable accommodation to persons with disabilities while in custody amounts to inhuman or degrading treatment.¹⁴⁵

144. *Ibid*, p. 45.

145. See for example: *Price v. the United Kingdom*, Application no. 33394/96, 10 July 2001; *Vincent v. France*, Application no. 6253/03, 24 October 2006; *Grimailovs v. Latvia*, Application no. 6087/03, 25 June 2013; *Semikhvostov v. Russia*, Application no. 2689/12, 2014; *Asalya v. Turkey*, Application no. 43875/09, 15 April 2014 and *Z.H. v. Hungary*, Application no. 28973/11, 8 November 2012.





PUTTING IT INTO PRACTICE

- 94 The preamble to the UN Convention on the Rights of Persons with Disabilities (CRPD) recognizes that “disability is an evolving concept” and that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”.¹⁴⁶
- 95 Article 14(1)(b) of the CRPD states that “the existence of a disability shall in no case justify a deprivation of liberty”. Article 14(2) of the Convention stipulates that if persons with disabilities are deprived of their liberty, “they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.”¹⁴⁷
- 96 Rule 5(2) of the Mandela Rules should be read together with Rule 4(2), which requires that all programmes, services and assistance be delivered in line with the individual treatment needs of prisoners. This links closely to the initial and ongoing individual needs and risks assessments, which are dealt with in more detail in **Chapter 1, paragraph 64–67** of this guidance document.
- 97 Reasonable accommodation and adjustments, as required in Rule 5(2), includes eliminating physical barriers for prisoners with mobility impairments, providing documents in Braille or as taped materials for prisoners with visual disabilities and access to interpreters for prisoners with sensory disabilities. Article 2 of the CRPD defines “reasonable accommodation” as the “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.¹⁴⁸
- 98 In addition to considering mental health and developmental disabilities when imposing disciplinary sanctions, “disabilities should also be taken into account in any reward or privilege system that recognises good behaviour and assessment of risk reduction for release. (...) If certain programmes or activities are only accessible to prisoners who progress in a certain way then some prisoners with mental, intellectual or learning disabilities may be excluded, which constitutes discrimination.”¹⁴⁹ More information about restrictions, discipline and sanctions can be found in **Chapter 4**.
- 99 As Article 4(3) of the CRPD points out, authorities should closely consult with and actively involve persons with disabilities in the development and implementation of legislation and policies concerning them. To fully understand and meet the needs of persons with disabilities, prison authorities should also seek out partnerships with community organizations and experts to learn from good practice in the community.
- 100 Rule 109(2) of the Mandela Rules obliges prison authorities to provide specialized facilities under the supervision of qualified health-care professionals for prisoners with mental disabilities and/or health conditions. Furthermore “any assessment or treatment should only be provided where the prisoner provides his or her informed consent”.¹⁵⁰

146. UN Convention on the Rights of Persons with Disabilities (CRPD), *General Assembly resolution 61/106*, 13 December 2006; and *Guidelines on article 14 of the CRPD: The right to liberty and security of persons with disabilities*, UN Committee on the Rights of Persons with Disabilities, September 2015.

147. *Ibid.*

148. See also: *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 19.

149. *Ibid.*

150. *Ibid.*

2.5. DEALING WITH THE BODY OF A DECEASED PRISONER



RELEVANT RULES: DEALING WITH THE BODY OF A DECEASED PRISONER

Rule 72: The prison administration shall treat the body of a deceased prisoner with respect and dignity. The body of a deceased prisoner should be returned to his or her next of kin as soon as reasonably possible, at the latest upon completion of the investigation. The prison administration shall facilitate a culturally appropriate funeral if there is no other responsible party willing or able to do so and shall keep a full record of the matter.



WHY IS IT IMPORTANT?

- 101 Rule 72 relates to Rule 1 of the Mandela Rules, which stipulates that all prisoners be treated with respect for their inherent dignity and value as human beings. Additionally, sensitivity and respect is required when prison staff interact with the family and friends of a deceased prisoner. Rule 72 also relates to Rule 69, which deals with processes for notifying a prisoner's next of kin or emergency contact in the event of death.
- 102 The requirement for prisons to keep a full record of any funerals organized by them is important to ensure that the family are notified and to guard against the possibility that bodies are disposed of without proper investigation.
- 103 There may be additional cultural, religious and/or gender-related requirements regarding the treatment of the body of a deceased prisoner.
- 104 Rule 72 is included in the section of the Mandela Rules that deals with investigations into custodial deaths. The formulation and context of the Rules suggest that Rule 72 applies in all cases, including cases where the death penalty is administered.



PUTTING IT INTO PRACTICE

- 105 Prison staff should receive training on how to deal with the bodies of deceased prisoners in a gender-sensitive way and with due respect for their religious and cultural norms. The manner in which a body is treated should be in line with procedures that would take place outside of a prison context. Staff should also be instructed on how to communicate respectfully and sensitively with the family and friends of deceased prisoners.
- 106 Where possible, necessary investigations, such as autopsies, should proceed swiftly so that there is no unreasonable delay in returning the body of a deceased prisoner to the next of kin. This is particularly important because of the distress a delay can cause to the family/friends, in particular in cultures where funerals normally take place quickly. Usually, there is no justification for keeping a body after an autopsy has been performed. Where the next of kin is not known, the body should be returned to the prisoner's named emergency contact.
- 107 UNOPS suggests that "[p]risons may require a facility where prisoners who have died can be prepared for burial or cremation, or where they can be stored while awaiting family arrangements. In such a case, special considerations must be incorporated to prevent the spread of disease".¹⁵¹
- 108 When a deceased prisoner's body is returned to the next of kin or emergency contact, the prisoner's belongings should also be returned to the designated person in line with Rule 67 on the retention of a prisoner's property.

¹⁵¹ Technical Guidance for Prison Planning, UNOPS, *op. cit.*, note 84, p. 157.

2.6. SLAVERY



RELEVANT RULES: SLAVERY

Rule 97

1. Prison labour must not be of an afflictive nature.
2. Prisoners shall not be held in slavery or servitude.

3. No prisoner shall be required to work for the personal or private benefit of any prison staff.



WHY IS IT IMPORTANT?

- 109 The Universal Declaration of Human Rights (UDHR) states that “[a]ll human beings are born free and equal in dignity and rights” and that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”.¹⁵² The International Covenant on Civil and Political Rights (ICCPR) also states that “[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited, no one shall be held in servitude and no one shall be required to perform forced or compulsory labour”.¹⁵³



PUTTING IT INTO PRACTICE

- 110 The International Labour Organization (ILO) Convention No. 29 concerning Forced or Compulsory Labour, the adoption of which dates back to 1930, obliges signatory states to suppress the use of forced or compulsory labour in all its forms within the shortest possible period, but makes a few specific exemptions such as compulsory military service and “any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations”. The ILO Convention clarifies, that this is because “except in a few rare cases the prisoner works under compulsion. He cannot choose his employment as the free worker does, but must usually do whatever work is assigned to him. The conditions in which this work is carried out are fixed by unilateral decision of the State; the prisoner has no voice in the matter and cannot as a rule appeal to the courts if he is the victim of injustice.”¹⁵⁴
- 111 The ILO Committee of Experts – the body charged with interpretation of ILO Conventions – has consistently required that there be objective and verifiable indicators that prisoners who work for private entities do so voluntarily. Specifically, the Committee has stated that Article 2(2)(c) of Convention 29 allows prisoners to work for private companies “only where prisoners worked in conditions approximating a free employment relationship”.¹⁵⁵ Further, on balance, the “circumstances in which the prison labour is performed should not be so disproportionately lower than the free market that it could be characterized as exploitative”.¹⁵⁶

¹⁵². *Universal Declaration of Human Rights*, General Assembly resolution 217 A(III), 10 December 1948, Articles 1 and 4.

¹⁵³. *International Covenant on Civil and Political Rights (ICCPR)*, General Assembly resolution 2200A (XXI), 16 December 1966, Article 8.

¹⁵⁴. *Memorandum on Prison Labour*, International Labour Organization (ILO), *International Labour Review*, Vol. XXV, 1932, pp. 313-314.

¹⁵⁵. *Eradication of forced labour*, International Labour Organization (ILO), *Forced Labour Convention*, 15 February 2007, Chapter II, para. 116.

¹⁵⁶. *General Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Organization Conference, 89th Session, 2001, p. 46, para. 143 at [www.ilo.org/public/libdoc/ilo/P/09661/09661\(2001-89-1A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2001-89-1A).pdf).

CONTEXT: ILO'S INDICATORS OF A FREE EMPLOYMENT RELATIONSHIP [2.9]

According to the ILO, indicators of a free employment relationship include:

1. The inmate's formal consent to work, in writing, with the consent form indicating wages and conditions of work;
2. Conditions of work that are similar to work outside the prison, namely:
 - Wages comparable to those of free workers with similar skills and experience in the relevant industry or occupation, taking into account factors such as productivity levels and any costs the enterprise incurs for prison security in connection with supervision of workers.
 - Wages paid directly to workers. Workers should receive clear and detailed wage slips showing hours worked, wages earned and any deductions authorized by law for food and lodging.
 - Daily working hours in accordance with the law.
 - Safety and health measures which respect the law.
 - Workers are included in the social security scheme (if applicable) for accident and health coverage;
 - Workers obtain benefits, such as learning new skills and the opportunity to work co-operatively in a controlled environment enabling them to develop team skills;
 - Workers have the possibility of continuing work of the same type upon release; and
 - The ability to withdraw their consent at any time, subject only to reasonable notice requirements.





3

3.

INCIDENT PREVENTION AND RESPONSE

3.1 INSTRUMENTS OF RESTRAINT

3.2 USE OF FORCE AND ARMS

3.3 INVESTIGATIONS

3. INCIDENT PREVENTION AND RESPONSE

- 01 The Mandela Rules were updated to include methods to prevent disciplinary offences or to resolve conflict in prisons by applying “conflict prevention, mediation or any other alternative dispute resolution mechanisms” (see Rule 38(1)) and acknowledging the approach of dynamic security (see Rule 76(c)) to prevent and resolve conflicts before they escalate.

In case such methods do not suffice, guidance has also been included on the use of instruments of restraint. Provisions on the use of force and of arms have not been updated in the revised SMR. The scope of the Rules in this regard therefore remains limited as part of a provision in the section related to institutional personnel. However, guidance included in the UN Code of Conduct for Law Enforcement Officials¹⁵⁷ and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF)¹⁵⁸ continue to supplement the Mandela Rules on the use of force and arms.

Furthermore, provisions have been incorporated into the Rules on the course of action in cases of any death, disappearance or serious injury, including obligations on reporting and investigations. The revised Rules also outline procedures to be followed whenever an act of torture or other ill-treatment may have been committed, irrespective of whether a formal complaint has been received.

CONTEXT: DYNAMIC SECURITY APPROACHES [3.1]

It is now generally acknowledged that creating a positive climate that encourages co-operation among prisoners can help to improve safety and security in prisons: “engaging with prisoners and getting to know them can enable staff to anticipate and better prepare themselves to respond effectively to any incident that may threaten the security of the prison and the safety of staff and inmates”.¹⁵⁹ This method of directly engaging with prisoners is usually referred to as dynamic security. The Mandela Rules acknowledge the concept of dynamic security in Rule 76(c).

UNODC has noted that, while physical and procedural security arrangements are “essential features of any prison (...) they are not sufficient in themselves to ensure that prisoners do not escape. Security also depends on an alert group of staff who interact with, and who know, their prisoners; staff developing positive staff-prisoner relationships; staff who have an awareness of what is going on in the prison; fair treatment and a sense of wellbeing among prisoners; and staff who make sure that prisoners are kept busy doing constructive and purposeful activities that contribute to their future reintegration into society”.¹⁶⁰

Dynamic security approaches involve proactive and frequent interaction between prison staff and prisoners. This allows staff to observe prisoners and gather information. Such regular interaction provides warning signs about possible incidents and allows prison staff to anticipate and prevent problems before they arise.

157. *Code of Conduct for Law Enforcement Officials*, General Assembly resolution 34/169, 17 December 1979.

158. *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 8th UN Congress on Prevention of Crime and Treatment of Offenders, 7 September 1990.

159. *Handbook for Prison Leaders*, UNODC, *op. cit.*, note 73, p. 106.

160. *Handbook on Dynamic Security and Prison Intelligence*, United Nations Office on Drugs and Crime (UNODC), 2015, p. 29.

Such an approach also means that if an incident occurs prison staff already know individual prisoners well enough to be able to respond effectively.¹⁶¹

Dynamic security approaches have been shown to improve security. According to the CPT, constructive relations between prisoners and staff “will serve to lower the tension inherent in any prison environment and by the same token significantly reduce the likelihood of violent incidents and associated ill-treatment”.¹⁶² UNDOC also states that the “approachability of staff, instilling confidence, creating a sense of order and safety/security” has been found to prevent conflict.¹⁶³

3.1. INSTRUMENTS OF RESTRAINT

02 Instruments of restraint have been defined as “external mechanical devices designed to restrict or immobilise the movement of a person’s body, in whole or in part”.¹⁶⁴ There are many different types of instruments of restraint, and new ones continue to be developed.

The use of restraints, including during transfer, should be strictly regulated by law and authorities should develop clear policies and procedures for their use, in line with the Mandela Rules, the Code of Conduct for Law Enforcement Officials and the BPUFF. These should include, at a minimum, the types of restraint that can and cannot be used and the risks associated with them; the circumstances in which they may be applied; the way in which they should be applied to minimize the risk of injury and pain; which staff are allowed to use them and who should authorize their use; and the reporting requirements for the use of restraints.

Laws, policies and procedures on the use of restraints should be publicly available and accessible to all staff, internal and external monitors, and prisoners. Such laws, policies and procedures should be regularly reviewed, with new medical research regarding their use given due consideration.

The use of restraints that are inherently degrading or painful must be prohibited. If laws or regulations contain a list of prohibited items, the list should not be interpreted narrowly, and there should be provision for other items to be prohibited if they are inherently degrading or painful, including new technologies. This must be made clear to prison staff.



RELEVANT RULES: INSTRUMENTS OF RESTRAINT

Rule 47:

1. The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.

2. Other instruments of restraint shall only be used when authorized by law and in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;

(b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.

¹⁶¹. *A Human Rights Approach to Prison Management*, ICPS, *op. cit.*, note 29, pp. 59, 70-71. See also: *Prison Incident Management Handbook*, United Nations Department of Peacekeeping Operations (DPKO), 2013, pp. 15 and 21 onwards; *Handbook on Dynamic Security and Prison Intelligence*, UNODC, *op. cit.*, note 160; and *Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials*, UN Office of the High Commissioner for Human Rights (OHCHR), vol. I, Geneva, 2005, p. 98.

¹⁶². *2nd General Report on the CPT's activities*, *op. cit.*, note 79, para 45.

¹⁶³. *Handbook on Dynamic Security and Prison Intelligence*, UNODC, *op. cit.*, note 160, p. 32.

¹⁶⁴. *Instruments of restraint: Addressing risk factors to prevent torture and ill-treatment*, Penal Reform International/Association for the Prevention of Torture, second edition, 2015, p. 1.



RELEVANT RULES: INSTRUMENTS OF RESTRAINT (CONTINUED)

Rule 48:

1. When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply:

(a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;

(b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed;

(c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.

2. Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.

Rule 49: The prison administration should seek access to, and provide training in the use of, control techniques that would obviate the need for the imposition of instruments of restraint or reduce their intrusiveness.

Rule 76:

1. Training referred to in paragraph 2 of rule 75 shall include, at a minimum, training on: (...)

(c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation;



WHY IS IT IMPORTANT?

03

Many new provisions in the Mandela Rules derive from the obligation of states to prevent and prohibit torture and other ill-treatment, and to safeguard the dignity inherent to all human beings. The use of force, arms and instruments of restraint, by their very nature, pose particular risks in this regard. However, prison authorities are sometimes required to use them to protect the safety of individuals or the security of the facility when other methods of control have failed. The provisions incorporated in the revised Rules are meant to provide policymakers, prison management and staff, with guidance on how to balance the need to use force, arms and restraints with the obligation to respect the dignity of those subject to force.



- 04 The use of instruments of restraint must be regulated and carefully monitored because of the high risk of humiliation, pain, torture, other ill-treatment or other potentially irreversible harm that prisoners may suffer as a result of such instruments being used on them.
- 05 Some instruments of restraint are inherently degrading or painful, while others pose a risk of injury depending on why and how they are used. If such instruments are applied deliberately to inflict pain or suffering, this constitutes torture.
- 06 Instruments of restraint that are not considered to be inherently degrading or painful may, nevertheless, be humiliating for the person concerned, or can be applied in ways that are unnecessarily painful. It should also be noted that restraints may be more painful or humiliating to some prisoners than others.
- 07 In a well-managed prison, the use of instruments of restraint should be the exception and not the rule. Their regular and systematic use can create tension and distrust between staff and prisoners, and accentuate the power imbalance within detention facilities. Fair and transparent procedures for using force enable prisoners to understand when and under which circumstances restraints can be used.
- 08 Alternatives to restraints are not only more humane; they may also be more effective in the long-term and are likely to contribute to more positive prisoner-staff relations.



PUTTING IT INTO PRACTICE

Prohibited instruments of restraint

- 09 The prohibition of the use of chains, leg-irons or other instruments of restraint that are inherently degrading or painful derives from the general prohibition of torture and other ill-treatment. The use of such instruments is absolutely prohibited and can never be justified by arguments of necessity or proportionality.
- 10 The list of prohibited items in Rule 47(1) is illustrative rather than comprehensive. The Rules do not attempt to provide a full list of prohibited items because different technology is used in different countries, and because the list would quickly be out-of-date due to the rapid development of new technologies. The Rules note that there are also other instruments of restraint that are inherently degrading or painful but that are not specifically mentioned in Rule 47(1). “[I]nherently degrading or painful restraints” has been interpreted to encompass, for example, the equipment and their use, described below.¹⁶⁵

CONTEXT: PROHIBITED MEANS OF RESTRAINT [3.2]

The following restraints have been found to be inhuman or degrading¹⁶⁶:

- **Weighted restraints.** The UN Special Rapporteur on torture has noted that the practice of applying leg-irons weighing approximately 3 kilograms, 24 hours per day is inhuman and degrading.¹⁶⁷ In the context of a prohibition in trade of goods that could be used for torture or other cruel, inhuman or degrading treatment, the European Union (EU) has banned weighted leg restraints, stating that they are likely to cause severe pain or suffering.¹⁶⁸
- **Restraints that have a fixed, rigid bar between cuffs.** For example, leg restraints that have “an iron bar riveted (...) to shackles, keeping the prisoner’s legs permanently apart at the bar’s length” have been described as inherently inhuman and degrading” by the UN Special Rapporteur on torture.¹⁶⁹

¹⁶⁵. *Monitoring Weapons and Restraints in Places of Detention: A Practical Guide*, Omega Research Foundation, 2018.

¹⁶⁶. For more information see also: *A Visual Guide to Military, Security and Police Equipment Prohibited or Controlled by the EU Torture Trade Regulation*, Council Regulation (EC) 1236/2005, Omega Research Foundation, 2017.

¹⁶⁷. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report Mission to China*, 10 March 2006, E/CN.4/2006/6/Add.6, Commission on Human Rights 62nd session, p. 44.

¹⁶⁸. *Commission Implementing Regulation No 775/2014 amending council Regulation (EC) No 1236/2005*, European Union, 16 July 2014, para. 6.

¹⁶⁹. United Nations Special Rapporteur on Torture, *Study on the situation of trade in and production of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms*, 13 January 2003, E/CN.4/2003/69, para. 9.

- **Thumb-cuffs, finger-cuffs, thumbscrews and finger-screws.** These restraints fall into the category of goods that “have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment”, according to an EU regulation prohibiting the trade of such devices.¹⁷⁰
- **Fixed restraints,** meaning cuffs that are “designed to be anchored to a wall, floor or ceiling”. The EU has ruled that these restraints to have “no practical use other than for (...) the purpose of torture and other cruel, inhuman or degrading treatment or punishment”.¹⁷¹ The CPT has noted that handcuffing detained persons to fixed objects is “is a matter of longstanding concern” and has called upon authorities to remove fixtures such as metal rings and floor to ceiling bars that are clearly designed for this purpose.¹⁷²
- **Cage beds and net beds** meaning beds comprising a cage (four sides and a ceiling) or similar structures enclosing a human being within the confines of the bed, the ceiling or one or more of the sides of which are fitted with metal or other bars, and which can only be opened from outside (cage beds). The definition also includes similar structures where the ceiling or one or more sides of which are fitted with nets, and which can only be opened from outside (net beds). The EU has stated that “[C]age beds and net beds are not an appropriate means for restraining patients or prisoners.”¹⁷³ Trade in these items has also been prohibited by the EU.
- **Restraint chairs, shackle boards and shackle beds,** meaning chairs, boards or beds fitted with shackles or other devices to restrain a human being should be abolished altogether according to the UNCAT, which has stated that “their use almost invariably leads to breaches of article 16 of the Convention [on cruel, inhuman or degrading treatment]”.¹⁷⁴ The EU has noted that “[R]estraint chairs, shackle boards and shackle beds restrict movement of the prisoner much more than simultaneous application of, e.g. handcuffs and ankle cuffs. The inherent risk of torture or inhuman treatment increases when this restraining technique is applied for longer periods. It is therefore necessary to prohibit the trade in restraint chairs, shackle boards and shackle beds with an exception for chairs only fitted with straps or belts.”¹⁷⁵
- **Electric-shock weapons,** meaning portable electric shock devices, including but not limited to, electric shock batons, electric shock shields, stun guns and electric shock dart guns and electric shock devices have also been condemned by a number of bodies, including the UNCAT, the UN Special Rapporteur on torture and the CPT.¹⁷⁶ The EU requires an export authorization for portable electric shock devices and has prohibited the export and import of electric-shock belts designed for restraining human beings by the administration of electric shocks.¹⁷⁷

Less intrusive instruments of restraint

- 11 International law permits the use of restraints only in the very narrow circumstances detailed in Rule 47. Any use of restraint must be in accordance with the principles of legality, necessity and proportionality and as a measure of last resort, when other methods have failed. Whenever possible, authorities should instead use de-escalation, mediation and alternative dispute resolution mechanisms (see Rule 38(1)).
- 12 Dynamic security approaches help prevent situations in which prison staff need to use instruments of restraint, force or arms. In well-managed facilities, prison staff will be able to detect many of the risks (escape, suicide and violent tendencies) at an early stage and be in a position to make well-timed interventions.

170. Council Regulation 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, European Union, article 5 in connection with Annex III; and Regulation No 775/2014, European Union, *op. cit.*, note 168, para. 6.

171. Regulation No 775/2014, European Union, *op. cit.*, note 168, Annex II, para. 2.4.

172. Report to the Government of the Slovak Republic on the visit carried out by European Committee for the Prevention of Torture, 11 February 2010, 8-19 November 1999; 1-19 May 2000, CPT/Inf(2010) 1, para. 22.

173. Regulation No 775/2014, European Union, *op. cit.*, note 168, para. 12 and Annex II, para. 2.7 and 2.8.

174. Report of the UN Committee against Torture (UN CAT), Consideration of reports submitted by States Parties under article 19 of the Convention, A/55/44, Chapter IV, M para. 180(c).

175. Regulation No 775/2014, European Union, *op. cit.*, note 168, para. 12 and Annex II, para. 2.5 and 2.6.

176. See for example: UN CAT, A/55/44, *op. cit.*, note 174, para. 179(e); Report of the Special Rapporteur on Torture, A/68/295, *op. cit.* note 57, para. 58; 20th General Report of the CPT, Council of Europe, 26 October 2010, paras. 65-84.

177. Council Regulation 1236/2005, European Union, *op. cit.*, note 170, Articles 3 and 4 of Annex II and Article 5 of Annex III; and Regulation No 775/2014, European Union, *op. cit.*, note 168, para. 16.

- 13 If alternative methods of control have been tried but failed, Penal Reform International (PRI) and the Association for the Prevention of Torture (APT) have suggested that “[f]abric leg restraints, appropriately tested and selected in line with human rights standards, could provide a more humane, yet effective, alternative to the use of ‘metal on skin’.”¹⁷⁸ Any metal restraints in use should be double locking to reduce the risk of overtightening.

Safeguards for the use of restraints

- 14 Instruments of restraint should be used in a manner than minimises, where possible, the pain caused by their application, and they should be removed at the earliest possible opportunity. They should never be applied, or their application prolonged, as a form of punishment.
- 15 Once prisoners are placed in restraints no other means of force should be used against them unless they still pose an immediate and serious threat that cannot be contained by less extreme measures.
- 16 Prisoners held under any form of restraint should be kept under constant and adequate supervision, as recommended by the CPT.¹⁷⁹ Such monitoring is important to prevent against strangulation or any other danger linked to use of the restraint. Particular care must be taken when using restraints on sick or injured prisoners, elderly prisoners and those with specific physical or mental health conditions and disabilities.
- 17 Restraints should not be used on prisoners during visits from family or friends, or during medical appointments, unless they are absolutely necessary to protect other person’s property, or to prevent escape.
- 18 Restraints should be removed before prisoners appear before a judicial or administrative authority to avoid humiliation and to reduce the risk that prisoners are assumed to be guilty or dangerous because they are wearing restraints.
- 19 The WHO has noted that actively suicidal prisoners may require protective clothing or restraints but notes that, in such cases, “clear policies and procedures must be in place if they are to be used. These must outline the situations in which restraints are appropriate and inappropriate, methods for ensuring that the least restrictive alternatives are used first, safety issues, time limits for use of restraints, the need for monitoring and supervision while in restraints, and access to mental health staff.”¹⁸⁰
- 20 If the prison director is not available to authorize the use of restraints, then another senior staff member should be delegated the responsibility for authorizing such action.

Post-incident procedures

- 21 Any time a restraint is used the process must be properly supervised and recorded in the prisoner file management system, in accordance with Rule 8(c). The records should indicate, at minimum, the type of restraint used, why the restraint was used, for how long it was used, who applied it and who authorized its use. The records should also include details of any injuries sustained by the prisoner, details of when the restraint was no longer needed and any complaints that may have been raised by the prisoner concerning the use of the restraint (Rule 8(d)).¹⁸¹
- 22 In addition to recording the use of a restraint in individual files, prison administrations should also keep and analyse disaggregated statistics on their use. This can help prisons to safeguard against the discriminatory use of restraints and ensure that safeguards are properly managed. The collection and use of prison data is dealt with in more detail in **Chapter 1** of this guidance document.
- 23 Every time a restraint is used there should also be a debriefing process. It is good practice to also include the experience of the prisoner in such processes.

178. *Instruments of restraint: Addressing risk factors to prevent torture and ill-treatment*, PRI/APT, *op. cit.*, note 164, p. 1.

179. *2nd General Report on the CPT’s activities*, *op. cit.*, note 79, para. 53.

180. *Preventing Suicide in Jails and Prisons*, World Health Organization/International Association for Suicide Prevention, 2007, p. 17 at apps.who.int/iris/handle/10665/43678.

181. See for example: *Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture*, 2 June 2015, CPT/Inf(2014) 21, para. 104.

- 24 Monitoring bodies need to have full access to records of the use of restraints, including any audio and video recordings of restraints being used.



PROMISING PRACTICE: DEBRIEFING FOLLOWING THE USE OF RESTRAINTS ON JUVENILE PRISONERS – ENGLAND AND WALES [3.3]

In England and Wales, authorities are required to carry out a structured debriefing following the use of force or restraint on juveniles in prison, including with the staff directly involved in the incident and the young person subject to the use of force or restraint. The outcome of all debriefings should be recorded in writing.

The debriefing process has two stages. The first step consists of an initial debriefing, as soon as possible after the use of force, to check the wellbeing of the prisoner and to ensure he or she understands what has happened, why it was necessary and what is going to happen next. The second step consists of a full debriefing with the prisoner, which should then take place within 48 hours of the use of force or restraint and in the presence of a lawyer if the prisoner requests. The purpose of the full debriefing is to agree an action plan to encourage positive behaviour and to minimize the likelihood of needing to use physical restraint again in the future.

Prison staff also go through a two-step process to debrief the use of force of restraint. The first step consists of an initial debriefing, which is to be held as soon as practical after the use of force, to ascertain if staff need medical treatment and to make sure they know they are required to complete incident reports while the details are fresh in their memory. The second step consists of a full debriefing, which takes place after statements on the use of force have been completed, to ensure that all staff understand the context of the incident and to reflect on any lessons that can be learned for managing difficult behaviour in future.¹⁸²

Training on the use of restraints

- 25 Training on the use of restraints should be regularly updated to reflect the introduction of new types of restraint, alternative methods of control and new medical studies on their impacts.
- 26 Rule 76(1)(c) also stipulates that relevant prison staff should be provided with training on the use of instruments of restraint “with due consideration of preventive and defusing techniques, such as negotiation and mediation”. This training should include real-life scenarios and practical exercises.
- 27 Only staff members who have been trained in the use of restraints should be authorized to use them.

CONTEXT: TRAINING ON THE USE OF RESTRAINTS [3.4]

Staff should receive training on the use of restraints before they enter active duty. Part of that training should involve having different instruments of restraints used on themselves. They will also require training updates during the course of their employment. All training should incorporate real life scenarios and practical exercises, and should include, as a minimum:

- Training on all relevant laws, policies and procedures;
- The instruments of restraint that can and cannot be used, and the risks associated with them
- The criteria for their deployment;
- How to use different instruments of restraint safely, legitimately and proportionately;
- How to use force or arms to the minimum extent necessary, and how to determine when their use is no longer necessary;

¹⁸² Use of Force Implementation of Minimising and Managing Physical Restraint, Ministry of Justice Prison Service Instruction, 21 February 2014.

- Alternative intervention techniques, including pre-emption and de-escalation techniques;
- Procedures for authorizing the use of instruments of restraint;
- The requirements for documenting the use of restraints; and
- Consequences for staff who violate laws or policies on restraints.

The role of health-care staff

- 28** The Mandela Rules are clear that health-care staff shall not have any role in the imposition of disciplinary or other restrictive measures. However, if the prison director orders the use of a restraint to prevent injury or damage to property, the director should immediately alert the physician or other qualified medical professional. This is particularly important, as there may be risk factors associated with physically restraining some prisoners, particularly for those with specific medical conditions.
- 29** Health-care staff may inform prison staff about particular medical conditions prisoners suffer from on a “need to know basis” to inform them of potential health risks associated with using restraints on certain prisoners. This information is only to be provided to protect the health of the patient and does not constitute health-care staff involvement in prison management. More information on the right to medical confidentiality and the provision of medical information on a “need to know” basis can be found in **Chapter 6, paragraphs 108–132** of this guidance document.
- 30** Health-care staff should report to the director any adverse effects they discover of restrictive measures on the prisoner, and should advise the director if they consider it necessary to stop using such restrictive methods for physical or mental health reasons. Restrictive measures in this context include the use of restraints.
- 31** Health-care staff should examine prisoners following the use of restraints to check for any injuries caused by the restraints, or any signs that the prisoner has been subjected to other ill-treatment while restrained. Any signs of injury caused by restraints should be considered as part of ongoing reviews of the appropriateness of particular instruments of restraint. Any injuries that appear to have been inflicted on prisoners through the use of restraints must be reported to the prison director without delay (Rule 46 (2)).
- 32** The International Dual Loyalty Working Group¹⁸³ notes that health professionals are often expected to ignore or passively accept the physical restraints imposed on their patients. This group recommends that, in addition to having no role in the use of restraints, health-care professionals should also not perform any medical duties on patients who are shackled or blindfolded unless “some form of restraint is necessary for the safety of the individual, the health professional and/or others, and treatment cannot be delayed until a time when the individual no longer poses a danger. In such circumstances, the health professional may allow the minimum restraint necessary to ensure safety.”¹⁸⁴ More information on medical ethics can be found in **Chapter 6, paragraphs 102–124** of this guidance document.

Restraint during transfer

- 33** The use of restraints during transport should always be based on individual, case-by-case assessments and the principles of legality, necessity and proportionality. Decisions on whether to use a restraint and what restraint to use should involve consideration of the particular risks associated with using restraints during the transportation of prisoners. Their use during transport should also be properly recorded and monitored.
- 34** While the use of handcuffs may be the norm during transfer, the mere fact of transfer does not necessitate the use of restraints. Decisions to use restraints must be informed by prior assessments of the risk posed by the prisoner, which should be conveyed to the escorting officers.

¹⁸³ The International Dual Loyalty Working Group is a collaborative initiative of the organization *Physicians for Human Rights* and the School of Public Health and Primary Health Care at the University of Cape Town, South Africa.

¹⁸⁴ *Dual Loyalty & Human Rights In Health Professional Practice; Proposed Guidelines & Institutional Mechanisms*, International Dual Loyalty Working Group, 2002, para. 1 at s3.amazonaws.com/PHR_Reports/dualloyalties-2002-report.pdf.

The use of restraints during pregnancy and childbirth

- 35 The use of restraints during labour, during childbirth or immediately after childbirth is prohibited by the Bangkok Rules and the Mandela Rules, because it is degrading, humiliating and dangerous for both the mother and the child. The commentary to Bangkok Rule 24 explains that “shackling during labour may cause complications during delivery such as haemorrhage or decreased foetal heart rate. If a caesarean section is needed, a delay of even five minutes may result in permanent brain damage to the baby.”¹⁸⁵
- 36 There are also medical concerns during pregnancy itself. It has been noted, for example, by the American Civil Liberties Union (ACLU), that “restraining pregnant prisoners at any time increases their potential for physical harm from an accidental trip or fall. This also poses a risk of serious harm to the woman’s foetus, including the potential for miscarriage (...) Shackling pregnant prisoners endangers the health and safety of both the mother and the foetus, and is almost never justified by the need for safety and security for medical staff, the public or correctional officers.”¹⁸⁶
- 37 The CPT has expressed the view that shackling or otherwise restraining pregnant women to beds or other items of furniture during gynaecological examinations and/or delivery, is “completely unacceptable, and could certainly be qualified as inhuman and degrading treatment”.¹⁸⁷
- 38 The use of restraints at any other time of pregnancy, including during transport to hospital should be used as a measure of last resort when no other measures are possible, and should be based on individual risk assessments.

Children in prison

- 39 Particular caution must be exercised when considering the use of restraints on children, due to their vulnerability. The UNCRC has stated that restraints applied on children must be “used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes should be abolished”.¹⁸⁸
- 40 Rule 64 of the Havana Rules stipulates that in the case of juveniles, “[i]nstruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.”

185. *Commentary to the Draft United Nations Rules for the treatment of Women Prisoners and non-custodial Measures for Women offenders*, DOC E/CN.15/2009/GRP.8, 2009, *op. cit.*, 139, p. 25.

186. *Briefing Paper: The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers*, American Civil Liberties Union, 2013, p. 1.

187. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *10th General Report on the CPT’s activities*, 18 August 2000, CPT/Inf (2000) 13, para. 27.

188. *Concluding observations on United Kingdom and Northern Ireland, Committee on the Rights of the Child*, 20 October 2008, CRC/C/GBR/CO/4, para. 39; see also: *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, General Assembly resolution A/RES/45/113, 14 December 1990, Rule 64; and *Concluding observations on the United Kingdom of Great Britain and Northern Ireland*, 6-31 May 2013, UN CAT, 24 June 2013, para. 28.

3.2. USE OF FORCE AND ARMS

41 In this context the word “arms” applies to all conventional firearms, as well as other weaponry which prison officials might be equipped with, including batons, irritant sprays, electrical discharge weapons (EDW) and kinetic impact weapons. Dogs may also be considered under this definition where they are used to intimidate or attack a prisoner.

Basic Principle 2 of the BPUFF requires law enforcement agencies to “develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms (...) These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons.”¹⁸⁹

The use of force and arms in places of detention must be strictly regulated by law and authorities should develop specific guidelines and procedures on the conditions and circumstances under which force may be used.¹⁹⁰ Bangkok Rule 31 recommends that clear policies and regulations should be developed and implemented that guide the conduct of prison staff to provide maximum protection for women prisoners from any gender-based physical or verbal violence, abuse or sexual harassment.

Basic Principle 3 of the BPUFF also requires that “[t]he development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.”¹⁹¹

Applicable law, regulations and procedures should include, as a minimum, the type of force/arms that can and cannot be used and the risks associated with them; the circumstances in which each type of force may be used; the members of staff who are entitled to use different types of force and who should authorize their use; the level of authority required before any force is used; the requirements for documenting and reporting on the use of force and arms; and the consequences for staff who violate such laws or procedures.¹⁹²

Regulations setting out what types of force and arms can or cannot be used should be regularly reviewed and updated to take into account new research into the associated risks of those methods and of new types of arms.



RELEVANT RULES: USE OF FORCE AND ARMS

Rule 82:

1. Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.
2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.

3. Except in special circumstances, prison staff performing duties that bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.

See also UN Code of Conduct for Law Enforcement Officials and UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (in particular Principles 15-17, on Policing persons in custody or detention)

189. *Basic Principles on the Use of Force and Firearms*, *op. cit.*, note 158, Basic Principle 2.

190. See also: *Resource Book on Use of force and Firearms*, OHCHR/UNODC, *op. cit.*, note 131, p. 144.

191. *Basic Principles on the Use of Force and Firearms*, *op. cit.*, note 158, Basic Principle 3.

192. *European Prison Rules*, Council of Europe, *op. cit.*, note 74, Rule 65.



WHY IS IT IMPORTANT?

- 42 The use of force and arms may be necessary in exceptional circumstances. However, it presents a high risk of injury and may result in fatalities, especially if directed against individuals with specific health conditions. Some arms are also likely to cause pain and humiliation. Sometimes they are deliberately misused to hurt or intimidate prisoners, while others have been found to have no use other than to inflict torture or other ill-treatment.
- 43 If the use of force and arms is not properly regulated it is likely to be used indiscriminately and when not strictly necessary. Lack of proper regulation can lead to a culture of fear and distrust emerging between prisoners and staff. Where prison rules are vague with regard to the use of force and where arms are readily available, there is a tendency to overuse them without first considering alternative means of control, even though they can be more effective in both the short- and long-term.
- 44 Although staff may sometimes need to resort to force or arms for their own safety, it is important to recognize that the use of force or arms can also endanger staff, since it may escalate a violent situation further. As noted in a 2010 UN survey, “[e]xcessive security and control can, at its worst, lead to a sense of injustice and increase the risk of a breakdown of control and of violent or abusive behaviour”.¹⁹³



PUTTING IT INTO PRACTICE

Prohibitions on the use of force and arms

- 45 Prisons should be free from any equipment intended to be used for inflicting torture or ill-treatment.¹⁹⁴
- 46 Arms that should never be used include spiked batons, truncheons made of metal or other implements having a shaft with metal spikes and spiked shields, which have been deemed to have “no practical use other than for (...) the purpose of torture and other cruel, inhuman or degrading treatment or punishment,”¹⁹⁵ and body worn electric shock equipment. Similarly, whips comprising multiple lashes or thongs and whips having one or more lashes or thongs fitted with barbs, hooks, spikes, metal wire or similar objects enhancing the impact of the lash or thong have been deemed unsuitable for use by law enforcement authorities and exports of these products have been prohibited within the EU.¹⁹⁶
- 47 Force or arms must never be used for the purpose of inflicting pain.

When can force and arms be used?

- 48 Force must only be used as a measure of last resort, in accordance with the principles of legality, necessity and proportionality. Its use is only justified in exceptional circumstances “when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened”.¹⁹⁷
- 49 Basic Principle 16 of the BPUFF states that firearms should not be used against people except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life or to prevent the escape of a person presenting such a danger. Firearms should only be used when less extreme means are insufficient to achieve these objectives. In any event, firearms may only be used with lethal intent when strictly unavoidable in order to protect life

193. *Workshop 2: Survey of United Nations and other best practices in the treatment of prisoners in the criminal justice system: Background Paper*, Twelfth United Nations Congress on Crime Prevention and Criminal Justice, 28 January 2010, 6A/CONF.213/13, para. 45.

194. United Nations Human Rights Committee, *General Comment No. 20: Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment (article 7 ICCPR)*, *op. cit.*, note 18, para. 11; Resource Book on Use of force and Firearms, OHCHR/UNODC, *op. cit.*, note 131, p. 145.

195. *Regulation No 775/2014*, European Union, *op. cit.*, note 168, para. 1 and Annex II, para. 3.

196. *Ibid.*, Annex II, para. 4.

197. *Basic Principles on the Use of Force and Firearms*, *op. cit.*, note 158, Basic Principle 15.

(Principles 16 and 9 of the BPUFF).¹⁹⁸ The commentary to Article 3 of the Code of Conduct for Law Enforcement Officials states that “the use of firearms is considered an extreme measure” and that “[e]very effort should be made to exclude the use of firearms”.¹⁹⁹

- 50** Basic Principle 4 of the BPUFF emphasizes the use of other means of control before resorting to force or arms, stating that law enforcement officials shall “as far as possible, apply non-violent means before resorting to the use of force and firearms” and may use them “only if other means remain ineffective or without any promise of achieving the intended result”.²⁰⁰
- 51** The law, regulations and procedures on the use of force and arms should be made available to all staff and prisoners. These procedures should also be available to the general public to ensure transparency.
- 52** As a matter of principle Rule 82(3) notes that “except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed.” Those staff who are armed and usually have no direct contact with prisoners should be required to hand in their arms if they are to have direct contact with prisoners.
- 53** In addition, Rule 65 of the Havana Rules notes that the “carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained”.²⁰¹
- 54** In every instance in which a firearm is discharged, a report needs to be made promptly to the competent authorities and should be analysed with a view to assessing its necessity and proportionality, and any lessons to be learned for the future.

How force and arms should be used

- 55** Only staff members who have been trained in the use of force and arms should be authorized to use them.
- 56** The use of force should be applied with a view to reducing the risk of injuries and it should be used only for the shortest time necessary. The use of force and arms should be discontinued as soon as there ceases to be an immediate danger.
- 57** Basic Principle 5 of the BPUFF states that where the use of force is unavoidable, the relevant officials should “exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved,” and should “minimise damage and injury”.²⁰²
- 58** The use of force and arms should be recorded by CCTV or body cameras for the purposes of accountability with due consideration given to the necessary safeguards regarding the right to privacy.²⁰³

Training on the use of force and arms

- 59** Rule 76(1)(c) stipulates that relevant prison staff should be provided with training on the use of force “with due consideration of preventive and defusing techniques, such as negotiation and mediation”, before entering into duty, but also through continuous in-service training courses (Rule 75(3)).
- 60** Staff should receive training on the use of force and arms before they enter active duty. They also need to undertake refresher training courses that reflect the latest rules and regulations during their period of employment.

¹⁹⁸. *Ibid*, Principle 16: “Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9”. Principle 9 BPUFF: “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”.

¹⁹⁹. *Code of Conduct for Law Enforcement Officials*, UNGA, *op. cit.*, note 157, article 3, Commentary (c).

²⁰⁰. *Basic Principles on the Use of Force and Firearms*, *op. cit.*, note 158, Basic Principle 4.

²⁰¹. See also: *United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice*, 26 January 2015, A/RES/69/194, para. 39 (d).

²⁰². *Basic Principles on the Use of Force and Firearms*, *op. cit.*, note 158, Basic Principle 5.

²⁰³. For further information on concerns around the possible violations of the right to privacy that body-worn cameras may generate, see for example: *Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions*, the Human Rights Council, 24 April 2015, A/HRC/29/37, paras. 59–63.

- 61 Training on the use of force and arms should be regularly updated in response to particular incidents and to reflect the development or introduction of new types of arms or alternative methods of control and new findings, including on the health implications associated with using certain arms and methods of force.

CONTEXT: TRAINING ON THE USE OF FORCE AND ARMS [3.5]

All training on the use of force and arms should incorporate real life scenarios and practical exercises, and should include, as a minimum:

- Training on all relevant laws, regulations and procedures, including on human rights law and standards;
 - Alternative, non-violent intervention techniques, including pre-emption and de-escalation techniques;
 - The type of force/arms that can and cannot be used, and the risks associated with them
 - The criteria for their deployment;
 - How to use different methods of force and different types of arms safely, legitimately and proportionately;
 - How to use force/arms safely to the minimum extent necessary, and how to determine when their use is no longer necessary;
 - Procedures for authorizing the use of force/arms;
 - The requirements for documenting the use of force/arms.
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Post-incident procedures

- 62 If the prison director is not available for prison staff to report the use of force immediately after it has taken place, as required by Rule 82(1), then the incident should be reported to another designated senior staff member.
- 63 Any use of force and arms, and the reason for its use, must be properly recorded in the prisoner file management system, in accordance with Rule 8(c). This is important to ensure that force and arms are only used legally and in accordance with agreed procedures.
- 64 The records should indicate, at a minimum, the type of force or arms used, the reason for its use, who applied it, who authorized its use and how long the incident lasted. The records should also include details of any injuries sustained as a result of the use of force or arms and the outcome of the use of force or arms.
- 65 In addition to recording the use of force and arms in individual files, prison administrations should keep a centralized register of disaggregated data concerning the use of force and arms. This data should be used to monitor and reduce the use of force and arms. Record keeping is important for safeguarding against the discriminatory use of force and arms and helps to ensure that safeguards are properly managed in all prisons.
- 66 Arms must be stored safely so that they can only be accessed by authorized members of prison staff. Each time a firearm is removed from storage and returned, the process should be recorded, including the time of removal and return of the firearm and the identity of the person who took and returned it.
- 67 Monitoring bodies need to have full access to records on the use of force and arms, including any audio and video recordings of force or arms being used.

3.3. INVESTIGATIONS

- 68 There is a specific obligation for states to investigate deaths, serious injuries and disappearances that occur in the context of detention. Prison authorities need to launch an internal inquiry in such cases. However, even where this is the case, impartial and thorough investigations need to also be carried out by independent bodies, given conflicts of interest.²⁰⁴

The Mandela Rules do not include any detailed guidance on such investigations because the Rules only provide guidance for prison administrations and staff, and because other international standards deal with the conduct of independent investigations in such contexts.²⁰⁵ Rather, the Mandela Rules focus on the obligations of prison administrations and prison staff if a death, disappearance or serious injury occurs, or if suspicion of torture or other ill-treatment arises in their facility.

In all cases, the state bears the burden of evidentiary proof to rebut the presumption of its responsibility for violations of the right to life and for torture and ill-treatment of those in its custody.²⁰⁶



RELEVANT RULES: INVESTIGATIONS

Rule 8(f):

The following information shall be entered in the prisoner file management system in the course of imprisonment, where applicable: (...)

(f) Information on the circumstances and causes of any injuries or death and, in the case of the latter, the destination of the remains.

Rule 71:

1. Notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations

into the circumstances and causes of such cases.

The prison administration shall fully cooperate with that authority and ensure that all evidence is preserved.

2. The obligation in paragraph 1 of this rule shall equally apply whenever there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed in prison, irrespective of whether a formal complaint has been received.

3. Whenever there are reasonable grounds to believe that an act referred to in paragraph 2 of this rule has been committed, steps shall be taken immediately to ensure that all potentially implicated persons have no involvement in the investigation and no contact with the witnesses, the victim or the victim's family.



WHY IS IT IMPORTANT?

Accountability and identification of institutional shortcomings

- 69 Investigations into deaths, disappearances and serious injuries are crucial to determine the facts of individual cases and to hold anyone responsible to account. Institutions can also learn from the findings of such investigations and improve policy and practice accordingly. Even where the investigation reveals no serious failures or shortcomings in particular facilities, the results of investigations can help inform and improve existing policy and practice in other facilities, or to make system-wide improvements.

204. The UN Special Rapporteur on torture has clarified that, in cases of torture or other ill-treatment the investigative body must be “independent from those implicated in the allegation and with no institutional or hierarchical connection between the investigators and the alleged perpetrators”. See: *Report of the Special Rapporteur on torture, A/68/295, op. cit. note 57, para. 64.*

205. Detailed guidance on the modalities of such investigations can be found in the *UN Principles on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, General Assembly resolution 55/89, 4 December 2000; and the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, Economic and Social Council resolution 1989/65, 24 May 1989; the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ('Istanbul Protocol'), OHCHR, Professional Training series No. 8/Rev.1 (2004); the *Minnesota Protocol on the Investigation of Potentially Unlawful Death: the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, 2016; and the Council of Europe, *Effective investigation of ill-treatment Guidelines on European standards*, second edition 2014.

206. *Report of the Special Rapporteur on torture, A/68/295, op. cit. note 57, para. 62.*

- 70** The obligation to report custodial deaths, disappearances and serious injuries reflects the state's heightened responsibility for persons deprived of their liberty. Human rights law states that the state is obliged to account for any death or injury of those in its custody regardless of how it occurred and to ensure accountability where officials, including correctional officers, are responsible.
- 71** It is crucial that investigations are prompt because evidence needs to be secured quickly, testimony is more detailed when fresh in witnesses' minds and because physical signs of torture might heal or fade quickly. In the case of disappearances, the initiation of an investigation is necessary to ensure that concerted efforts to locate the missing individual can commence as quickly as possible.
- 72** The existence of independent investigation mechanisms can act as a deterrent against human rights violations, since it sends a clear signal that misuse of power will not be tolerated and that perpetrators will be held to account.
- 73** Where a prisoner has sustained injuries before being admitted to prison, including during arrest and in police custody, the prison administration should report the injury immediately for investigation so that those responsible are held to account and that they are not wrongfully implicated themselves, in line with Rules 7(d) and 30(b). These rules are dealt with in **Chapter 1** and **Chapter 6** respectively.

Restoring trust and confidence in the prison system

- 74** Independent investigations into deaths, disappearances and serious injuries in custody are important mechanisms for all stakeholders, including the families and friends of prisoners. They help to signal that such incidents are taken seriously, that there is a commitment to reveal their cause and an established process for holding perpetrators to account.
- 75** Public trust and confidence in the prison system is likely to be impacted following instances of deaths, disappearances and serious injuries in custody. However, if these incidents are independently investigated and subject to public scrutiny, and if the resulting recommendations are taken seriously, trust and confidence may be restored.

Protection against false allegations

- 76** Thorough, effective and independent investigations protect the prisons and their staff against false allegations of ill-treatment. The prospect of detailed investigations may in itself deter individuals from making false allegations but, if conducted correctly, will also ensure that those accused have the right and ability to defend themselves against any wrongful allegations.



PUTTING IT INTO PRACTICE

Which incidents must be reported and investigated?

- 77** The requirement to report serious injury or any act of torture or other cruel, inhuman or degrading treatment or punishment also applies to injuries that occurred prior to arrival at prison, including in police custody.
- 78** Serious injuries include injuries caused by sexual and gender-based violence.
- 79** All deaths must be reported, including not only those deaths deemed to be suspicious, but also those said to have been due to natural cause and suicides. This is important to identify deaths caused by neglect or omission, to prevent any concealment of ill-treatment, to determine if the death could have been avoided and to prevent comparable situations from emerging in the future.
- 80** Principle 6 of the BPUFF affirms that law enforcement officials must promptly report to their superiors any case "where injury or death is caused by the use of force and firearms by law enforcement officials".²⁰⁷

²⁰⁷Basic Principles on the Use of Force and Firearms, *op. cit.*, note 158, Basic Principle 6.

- 81 Suicide attempts or instances of self-harm that result in serious injury also need to be investigated. This is important not only to ensure that there has been no cover up of ill-treatment, but also to determine why authorities failed to prevent them, including any shortcomings in support services and mental health-care.
- 82 As the Mandela Rules refer to any “custodial” death, disappearance or serious injury, the death, disappearance or serious injury of any staff member in the course of their duty, or the death, disappearance or serious injury of any prison visitor or service provider that takes place in the custodial environment, should also be investigated.
- 83 The requirement to report allegations of torture or other ill-treatment is reiterated in Rule 57(3), which is dealt with in **Chapter 1, paragraphs 161–162** and in Rule 71(2), which is dealt with in **Chapter 3, paragraphs 84–101** of this guidance document.



PROMISING PRACTICE: INVESTIGATING DEATHS OF THOSE RECENTLY RELEASED FROM PRISON [3.6]

The Prisons and Probation Ombudsperson (PPO) in the United Kingdom investigates deaths in custody due to any cause, including any apparent suicides and natural causes. As part of its role, the Ombudsperson has discretionary powers to investigate the death of someone who has recently been released from custody if he/she feels there are particular lessons to be learned from the treatment of that individual.

The PPO gathers evidence about what was happening to the prisoner or former prisoner before her or his death. This includes examining all the relevant records and policies, together with interviews with relevant staff and prisoners or residents, if required. The PPO also works with health authorities to commission an independent clinical review of the health-care provided to the person before their death while they were in custody.

The PPO appoints a family liaison officer to support the bereaved family through the investigation process and informs them about the progress of the investigation. He or she will also offer them the opportunity to ask any questions and raise any concerns so these can be considered as part of the investigation.

The PPO has noted that although deaths following release from custody “represent only a small proportion of our investigations, there are some specific risks associated with prisoners who have recently been released from prison. Research suggests that, relative to the general population, people discharged from prison are 40 times more likely to die in the first week after discharge and over 90% of those deaths are drug-related”.²⁰⁸

Initiating an investigation

- 84 As Rule 71 makes clear, all deaths, disappearances, serious injuries or allegations of torture and other ill-treatment need to be reported “without delay” and notwithstanding the initiation of an internal investigation. Rule 57(3) states that allegations of torture or other ill-treatment shall be “dealt with immediately”.
- 85 UNCAT has clarified that the meaning of “prompt” for the initiation of an investigation by the prison director should mean “within hours, or at the most, within days” and that a relatively short delay can constitute a violation of Article 12 of the CAT.²⁰⁹
- 86 An internal inquiry can be carried out in parallel to the external investigation, provided it does not interfere with the external investigation. The fact that there may be a criminal investigation into a particular incident does not preclude the need for a prison to conduct its own investigation into that incident. In no circumstances should there be a requirement for an internal inquiry to be completed before an external investigation can be initiated.
- 87 In order for prison directors to be able to make reports without delay, they must be promptly informed by their staff members following any incident. If the prison director is not available, then staff should report the incident to the deputy or senior prison staff member authorized to represent her/her. This staff member should then make the report.

208. Nicola Singleton, Elizabeth Pendry, Colin Taylor, Michael Farrell, and John Marsden, *Findings 187: Drug-related mortality among newly released offenders*, Home Office UK, 2003 at webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/pdfs/2/r187.pdf.

209. *Report of the Special Rapporteur on torture*, A/68/295, *op. cit.* note 57, para. 63; see also: UN CAT, *Blanco Abad v. Spain*, Comm. No. 59/1996, CAT/C/20/D/59/1996, 14 May 1998, para. 8.5 at www.univie.ac.at/bimtor/dateien/cat_1996_abad_vs_spain.pdf. See also: Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd edition, Kehl am Rhein, N. P. Engel Verlag, 2005, p. 434.

- 88 Investigations into signs of torture or other ill-treatment can also be triggered by health-care staff, in accordance with Rule 34, which requires them to “document and report such cases to the competent medical, administrative or judicial authority”. This is dealt with in more detail in **Chapter 6, paragraphs 76–101** of this guidance document.
- 89 Principle 34 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles) notes that inquiries can be initiated “by a judicial or other authority, either on its own motion or at the instigation of a member of the family of such a person or any person who has knowledge of the case”.²¹⁰

The responsibilities of prison administrations and prison staff

- 90 When cases requiring investigation arise, prison administrations and staff must promptly report the incident, preserve any evidence, including CCTV footage, ensure there is no interference in the investigation, protect the alleged victim and any witnesses, and co-operate with and support the investigative body.
- 91 The UN Special Rapporteur on torture has emphasized that there “should be protocols and guidelines for the prison administration about co-operating with the authorities by not obstructing the investigation and by collecting and preserving evidence”.²¹¹ Such protocols and guidelines should be in line with those in the community outside of the prison. Key guidelines should include a requirement to immediately seal off the scene of any incident and to protect of any evidence. The requirement to seal off the scene of the incident and protect evidence must apply equally if the incident occurred in a vehicle.
- 92 Prison authorities have an ongoing responsibility to monitor and record such incidents and to continuously make efforts to prevent them recurring.
- 93 The UN Special Rapporteur on torture has stated that “those potentially implicated in torture or other ill-treatment should immediately and for the duration of the investigation be suspended, at a minimum, from any duty involving access to detainees or prisoners because of the risk that they might undermine or obstruct investigations”.²¹²
- 94 While Rule 71(3) relates specifically to instances of torture and other ill-treatment, it follows that all people who are potentially implicated in custodial deaths, disappearances and serious injuries should equally have no involvement in investigations and no contact with witnesses, victims or victims’ families.

Protection for victims/witnesses

- 95 Rule 34 stipulates that when health-care professionals document and report signs of torture or other ill-treatment, “[p]roper procedural safeguards shall be followed in order not to expose the prisoner or associated persons to foreseeable risk of harm”. Rule 57(2) calls for protection against “retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint”. This is dealt with in more detail in **Chapter 1** of this guidance document.
- 96 The Istanbul Protocol makes it clear that in the context of investigations, “[t]he State shall protect complainants, witnesses, those conducting the investigation and their families from violence, threats of violence or any other form of intimidation (...) If the commission [of inquiry] concludes that there is a reasonable fear of persecution, harassment or harm to any witness or prospective witness, the commission may find it advisable to hear the evidence in camera, keep the identity of an informant or witness confidential, use only evidence that will not risk identifying the witness and take other appropriate measures.”²¹³

210. *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, General Assembly resolution 43/173, 9 December 1988, Principle 34.

211. *Report of the Special Rapporteur on torture, A/68/295, op. cit.* note 57, para. 65.

212. *Ibid.*, para. 66.

213. *Istanbul Protocol*, OHCHR Professional Training Series No. 8/Rev.1, 2004, *op. cit.*, note 205, para. 112.

- 97** During investigations, authorities should consider how they can best protect those at risk in ways that neither stigmatize nor discriminate against them. If there is no alternative to protective separation, then it should be used for the shortest possible time until other arrangements have been made. Protective separation should only be instituted in agreement with the prisoner concerned and should be subject to regular review in each individual case.
- 98** Protection of implicated persons should include any staff members who witnessed the incident in question and might, in some cases, also extend to the family members of witnesses.
- 99** If the incident being investigated occurred between prisoners, or if a prisoner is alleged to have harmed a staff member, then it may be necessary to separate prisoners who have been victims of ill-treatment, or to transfer the accused prisoner to another facility or another part of the facility for their own protection pending the investigation, including if they explicitly request transfer.
- 100** It may be necessary to separate or move witnesses for protective purposes. Such measures can, however, have the effect of punishing the victim or witnesses. As such, authorities should also be aware of the potential for prisoners to make false allegations with the deliberate purpose of getting someone moved. Such transfers should therefore be avoided or, if absolutely necessary, be only temporary in nature.
- 101** In all cases there should be no contact between the alleged perpetrator and the victim pending the outcome of the investigation.





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4

RESTRICTIONS, DISCIPLINE AND SANCTIONS

4.1 DISCIPLINARY SANCTIONS AND PROCEDURES

4.2 SOLITARY CONFINEMENT

4.3 THE ROLE OF HEALTH-CARE PERSONNEL

4.4 ALTERNATIVE DISPUTE RESOLUTION

4.

4. RESTRICTIONS, DISCIPLINE AND SANCTIONS

01 Rule 36 makes it clear that discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody of prisoners, the secure operation of the prison and a well-ordered community life. The use of overly punitive disciplinary sanctions and restrictive measures is detrimental to the smooth running of detention facilities. It negatively impacts prisoner-staff relations and has also proven ineffective in many situations, with no clear benefits for prison management.

Restrictions, discipline and sanctions should not be a first response to problems but should be exceptional, and be imposed only once other measures aimed at preventing conflicts have failed.²¹⁴ To this end, disciplinary proceedings must be applied in a fair, consistent and transparent manner, in accordance with applicable rules and regulations.

A number of provisions in the Mandela Rules cover disciplinary sanctions (Rules 39-41), while others apply more broadly to “other restrictive measures” and “restrictions”.²¹⁵

The term “other restrictive measures” is not defined in the Mandela Rules, but the context of the rules suggests that it “describes limitations in the context of contact with the outside world (visits), refers to measures imposed not as a disciplinary sanction, but in the context of “safety and security,” presumably including measures to prevent inter-prisoner violence and risks of self-harm and suicide and is used in the context of the use of instruments of restraint”.²¹⁶

National law needs to determine both the “acts and omissions by prisoners that constitute disciplinary offences”,²¹⁷ and which type of disciplinary offences can be applied for such infractions. Practices that are prohibited under Rules 42 and 43 need to be explicitly prohibited by prison administrations, as do any other restrictions and disciplinary sanctions that amount to torture or other cruel, inhuman or degrading treatment or punishment (see also Rule 1). The consequences for anyone who resorts to such prohibited actions must also be clearly regulated. Furthermore, prisoners shall be allowed to defend themselves in person or through legal assistance and be assisted by a competent interpreter free of charge, in accordance with Rule 41(3). National laws and regulations should, therefore, further determine the access to legal assistance, including regulations on free legal aid and practical arrangements for interpretation when disciplinary sanctions are imposed.

Provisions have been adopted in the new SMR to place limitations and prohibitions on solitary confinement, regardless of whether such measures are applied as a disciplinary sanction or for other purposes.

²¹⁴. *Report of the Special Rapporteur on torture, A/68/295, op. cit.* note 57, para. 57.

²¹⁵. Note that the rules apply regardless of whether the restriction was imposed as a disciplinary sanction or for other reasons, unless the text of the specific Rule states otherwise.

²¹⁶. *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 77.

²¹⁷. *European Prison Rules*, Council of Europe, *op. cit.*, note 74, Rule 57(2).

4.1. DISCIPLINARY SANCTIONS AND PROCEDURES



RELEVANT RULES: DISCIPLINARY SANCTIONS AND PROCEDURES

Rule 36: Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well ordered community life.

Rule 37:

The following 'shall always be subject to authorization by law or by the regulation of the competent administrative authority', such as the relevant ministry or the prison administration.

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of sanctions that may be imposed;
- (c) The authority competent to impose such sanctions;
- (d) Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation.

Rule 39:

1. No prisoner shall be sanctioned except in accordance with the terms of the law or regulation referred to in rule 37 and the principles of fairness and due process. A prisoner shall never be sanctioned twice for the same act or offence.

2. Prison administrations shall ensure proportionality between a disciplinary sanction and the offence for which it is established, and shall keep a proper record of all disciplinary sanctions imposed.

Rule 40: No prisoner shall be employed, in the service of the prison, in any disciplinary capacity.

Rule 41:

1. Any allegation of a disciplinary offence by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.

2. Prisoners shall be informed, without delay and in a language that they understand, of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defence.

3. Prisoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges. If the prisoners do not understand or speak the language used at a disciplinary hearing, they shall be assisted by a competent interpreter free of charge.

4. Prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.

5. In the event that a breach of discipline is prosecuted as a crime, prisoners shall be entitled to all due process guarantees applicable to criminal proceedings, including unimpeded access to a legal adviser.

Rule 42: General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health-care and adequate personal space, shall apply to all prisoners without exception.

Rule 43:

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement;
- (c) Placement of a prisoner in a dark or constantly lit cell;
- (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
- (e) Collective punishment.²¹⁸

2. Instruments of restraint shall never be applied as a sanction for disciplinary offences.²¹⁹

3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

²¹⁸ "Collective punishment" refers to sanctions which affect the whole prison population or a group of prisoners regardless of their individual responsibility. It includes sanctions such as restricting the out-of-cell time or activities of all the occupants of particular cells, or full prison lockdowns applied as punishments rather than purely for security purposes. Some incidents may also result in policy changes which have the effect of collective punishment, including the imposition of shorter visiting hours and restrictions on bringing food to prisoners.

²¹⁹ The use of restraints is discussed in more detail in Chapter 3 of this guidance document.



WHY IS IT IMPORTANT?

- 02 It is a basic requirement of the rule of law to have a legal basis and due process in place for disciplinary sanctions. Such sanctions are in place to ensure compliance with prison rules and a secure, safe and well-ordered prison environment. They are not intended to impose additional punishment on prisoners. Many problems in prisons can be resolved without resorting to disciplinary measures.
- 03 Disciplinary sanctions can be harmful not only to the individual concerned, but also to the overall prison environment. Harsh sanctions can create distrust between prisoners and staff, particularly if they are not well managed, and can lead to further problems within the facility. As the SPT has pointed out, where disciplinary measures appeared to be applied “arbitrarily or inconsistently”, and where prisoners “were never provided with information on the procedure and the modalities of appeal against disciplinary measures and none of them considered doing so”, the overall attitude was “one of resignation and fear of reprisals”.²²⁰
- 04 Clear definition, regulation and consistent application of disciplinary sanctions increases the acceptance of prison rules among prisoners and can act as a deterrent against infractions. According to ICPS, “the vast majority of prisoners will welcome firm and fair management by staff because if the staff are not in control of a prison the resulting vacuum will be filled by strong willed prisoners”.²²¹
- 05 Clear and transparent regulations of restrictions and disciplinary sanctions and procedures protect against the unnecessary, disproportionate, arbitrary or discriminatory use of such measures. If disciplinary actions are not properly regulated and observed, there is a risk that disciplinary sanctions are applied inconsistently and that particular prisoners or groups of prisoners are targeted under the guise of “discipline”.
- 06 The regulation of disciplinary procedures is also important to prevent informal systems of punishment being administered by staff or other prisoners.
- 07 It is important to keep a record of restrictions and disciplinary sanctions imposed on prisoners. Such a process can safeguard against the unfair imposition of sanctions and the use of informal punishments.



PUTTING IT INTO PRACTICE

Regulating the use of restrictions and disciplinary sanctions

- 08 The use of disciplinary sanctions by prison administrations needs to be based on and bound by clear and transparent laws and regulations, which ensure the rule of law is upheld and provide procedural safeguards for those on whom they are imposed. This ensures that only restrictions and disciplinary sanctions enshrined in law can be imposed, and only in particular cases that are set out in the law and regulations.
- 09 Rule 37(d) requires that any form of involuntary separation from the general prison population must be subject to authorization by the law, regardless of whether it reaches the threshold of “solitary confinement”, as defined in Rule 44. The Rule makes clear that it applies irrespective of the term used (“solitary confinement, isolation, segregation, special care units or restricted housing”), and irrespective of whether such a measure is imposed as a disciplinary sanction or for other reasons, such as the maintenance of order and security.
- 10 Regulations need to clearly state that prisoners must not be subject to disciplinary sanctions twice for the same infraction, in accordance with Rule 39(1).

²²⁰ UN Subcommittee for the Prevention of Torture, CAT/OP/UKR/1, *op. cit.*, note 6, paras. 123 and 124.

²²¹ A Human Rights Approach to Prison Management, ICPS, *op. cit.*, note 29, p. 69.

- 11 Prison staff must be made fully aware of what conduct constitutes a disciplinary offence and of permissible sanctions associated with each infraction. They must receive training on relevant legislation, regulations and policies, in accordance with Rules 75 and 76. More information on staff training is included in **Chapter 1, paragraphs 187–220** of this guidance document.
- 12 Any changes in the regulations governing the use of disciplinary sanctions must be properly communicated to all staff and prisoners in a timely manner. This is important to avoid the possibility that staff administer improper sanctions because they are unaware of the latest changes to regulations or because they are reluctant to alter their established procedures.
- 13 Prison administrations should keep records of the different types of infractions and the restrictions and sanctions used in practice. This can help prison authorities identify the reasons why prisoners, or certain groups of prisoners, infringe prison rules, the measures that might be taken to address these reasons and the effectiveness of particular types of sanctions and restrictions.

Necessity and proportionality

- 14 Restrictions and sanctions are not meant to impose an additional punishment, but ensure the permissible objective of ensuring safe custody of prisoners, the secure operation of the prison and a well-ordered community life. Rule 36, therefore, enshrines the principles of necessity and proportionality, in line with the requirement to treat “all prisoners with the respect due to their inherent dignity and value as human beings”.²²²
- 15 Only sanctions provided for by law and regulation can be imposed, and need to be proportionate to the infraction they address (Rule 39(2)). The UN Special Rapporteur on torture has noted that a “punishment disproportionate to the offence” would be tantamount to “improperly making the nature of the deprivation of liberty harsher”.²²³
- 16 The principle of proportionality must be determined on a case-by-case basis. In all disciplinary decisions, attention should, therefore, be paid to the nature and severity of the alleged offence, the role of the individual in that offence, any mitigating or aggravating factors and the likely impact of any sanctions against them.
- 17 The CPT has stressed that to be proportionate, any restriction of a prisoner’s rights “must be linked to the actual or potential harm the prisoner has caused or will cause by his or her actions (or the potential harm to which he/she is exposed) in the prison setting”.²²⁴
- 18 Individual, case-by-case hearings should apply even if an incident or infraction involves a large number of people. This is important for determining an individual’s specific role as well as the potential repercussions of particular sanctions on each individual. By way of example from outside the OSCE region, the *African Charter on Human and People’s Rights* points out, “[p]unishment is personal and can only be imposed on the offender.”²²⁵
- 19 Case-by-case decisions need to take into account that breaches of prison rules may not be a consequence of insubordination, but could, for example, be caused by traumatization, a mental illness or developmental disability. The Mandela Rules require prison administrations to consider such underlying reasons and state that prisoners shall not be sanctioned if an infraction was the direct result of a mental illness or developmental disability (Rule 39(3)).

Prohibited sanctions and restrictions

- 20 In line with the absolute prohibition in international law of torture or other ill-treatment (see also Rule 1 of the Mandela Rules), restrictions and sanctions must never amount to such treatment. To this end, Rule 43 provides a non-exclusive list of sanctions that have been recognized as constituting such treatment.

²²² *The Mandela Rules*, *op. cit.*, note 1, Rule 1; ICCPR, UNGA, *op. cit.*, note 153, Article 10.

²²³ *Report of the Special Rapporteur on torture*, A/68/295, *op. cit.* note 57, para. 57.

²²⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *21st General Report of the CPT*, Council of Europe, 10 November 2011, CPT/Inf (2011)28, para. 55(a).

²²⁵ *The African Charter on Human and People’s Rights the Banjul Charter*, Organization of African Unity, 27 June 1981, Article 7(2).

- 21 The list provided in Rule 43 is not exclusive, and the prohibition includes other restrictions and sanctions if a public official intentionally inflicts severe mental or physical suffering for the purpose of punishment, intimidation or coercion, discrimination or to obtain a confession.
- 22 It is possible that a restriction or sanction does not constitute torture or other ill-treatment, but that a combination of such measures, or the imposition of them in close succession, surpasses the threshold of what can be called torture or ill-treatment. This may include, for example, the frequent transfer of a prisoner to another facility as a form of reprisal. It may also include frequently renewed disciplinary measures.
- 23 Rule 42 lists living conditions that prisoners are entitled to without exception. Consequently, these conditions, such as light, nutrition, drinking water or health-care, must never be withheld or reduced as a disciplinary sanction.
- 24 The Mandela Rules are clear that prisoners should never be placed in a dark cell, and equally not in a constantly lit cell. To this end, the UNOPS Technical Guidance for Prison Planning points out that “it is critical that the design, construction or rehabilitation of prison facilities do not include facilities and equipment in contravention of human rights principles. In particular, no facility should be designed, constructed or rehabilitated to include the use of chains or irons as instruments of restraint, or dark isolation cells and cell-blocks.”²²⁶
- 25 The linguistic formulation “restrictions or disciplinary sanctions” makes clear that any such treatment is prohibited regardless of whether it is imposed in the course of a disciplinary procedure or in the name of safety, security and order in the prison.
- 26 Disciplinary sanctions should never be taken against prisoners who attempt suicide or self-harm. Instead, these individuals must be provided with appropriate care and treatment.²²⁷

The right to defence and legal representation in disciplinary proceedings

- 27 In order to know their rights and obligations, prisoners need to be provided with clear and comprehensive information about the relevant rules and procedures in a language and format they understand. **Chapter 1, paragraphs 116–129** of this guidance document deals in more detail with the information that should be provided to prisoners.
- 28 When accused of an infraction of prison rules, prisoners must be informed about allegations against them without delay and in a language that they understand (Rule 41(2)). They must then be given adequate time and facilities to prepare for their defence.
- 29 In order to effectively prepare their defence, the “adequate time and facilities” given to prisoners must include, at a minimum, written details of the accusations against them, copies of the applicable rules and regulations, assistance from an interpreter and access to a pen and paper or a computer.
- 30 Prisoners can either defend themselves, or use legal representation “if the interests of justice so require, particularly in cases involving serious disciplinary charges”. The determination of “when the interests of justice so require” and “serious disciplinary charges” should take into account:
- Cases that are particularly complex;
 - Accusations involving prisoners who lack the capacity to understand the accusations and the process, and those who do not have the ability to defend themselves;
 - Accusations that carry a punishment that could lead to serious consequences for the prisoner and/or a material change in their conditions of imprisonment;
 - Cases where the applicable law or prison regulation is not clearly worded;
 - How national laws define a serious disciplinary offence; and
 - Whether the act constitutes an offence to be prosecuted by judicial authorities rather than something to be dealt with through internal prison rules and disciplinary procedures.
- 31 The right of prisoners to defend themselves means that those accused must have the opportunity to be present at their hearing and to have their case heard by the decision-making body. The right to be present at the hearing applies whether they are

²²⁶ Technical Guidance for Prison Planning, UNOPS, *op. cit.*, note 84, p. 32.

²²⁷ Preventing Suicide in Jails and Prisons, WHO/International Association for Suicide Prevention, *op. cit.*, note 180, p. 20.

represented through legal assistance or not. They should also have the opportunity to cross examine any witnesses to the alleged infraction, ask questions, seek clarifications and examine any evidence relevant to the allegation.

- 32 The UNCAT has provided guidance on fair trial guarantees for disciplinary proceedings in prison, including the right “to be heard in person; to call witnesses and examine evidence given against them; to be provided with a copy of any disciplinary decision concerning them and an oral explanation of the reasons for the decision and the modalities for lodging an appeal, and to appeal to an independent authority against any sanctions imposed”.²²⁸
- 33 If legal assistance is not available or if prisoners are unable to defend themselves, they should be allowed to ask another person to assist them in their defence.
- 34 Prisoners need to be informed in writing, and in a timely manner, about the outcome of any disciplinary proceeding and need to have access to a judicial review (Rule 41(4)).

The right to judicial review

- 35 The opportunity to seek judicial review of a disciplinary decision is particularly important in cases involving sanctions that will lead to serious consequences for the prisoner and/or a material change in their conditions of imprisonment.
- 36 The court must be sufficiently competent to rule on the merits and the severity of the sanction, and must have the power to overturn decisions taken by the prison management.
- 37 As a rule, a disciplinary sanction should not be implemented before the expiry of any appeal deadline and before the completion of the judicial review procedure in cases where an appeal has been lodged.

Record keeping

- 38 Any disciplinary sanctions should be recorded in a prisoner’s file (Rules 8(c) and (e)) and should include the details of the infringement, the details and outcome of the disciplinary procedure and the details and date of the sanction imposed. Prison authorities should also keep a central register of disciplinary sanctions in accordance with Rule 39(2). Such information can be useful in monitoring the effectiveness of different types of disciplinary sanctions. Similar records should also be kept in connection with restrictions. Record keeping is covered in more detail in **Chapter 1, paragraphs 01–63** of this guidance document.
- 39 The use of disciplinary sanctions should be carefully monitored so that the central prison administration can identify any unusual or excessive application of certain forms of restrictions or disciplinary sanctions.

Staff training

- 40 All staff need to receive training on preventive and defusing techniques, and on prohibited and permitted sanctions and restrictions, including the duty to respect the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other ill-treatment, in accordance with Rule 76(1)(b). Such training needs to be updated to reflect any changes in law and policy, and any new findings related to the impact of sanctions and restrictions on human beings, in both medical and correctional terms.
- 41 Any changes in disciplinary policy need to be fully communicated to all staff, ideally before being put into practice.

228. UN Committee Against Torture, *CAT/C/51/4*, *op. cit.*, note 63, para. 41; see also: *European Prison Rules*, Council of Europe, *op. cit.*, note 74, Rule 59.

4.2. SOLITARY CONFINEMENT

42 The revision of the SMR took into account that a significant body of international law has developed that requires the regulation and restriction of the use of solitary confinement,²²⁹ a term often used interchangeably with the terms “isolation” and “segregation”.

Due to the detrimental effects of isolation on human beings and the potential misuse of this practice, Rule 37(d) has been introduced to clarify that prison staff can separate a prisoner from the general prison population only if and when permissible by law, irrespective of the length of the period of such separation and irrespective of the term used for such a measure (solitary confinement, isolation, segregation, special care units or restricted housing).

The Rules apply regardless of whether involuntary separation from the general prison population is used as a disciplinary sanction, to isolate people remanded in custody during an on-going criminal investigation, as an administrative tool for managing specific groups of prisoners or as part of a judicial sentence. The Rules also apply regardless of whether the measure is imposed by the prison administration, by a disciplinary committee or by a court.²³⁰

All states should avoid the use of solitary confinement where possible and take steps towards its total abolition.²³¹ The use of any form of involuntary separation, whether as a disciplinary sanction or for the maintenance of order and security, must be subject to authorization by law or by the regulation of the competent administrative authority, as set out in Rule 37(d).

The use of solitary confinement must be regulated and safeguarded as part of broader written disciplinary procedures. Relevant laws and regulations should also clearly lay out prohibitions and limitations on the use of solitary confinement.



RELEVANT RULES: SOLITARY CONFINEMENT

Rule 38(2): For prisoners who are, or have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison.

Rule 44: For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Rule 45:

1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.

2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply.

²²⁹. See for example: *Basic Principles for the Treatment of Prisoners*, General Assembly resolution 45/111 of 14 December 1990, Principle 7; United Nations Human Rights Committee, *General Comment No. 20: Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment (article 7 ICCPR)*, *op. cit.*, note 10.

²³⁰. Including, for example, for prisoners on death row or those serving life sentences.

²³¹. *Basic Principles for the Treatment of Prisoners*, UNGA, *op. cit.*, note 229, Principle 7; UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim Report to the General Assembly*, 5 August 2011, A/66/268, paras. 82–101; *Report of the Special Rapporteur on torture*, A/68/295, *op. cit.* note 57, para. 60–61; *The Istanbul statement on the use and effects of solitary confinement*, International Psychological Trauma Symposium, 9 December 2007.



WHY IS IT IMPORTANT?

- 43 The negative, and potentially long-lasting, impact of solitary confinement on the physical and mental health and wellbeing of prisoners is well-documented. Medical research confirms that the denial of meaningful human contact can lead to “isolation syndrome”, the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide, and which can destroy a person’s personality.²³²
- 44 The Istanbul Statement on the use and effects of solitary confinement (the Istanbul Statement) has also captured this, stating that “[s]olitary confinement may cause serious psychological and sometimes physiological ill effects (...) Negative health effects can occur after only a few days in solitary confinement, and the risk rises with each additional day spent in such conditions. (...) The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and wellbeing.”²³³
- 45 Solitary confinement can, in certain circumstances, amount to cruel, inhuman or degrading treatment or punishment. Additionally, due to the inherent isolation of solitary confinement, there is a heightened risk of other human rights violations taking place.
- 46 Solitary confinement can also increase the risk of suicide or self-harm, particularly for prisoners with pre-existing mental health conditions. As the WHO has pointed out, “[s]ocial and physical isolation and lack of accessible supportive resources intensify the risk of suicide. Therefore, an important element in suicide prevention in correctional settings is meaningful social interaction.”²³⁴ The potential long-term effects of isolation, including the risk of suicide and self-harm, mean that there is risk not only during the period of isolation itself, but potentially long-lasting psychological effects that may persist long after the initial punishment and even after release from prison.
- 47 The use of solitary confinement is generally negative for staff-prisoner relations and social cohesion within the prison. Arguably, it also has a negative impact on the prisoner’s prospects for reintegration and rehabilitation. The UN Special Rapporteur on torture has stated that solitary confinement is contrary to rehabilitation, which is the ultimate aim of penitentiary systems.²³⁵
- 48 Principle 7 of the UN Basic Principles for the Treatment of Prisoners calls for efforts towards “the abolition of solitary confinement as a punishment, or to the restriction of its use.”²³⁶



PUTTING IT INTO PRACTICE

Definition of solitary confinement

- 49 Prohibitions and limitations of solitary confinement incorporated into the Mandela Rules apply regardless of whether the measure is used as a disciplinary sanction or for other purposes (see Rule 37(d), Rule 43(1) and the definition in Rule 44).

²³² More detailed information about the harmful impacts of solitary confinement can be found in: Grassian S, ‘Psychiatric effects of solitary confinement’, *Journal of Law and Policy*, Vol. 22, 2006, pp. 325-383; Craig Haney, ‘Mental health issues in long-term solitary and supermax confinement’, *Crime & Delinquency*, Vol. 49, No. 1, 2003, pp. 124-156; Sharon Shalev, ‘A sourcebook on solitary confinement’, *Mannheim Centre for Criminology – London School of Economics*, 2008; *Interim report of the Special Rapporteur on torture*, A/66/268, *op. cit.*, note 231.

²³³ *The Istanbul statement on the use and effects of solitary confinement*, *op. cit.*, note 231, p. 2.

²³⁴ *Preventing Suicide in Jails and Prisons*, WHO/International Association for Suicide Prevention, *op. cit.*, note 180, p. 16.

²³⁵ “‘Solitary confinement should be banned in most cases’, UN expert says”, *UN News Centre*, 18 October 2011.

²³⁶ *Basic Principles for the Treatment of Prisoners*, UNGA, *op. cit.*, note 229, Principle 7.

- 50 The *Essex paper* seeks to clarify the term “meaningful human contact”, used in Rule 44 to define what prisoners are deprived of during solitary confinement. Meaningful contact is defined as “the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and wellbeing. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.”²³⁷
- 51 It does not constitute “meaningful human contact” if prison staff “deliver a food tray, mail or medication to the cell door or if prisoners are able to shout at each other through cell walls or vents. In order for the rationale of the Rule to be met, the contact needs to provide the stimuli necessary for human wellbeing, which implies an empathetic exchange and sustained, social interaction. Meaningful human contact is direct rather than mediated, continuous rather than abrupt, and must involve genuine dialogue. It could be provided by prison or external staff, individual prisoners, family, friends or others – or by a combination of these.”²³⁸

Use in exceptional circumstances only

- 52 Rule 45 states that “[s]olitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible (...)” This position has been emphasized by many international bodies including the UN Special Rapporteur on torture and the UNCAT.²³⁹
- 53 Solitary confinement shall be considered a last resort, only to be used when other measures have first been tried and failed.

²³⁷. *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 89.

²³⁸. *Ibid*, p. 89.

²³⁹. See also: *European Prison Rules*, Council of Europe, *op. cit.*, note 74, Rule 60.5.





PROMISING PRACTICE: UNITED STATES – THE SAFE ALTERNATIVES TO SEGREGATION INITIATIVE [4.1]

The Vera Institute of Justice – a United States research institute – is partnering with corrections systems in the country to reduce their reliance on “segregated housing” (solitary confinement) through the advancement of safe and effective alternatives in a project entitled the Safe Alternatives to Segregation (SAS) Initiative.²⁴⁰

In partnership with corrections departments in Nebraska, North Carolina and Oregon and local departments in Middlesex county, New Jersey and New York City, Vera performs “a full review of the corrections departments” policies and practices and conduct[s] data analysis to “determine the drivers and characteristics of

incarcerated people in segregation.” Vera also provides “recommendations on policy and practice changes that can safely and effectively reduce the use of segregated housing across the systems and will help implement these recommendations”.²⁴¹

Additionally, the online Safe Alternatives to Segregation Resource Center provides the latest research, reports, policy briefs and information on reforms being implemented in the United States, with the purpose of informing corrections officials, policymakers, advocates, the media, and the general public about the current use of segregation in the US, its impacts and what can be done to address it.



PROMISING PRACTICE: STUDY ON SEGREGATION UNITS IN ENGLAND AND WALES [4.2]

A study of segregation and close supervision centres in England and Wales²⁴² identified the following promising practice examples:

One segregation unit had its mission statement displayed in a prominent place where prisoners could see it. The mission statement of the unit was to “challenge negative behaviour and encourage positive engagement with the aim of successfully reintegrating prisoners back into the general population.”

Another unit sought to solve the root causes that led prisoners to be segregated. Segregation unit officers engaged with prisoners to identify and address the problems in their conduct that had led to the decision to segregate them, including working with prisoner’s on their attitudes and behaviour. Some segregation review boards investigated the reasons for segregation and tackled them as problems that could be resolved, rather than as justification for further segregation.

In one unit, a review was held regularly (at least once a week) with the attendance of representatives from the probation, safer custody, psychology, mental health in-reach, health-care and chaplaincy units. The Independent Monitoring Board also attended the weekly reviews.

Diverse means were used in different units to communicate details about segregation to prisoners. These included:

- A statement of purpose being prominently displayed at one unit;
- A poster with a list of expected behaviour and entitlements being displayed by the telephones in another unit; and
- Induction booklets about rules and expectations of the segregated facility.

In one unit, a named member of the segregation team held responsibility for the much-neglected area of purposeful activities for prisoners. Working one-to-one with each resident, they planned and provided for course-work, hobbies, in-cell work and other activities tailored to individual needs, interests and abilities for segregated prisoners.

In one of the prisons visited, newly segregated prisoners were given an induction booklet that informed them that they “may request a variety of educational resources and equipment to assist them in continuing to study” while in the unit.



²⁴⁰. For more information, see: www.vera.org and www.safealternativestosegregation.org.

²⁴¹. See: *Safe Alternatives to Segregation Initiative*, VERA Institute for Justice at www.safealternativestosegregation.org/about.

²⁴². Sharon Shalev and Kimmitt Edgar, *Deep Custody: Segregation units and close supervision centres in England and Wales*, The Prison Reform Trust, 2015, pp. vii-viii.

Absolute prohibitions

- 54 The Mandela Rules absolutely prohibit the use of indefinite²⁴³ and of prolonged solitary confinement, both of which amount to torture or other ill-treatment.²⁴⁴
- 55 As clarified in Rule 44, prolonged solitary confinement refers to confinement that lasts for a period in excess of 15 continuous days. The rationale of the prohibition implies that it also applies when periods of isolation are imposed in close succession. The UNCAT has recommended that there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period.²⁴⁵ The UN Special Rapporteur on torture has similarly noted that the prohibition should include “frequently renewed measures that amount to prolonged solitary confinement”.²⁴⁶ If prisoners held in solitary confinement are transferred from one facility to another, the maximum time limit of 15 consecutive days still applies.
- 56 The UN Special Rapporteur on torture has stated that “[i]f used intentionally for purposes such as punishment, intimidation, coercion or obtaining information or a confession, or for any reason based on discrimination, and if the resulting pain or suffering are severe, solitary confinement amounts to torture”.²⁴⁷
- 57 Rule 45(2) reiterates the prohibition of the use of solitary confinement “and similar measures” in cases involving women and children as referred to in other UN standards and norms. This includes Rule 22 of the Bangkok Rules, which specifies that “[p]unishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison.” This is due to the possible health complications that could arise from those who are pregnant and the fact that it penalizes children by separating them from their parents. Rule 67 of the Havana Rules prohibits placement of juveniles in solitary confinement as a disciplinary measure. The UNCRC and the UN Special Rapporteur on torture have called on States to never use solitary confinement on children.²⁴⁸
- 58 The use of solitary confinement is absolutely prohibited for prisoners with mental health issues given their diminished mental capacity and because solitary confinement often results in severe exacerbation of previously existing mental health conditions.²⁴⁹

Further limitations

- 59 If applied as a disciplinary sanction, all relevant procedural and substantial safeguards as detailed in Rule 39 apply, including the principles of due process. With regard to solitary confinement and proportionality, the CPT has stated that “[g]iven that solitary confinement is a serious restriction of a prisoner’s rights which involves inherent risks to the prisoner, the level of actual or potential harm must be at least equally serious and uniquely capable of being addressed by this means.”²⁵⁰
- 60 In some countries transport between facilities can take days or even weeks and prisoners may be transported in conditions that amount to solitary confinement. In such situations, all protections relating to solitary confinement must apply.

243. The term “indefinite” solitary confinement means that the prisoner concerned does not know when this type of confinement will end.

244. *Interim Report of the Special Rapporteur on Torture*, A/66/268, *op. cit.*, note 231, paras. 57–61 and 81.

245. See: *Concluding observations: Portugal*, UN CAT, 23 December 2013, CAT/C/PRT/CO/5–6, para. 12.

246. *Report of the Special Rapporteur on torture*, A/68/295, *op. cit.* note 57, para. 61.

247. *Ibid.*, para. 60.

248. See for example: *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding observations: Denmark*, Committee of the Rights of the Child, 23 November 2005, CRC/C/DNK/CO/3, para. 59 (a); *Interim Report of the Special Rapporteur on Torture*, A/66/268, *op. cit.*, note 231, para. 86.

249. *Istanbul Statement on the use and effects of solitary confinement*, *op. cit.*, note 231, p. 4; see also: *Report of the Special Rapporteur on torture*, A/66/268, *op. cit.*, note 231, paras. 67–68 and 78; *Report of the Special Rapporteur on torture*, A/68/295, *op. cit.* note 57, para. 61. For more information on the impact of solitary confinement on mental health, see: Sharon Shalev, *A sourcebook on solitary confinement*, *op. cit.*, note 232.

250. *21st General Report*, CPT, *op. cit.*, note 224, para. 55.



PROMISING PRACTICE: TOOLKIT TO END THE SOLITARY CONFINEMENT OF CHILDREN [4.3]

The ACLU has developed a toolkit that provides comprehensive resources to end the solitary confinement of children. The toolkit accompanies the ACLU report, *Alone and Afraid: Children Held in Confinement and Isolation in Juvenile Detention and Correctional Facilities*,²⁵¹ which gives a brief background on the problem of youth solitary confinement in juvenile facilities and solutions to it.

The toolkit includes information on engaging affected youth in discussions about solitary confinement, advocacy materials and model legislation to limit solitary confinement and other forms of isolation in juvenile detention facilities, as well as details of national and international standards on juvenile detention. The ACLU also provides guidance on alternatives to the solitary confinement of children.²⁵²

Additional safeguards

- 61 The right to seek independent review of a decision to impose solitary confinement applies independently of the grounds on which it was imposed.
- 62 Monitoring bodies must have unhindered access to segregation facilities and to prisoners held in them. This applies regardless of the grounds for which the isolation was imposed. Monitoring bodies should also have access to relevant documentation related to solitary confinement. The role of internal inspection and external monitoring bodies is addressed in **Chapter 1, paragraphs 221–232 and Chapter 7, paragraphs 01–24** of this guidance document respectively.
- 63 The use of solitary confinement needs to be carefully documented in individual prisoner files and its application monitored across institutions and within the overall prison administration. On this, the UN Special Rapporteur on torture has stated that:

“All assessments and decisions taken with respect to the imposition of solitary confinement must be clearly documented and readily available to the detained persons and their legal counsel. This includes the identity and title of the authority imposing solitary confinement, the source of his or her legal attributes to impose it, a statement of underlying justification for its imposition, its duration, the reasons for which solitary confinement is determined to be appropriate in accordance with the detained person’s mental and physical health, the reasons for which solitary confinement is determined to be proportional to the infraction, reports from regular review of the justification for solitary confinement, and medical assessments of the detained person’s mental and physical health.”²⁵³



PROMISING PRACTICE: MULTIDISCIPLINARY TEAM WORK IN SEGREGATION UNITS [4.4]

A review of seclusion and restraint practices in New Zealand²⁵⁴ found that progression out of segregated environments is often supported by multidisciplinary team work and family involvement. There was a degree of multidisciplinary team work in most of the prisons visited, especially in reviewing the segregation of prisoners at risk. These reviews typically involved custodial staff, health and mental health staff, occupational therapists and representatives from the community mental health facility.

For example, at Auckland Men’s prison, weekly meetings were held to discuss prisoners with complex needs, which included mental health, education and custodial staff, as well as representatives from a forensic psychiatry clinic. Similarly, all the women at the At Risk unit in Christchurch Women’s prison were assessed daily by a multidisciplinary team that included nursing staff, senior custodial staff, unit staff and the prisoner herself. Segregation review hearings in Auckland South prison included the prisoner himself as well as a cultural representative, mental health practitioner and custodial staff.

251. *Alone and Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, American Civil Liberties Union (ACLU), June 2014.

252. The toolkit can be accessed at www.aclu.org/report/alone-afraid.

253. *Interim Report of the Special Rapporteur on Torture, A/66/268, op. cit.*, note 231, para. 93.

254. Sharon Shalev, ‘Thinking Outside the Box?’ A review of seclusion and restraint practices in New Zealand, New Zealand Human Rights Commission, April 2017.

Reducing the negative impact of solitary confinement and other sanctions

- 64 Prison authorities should make every effort to alleviate the potential detrimental impact of confinement (Rule 38(2)) by providing alternative social contact and by ensuring compensatory measures once the period of isolation is over.
- 65 Disciplinary sanctions or restrictive measures must not include the prohibition of family contact.
- 66 All efforts should be made to enable those undergoing solitary confinement to participate in other aspects of prison life, including work, educational and recreational activities.

CONTEXT: MEASURES TO ALLEVIATE THE IMPACT OF CONFINEMENT [4.5]

Measures to alleviate the potential detrimental impact of confinement, as noted in Rule 38(2) might include, for example:

- Increased contact with the outside world;
 - improved access to vocational, educational and recreational activities;
 - Allowing isolated prisoners to exercise or participate in recreation activities together;
 - Providing segregated prisoners who wish to work with the opportunity to do so, either inside their cell, or, where possible, at a designated area alongside others;
 - Allowing prisoners in longer-term segregation to express themselves through art;
 - Providing access to a gym; and
 - Providing musical instruments and craft materials.
-

Prevention and reintegration

- 67 Prison authorities should aspire to prevent or eliminate the use of isolation by focusing on the root causes of incidents that lead to its use. When a prisoner has been held in solitary confinement, the emphasis, from the outset, must be on returning and reintegrating her or him with the general prisoner population.
- 68 Prisoners who have been in solitary confinement should be encouraged to undergo a debriefing with staff and be provided with extra care and support with a view to preventing the need for solitary confinement to be used on them again in future.
- 69 After a longer period of isolation, a phased return to the general prison population should be arranged. Experience has shown that problems can arise when prisoners are directly released into the general prison population from solitary confinement.
- 70 The Mandela Rules do not regulate cases where a prisoner requests to be separated from the general prison population (voluntary separation). It is recommended that, in those cases, authorities should first seek to understand the reasons why the prisoner wants to be separated and try to resolve the issue by other means. If there are fears for that individual's safety, then authorities should consider if they can provide the prisoner with a safe environment without isolating her or him. If isolation is deemed the only possible avenue, it should be used only for the period of time necessary to resolve the situation.

The planning and design of isolation cells

- 71 UNOPS has provided some minimum requirements for the planning and design of isolation cells and notes that the “inclusion of isolation cells in the design of the prison should be justified by the risk profile of the prisoners, and not assumed as a matter of course. Especially in low security prisons, isolation cells may not be necessary.”²⁵⁵ In the design of isolation cells, the *Technical Guidance for Prison Planning* points out that all other minimum aspects of cell accommodation apply, “including specifications for space, lighting and ventilation, heating

²⁵⁵ *Technical Guidance for Prison Planning*, UNOPS, *op. cit.*, note 84, p. 111.

and cooling. The provision of a dedicated external yard to enable exercise for prisoners in isolation is also required, and separate sanitation, eating, cooking and medical facilities may also need to be provided.”²⁵⁶

- 72 The *Technical Guidance for Prison Planning* also points out that isolation cells should not be considered part of the overall prison capacity, so that if prisoners are removed from the general population and put in isolation there must be a space for them to return to following the period of isolation. Isolation cells should never be used as a means to alleviate overcrowding.²⁵⁷

4.3. THE ROLE OF HEALTH-CARE PERSONNEL



RELEVANT RULES: THE ROLE OF HEALTH-CARE PERSONNEL

Rule 46:

1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.

2. Health-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.

3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.



WHY IS IT IMPORTANT?

- 73 As mentioned in **Chapter 6, paragraph 103** of this guidance document, the UN Principles of Medical Ethics (Principle 3) point out that “It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.”
- 74 Rule 32(d) of the Mandela Rules reiterates the absolute prohibition on physicians and other health-care professionals from engaging, actively or passively, in acts that may constitute torture or other ill-treatment.
- 75 Daily visits by health-care staff to those held in involuntary separation are important to assess the impact of segregation on prisoners’ physical and mental health, including indications of suicidal tendencies or self-harm, and also to detect any signs of torture or other ill-treatment. The fact that medical staff will visit prisoners undergoing such punishment on a daily basis can itself act as a deterrent to ill-treatment.

²⁵⁶. *Ibid*, p. 112.

²⁵⁷. *Ibid*, p. 111.



PUTTING IT INTO PRACTICE

- 76 Health-care staff should pay particular attention to the health of prisoners in segregation and undergoing other forms of sanctions. To this end, health-care staff must be informed every time a prisoner is placed in solitary confinement and prison authorities must give health-care staff unimpeded access to all segregated prisoners.
- 77 Daily health-care visits to those undergoing any form of involuntary separation must be private to ensure full medical confidentiality. Thus, prisoners should be able to have a confidential conversation with health-care staff. Such conversations are particularly important in detecting mental health conditions.
- 78 In the absence of the prison director, health-care personnel should report any concerns to another designated senior staff member.
- 79 In addition to daily scheduled visits, health-care staff should be available to visit prisoners undergoing sanctions at any time of the day. This could be in response to a direct request from the prisoner or at the recommendation of a staff member.
- 80 The recommendations of the health-care staff in relation to a prisoner's health must be acted upon by the prison director or other delegated staff member.

4.4. ALTERNATIVE DISPUTE RESOLUTION



RELEVANT RULES: ALTERNATIVE DISPUTE RESOLUTION

Rule 38(1): 1. Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.



WHY IS IT IMPORTANT?

- 81 There are many effective and well-proven ways in which to deal with security and order in places of detention, such as the configuration and infrastructure of the place of detention; having adequate numbers of well-trained staff; having an effective system of classification and separation of detainees; having positive staff-prisoner relationships that enable prison staff to anticipate and proactively deal with problems; and having dynamic security and conflict resolution tools, such as mediation, at hand.²⁵⁸
- 82 Prison administrations have a number of options at their disposal to resolve problems without resorting to disciplinary sanctions. These include conflict prevention, informal warnings for minor breaches of discipline and mediation techniques. As with disciplinary procedures, care should be taken to ensure that such measures are applied fairly and consistently.
- 83 The UN Special Rapporteur on torture has reiterated the importance of alternative dispute resolution stating that "it is essential that the Rules provide for an obligation for prison authorities to use disciplinary measures on an exceptional basis and only when the use of mediation and other dissuasive methods to resolve disputes proves to be inadequate to maintain proper order".²⁵⁹

^{258.} *Second Report of Essex Expert Group on the Review of the Standard Minimum Rules for the Treatment of Prisoners*, Penal Reform International and the University of Essex, 20 March 2014, para. 43 at www.penalreform.org/resource/report-essex-experts-review-standard-minimum-rules-treatment.

^{259.} *Report of the Special Rapporteur on torture, A/68/295, op. cit.* note 57, para. 57.

- 84 If prison staff are well trained in dynamic security techniques then they will be better equipped to recognize the early warning signs of disciplinary offences and defuse the situation before it escalates. Such preventative approaches require fewer resources than formal disciplinary procedures and can contribute to improved prisoner/staff relations. The concept of dynamic security, an approach to security, which combines positive staff-prisoner relationships with fair treatment and purposeful activities that contribute to their future reintegration into society, is explored in more detail on in **Chapter 3, paragraph 01** of this guidance document.



PUTTING IT INTO PRACTICE

- 85 The requirement to use alternative dispute resolution mechanisms links back to Rules 75 and 76(1)(c), which require prison staff to receive ongoing training on the concept of dynamic security and preventative and defusing techniques such as negotiation and mediation.
- 86 A dynamic security approach, establishing a positive relationship between prison staff and prisoners, is a key element in being able to apply alternative dispute resolution.
- 87 In order for prisons to be successfully managed, policymakers, prison managers and staff must be fully engaged with, and committed to, the principles of dynamic security and alternative dispute resolution. Staff at all levels must, therefore, be carefully selected with this in mind.
- 88 The phrase “to the extent possible” in Rule 38(1) recognizes that disciplinary procedures are necessary on occasions. However, the wording should not lead to a narrow interpretation of this provision. Alternative dispute resolution mechanisms should always be applied before formal disciplinary procedures except in cases where it is reliably determined that other measures will not be effective, or if the infraction is serious enough to move straight to formal procedures.



CONTACT WITH THE OUTSIDE WORLD

5.1 CONTACT WITH FAMILY AND FRIENDS

5.2 ACCESS TO LEGAL ADVICE, REPRESENTATION AND LEGAL AID

5.3 NOTIFICATIONS

5.

5. CONTACT WITH THE OUTSIDE WORLD

- 01 There are many ways that prison administrations can help prisoners establish, maintain and develop contact with the outside world. They can help prisoners understand the value of external connections, and have an important role in facilitating such contact, particularly for those who face problems in doing so themselves.

The Mandela Rules set out the rights of prisoners to communicate with their family and friends at regular intervals, and provide safeguards against the prohibition or restriction of family contact. The new set of rules also detail the right of prisoners and third parties to be informed about detention, transfer, serious injury, illness or death of a family member.

In relation to legal advice and representation, the Mandela Rules affirm the right of prisoners to be provided with adequate time and facilities to be visited by and consult with a legal advisor without delay, interception or censorship and in full confidentiality. This right applies not only to pre-trial prisoners in relation to their defence (Rules 119, 120), but to all prisoners on “any legal matter” (Rule 61(1)).

Acknowledging the inability of many prisoners to afford legal representation in the context of criminal proceedings, the rules have been updated to incorporate relevant provisions of the 2012 UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UN Legal Aid Principles and Guidelines).²⁶⁰ They call on states to enact specific legislation to establish legal aid schemes²⁶¹ that are “accessible, effective, sustainable and credible”, allocating the “necessary human and financial resources”.²⁶² Effective remedies and safeguards also need to be available if access to legal aid is undermined, delayed or denied, or if prisoners have not been adequately informed of their right to legal aid.²⁶³

The range of institutions that can be involved in such schemes includes non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academia.²⁶⁴ More detail for policymakers on the establishment of legal aid schemes in criminal proceedings can be found in the UN Legal Aid Principles and Guidelines and in the UNODC/ UNDP handbook titled, *Early Access to Legal Aid in Criminal Justice Processes: a Handbook for Policymakers and Practitioners*.²⁶⁵

260. *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, General Assembly resolution 67/187, 28 March 2013, A/RES/67/187.

261. The Principles (*ibid*) clarify that legal aid comprises: “legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence (...) that is provided at no cost for those without sufficient means or when the interests of justice so require”, para. 8.

262. *Ibid*, Principle 2, para. 15.

263. *Ibid*, Principle 9, para. 31.

264. *Ibid*, para. 9.

265. *Early Access to Legal Aid in Criminal Justice Processes: a handbook for policymakers and practitioners*, United Nations Office on Drugs and Crime (UNODC) and United Nations Development Programme (UNDP), February 2014.

5.1. CONTACT WITH FAMILY AND FRIENDS



RELEVANT RULES: CONTACT WITH FAMILY AND FRIENDS

Rule 58:

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:

- (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
- (b) By receiving visits.

2. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.



WHY IS IT IMPORTANT?

Rehabilitation and reintegration

- 02 Contact with the outside world is crucial for the rehabilitation and reintegration of prisoners. Meaningful interactions with family, friends and community representatives help individuals imagine their life after release, and help them to prepare themselves accordingly, both practically and psychologically. This can act as a significant motivator for them to behave better while in prison, and can reduce the risk of recidivism. Family visits close to the time of release can play a particularly important role in helping prisoners and their families make post-release plans.
- 03 Regular contact with family and friends can also serve to remind prisoners that they have responsibilities outside of prison, and to reinforce their commitment to observing prison rules and procedures. Contact allows them to participate in discussions and decisions related to family and community life, so that they feel less isolated and more engaged with broader society. This is important, not only for inter-personal relations, but also for the psychological wellbeing of prisoners. Regular contact with family members through visits is also likely to reduce the risk of family breakdown resulting from detention.
- 04 It is particularly important for parents in prison to be able to maintain contact with their children outside of prison, and to be able to input into decisions regarding their education, health and caregiving arrangements. When such contact is not possible, it is likely that the wellbeing of both parent and child will be affected. Studies have shown that contact with parents in prison is important for children's education, social inclusion and mental health.²⁶⁶

The right to family life

- 05 Contact with family is a right, not a privilege and it applies to all prisoners and their family members. This right is enshrined in Article 23 of the ICCPR. The right of children to have contact with their family members is enshrined in the CRC.²⁶⁷
- 06 UNODC points out that, because prisoners' contact with the outside world must be seen as an entitlement rather than a privilege, withholding or granting such contact should not be used as either a reward or a punishment.²⁶⁸
- 07 The denial of family visits to people in detention may in itself constitute cruel, inhuman or degrading treatment. For example, the UN Special Rapporteur on torture concluded in an observation report that the rights of individuals held in pre-trial detention had been violated

²⁶⁶. See for example: *Children of prisoners maintaining family ties*, Social Care Institute for Excellence, April 2008.

²⁶⁷. Convention on the Rights of the Child, *op. cit.*, note 140, Article 16(1): No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

²⁶⁸. *Handbook on Dynamic Security and Prison Intelligence*, UNODC, *op. cit.*, note 160, p. 22.

because of the “denial of family visits of persons in custody”, stating that it “constitutes, under these circumstances, cruel, inhuman or degrading treatment in violation of international standards”.²⁶⁹

- 08 Because they are deprived of their liberty, prisoners must rely on prison authorities to enable and support them to maintain and develop ties with family and friends. Authorities have a responsibility to do this. Authorities should, therefore, be proactive in their efforts and focus on promoting such contact, rather than limiting it.

Improving prisoner health and wellbeing

- 09 There is no doubt that contact with family and friends can be beneficial for prisoners’ psychological health and overall wellbeing. Such contact can alleviate the anxiety a prisoner feels about her or his situation and family responsibilities. Contact is a source of comfort and reassurance, but it can also relieve boredom and provide an avenue for prisoners to express their problems, fears and frustrations.
- 10 Contact with the outside world provides a degree of normalcy to counter-balance the negative effects of prison life and those who have such contact are likely to cope better with their confinement than those who are more isolated. As such, prison administrations may find that prisoners are easier to manage and suffer from fewer psychological problems, potentially decreasing levels of violence.
- 11 Regular contact with family or friends can also reduce the likelihood of suicide and self-harm,²⁷⁰ not only because of the reassurance it provides, but because visitors may recognize early symptoms of depression or other warning signs. Prisoners may also confide in their visitors about physical or mental health conditions.
- 12 In many countries it is common for visitors to bring prisoners supplies of food, drinks, sanitary items and medicine. While the provision of such supplies is the responsibility of prison authorities, and all prisoners should have equal access to them, the reality is that some prisoners are dependent on visitors to meet their basic nutritional and physical health requirements.



PROMISING PRACTICE: FAMILY CONTACT OFFICERS IN SCOTLAND [5.1]

In Scotland every prison has a Family Contact Officer, who is responsible for encouraging and maintaining links with families. The main role of the officer is to offer support and advice for relatives who may have concerns about a prisoner.

As well as acting as a liaison point between visitors and prisoners the contact officer can also put visitors in touch with appropriate partner agencies for advice and support.²⁷¹

Safeguard against ill-treatment

- 13 Contact with the outside world is also a key safeguard against torture and other ill-treatment. It can prevent human rights violations from taking place, but also provides opportunities for reporting ill-treatment and for taking action.
- 14 The knowledge that prisoners have someone to talk to can act as a strong deterrent for torture and other ill-treatment. Moreover, prison visitors may themselves notice indications of physical ill-treatment or psychological distress and ask the prisoner what happened. Visitors may be able to alert authorities to the risk of ill-treatment, or advise the prisoner about the best way to respond.
- 15 Those who have regular contact with family and friends are also less vulnerable because they are provided with material and psychological support. Because they know they have an outlet for communication they tend to feel, and appear, emotionally stronger which in itself can reduce the risk of ill-treatment. Even if they feel they cannot complain to the prison administration they can at least confide in someone they trust.

269. UN Special Rapporteur on torture, *Report to the Human Rights Council on observations on communications transmitted to Governments and replies received*, 12 March 2013, A/HRC/22/53/Add.4, para. 20.

270. See for example: ‘Great Expectations?: A Review of the Role of Prisoners’ Families in England and Wales, Dr. Alice Mills, University of Southampton, 2005 at www.britisccrim.org/volume7/001.pdf.

271. www.sps.gov.uk/Families/WhereCanIGetSupport/Family-Contact-Officers.aspx.

Making complaints

- 16 If a prisoner is unable to make a request or complaint then a family member, or any other person who has knowledge of the case, can do so on her or his behalf, in accordance with Rule 56(4). This will only be possible if prisoners can safely and regularly communicate with such those family members or other people. This possibility extends beyond reports of ill-treatment, to include other requests and complaints that prisoners are unable to raise themselves. More guidance on requests and complaints mechanisms can be found in **Chapter 1, paragraphs 130–165** of this guidance document.
- 17 Visitors may be able to facilitate access to appropriate counselling and legal representation, and follow up on the progress of the complaint.
- 18 When torture and other ill-treatment has been reported, access to the outside world is crucial as a safeguard against retaliatory actions.

CONTEXT: TYPES OF PRISON VISITS [5.2]

There are many different types of prison visits in use in different countries and places of detention, and particular arrangements may differ according to local culture. The list below is not exhaustive, but is intended to give some indication of the different forms prison visits can take.

Non-contact/closed visits

These take place where prisoners and visitors are separated by glass or another barrier. They usually involve limited or no physical contact, though prisoners and their families may sometimes be able to touch or hold hands, depending on the arrangement of the barrier. These visits are the most restricted, and the least useful in terms of prisoner wellbeing and reintegration prospects. Non-contact visits should only be imposed when there are specific security reasons for doing so.

Contact/open visits

These types of visit permit some form of physical contact between prisoner and visitor and do not usually involve any form of barrier. They usually take place within sight but not within hearing of prison guards.

Extended visits

These are regular visits that are extended in length to take into consideration personal circumstances, such as family crises or special occasions. Extended visits should also be considered for visits involving children, for visitors who have to travel long distances and for female prisoners, who tend to receive fewer visits than male prisoners.

Private visits

These are visits in which prisoners can be alone with their families or another person with whom they have an intimate relationship. They usually take place in designated settings and often involve children. For such visits to be successful there must be effective assessment procedures in place to determine any potential risk to the prisoner or visitor.

Conjugal/intimate visits

These are visits in which a prisoner may spend time alone with a visitor and engage in sexual activities. They help maintain emotional and intimate bonds between partners and allow for some normalisation of relationships, aiding rehabilitation and reintegration.

Family visits/long visits

Such visits involve the prisoner and their family, including children, spending time together for several days in some form of dedicated facility managed by the prison administration. Family visits should not be limited to those who have children.

Home leave

This is a system whereby prisoners are temporarily released to spend time at home. It is sometimes used for prisoners nearing their release date to aid reintegration, but might also be used for medical, educational or occupational reasons, or for special occasions. They can also be considered when a family member or other third party is sick or physically unable to visit the prisoner.



Virtual visits

This includes video-conferencing and other forms of remote communication. They may be particularly useful for foreign nationals and those whose families live far away, but should not be used as a substitute for in-person visits where these are possible.



PUTTING IT INTO PRACTICE

Allocation to prison facilities

- 19** It is much easier for prisoners to maintain contact with families and friends if the detention facility is easy to access and they are located close to their home or place of social rehabilitation, in accordance with Rule 59. Location of family and other contacts should therefore be a key consideration for those determining the allocation of individual prisoners.
- 20** Prisoners should be able to request transfer to a facility closer to their home or place of usual residence. All prisoners should be given information about how to request a transfer and, if they are unable to make the request themselves, others should be able to apply on their behalf. The procedures for assessing such requests must be fair and transparent.
- 21** Prisoners should never be allocated or transferred to a facility far from their family or friends as a form of punishment. In this regard, the CPT has noted that “the continuous moving of a prisoner from one establishment to another can have very harmful effects on his psychological and physical wellbeing. Moreover, a prisoner in such a position will have difficulty in maintaining appropriate contacts with his family and lawyer. The overall effect on the prisoner of successive transfers could under certain circumstances amount to inhuman and degrading treatment.”²⁷²

**PROMISING PRACTICE: ASSISTANCE WITH FACILITATING FAMILY VISITS [5.3]**

It is good practice for prison authorities to proactively encourage visits to prisoners. Prisons could consider assisting with transport and overnight accommodation for those travelling long distances. They could also establish links with local NGOs that may be able to help them with this. Transport sharing arrangements for those coming from other parts of a country may also be useful or authorities may consider voucher schemes or transport discounts for prison visitors. NGOs may also be able to facilitate contact with families in other ways, such as locating family members or delivering letters.

In Cambodia, the organization *This Life Cambodia* works with children in prison and parents in conflict with the law. As part of their work, they facilitate monthly visits for the families of boys in prison, who are participating in vocational training programmes with the organization. Many of the families supported by *This Life Cambodia* would not be able to visit the boys in prison without the support of the organization, which manages the associated costs of travelling from their homes,

often situated in rural and remote locations, to the prisons. Most families are able to visit the prison at least once a month with the support of the organization.

An evaluation of the programme found that “(...) students [the boys in prison] agreed that seeing their families gave them hope to continue studying for a brighter future. Teachers also noticed happier students after family visitation. Vocational trainers reported that when students had not seen their families, they were often more stressed and unable to focus or concentrate on their study...when students had seen their families, trainers typically heard the students talking to each other about the visitation, which created a more positive atmosphere in the training centre.”

The organization has also noted that “[o]ne of the most important aspects of family visits for the boys is the encouragement they receive from their parents to continue to focus on their study. This helps to keep boys positive”.²⁷³

²⁷² 2nd General Report on the CPT's activities, *op. cit.*, note 79, para. 57.

²⁷³ *This Life Beyond Bars: 3 Year Program Evaluation 2014*, This Life Cambodia, August 2014, p. 31 at www.thislifecambodia.org/wp-content/uploads/2015/01/2014-TLBB-3yr-Program-Evaluation.pdf.

Who should be able to visit?

- 22 As the concept of “family” differs from one culture to another, it should not be interpreted rigidly, and should include non-immediate family members, as well as those in non-traditional family structures.



PROMISING PRACTICE: FAMILY VISITS IN GEORGIA [5.4]

Until 2010, Georgia’s *Law on Imprisonment* only provided for immediate family members to visit their relatives in prison. However, the adoption of the 2010 *Code on Imprisonment* broadened the scope of family visits, with Article 17.2 allowing for any prisoner to meet “close relatives” for visits lasting one to two hours. The visits take place under electronic or direct visual surveillance, but are not listened to by the authorities. Denial of this right must be justified in writing to the prisoner.

Close relatives are defined as sons and daughters, spouses, a person who is a parent to a prisoner’s child; parents (including adoptive parents),

step-mothers, step-fathers, partner’s parents, partner’s child, foster children and their offspring, grandchildren, sisters and brothers, nephews, nieces and their children; grandparents, parents of grandparents, uncles, aunts, cousins and any person with whom the prisoner has lived and led a common household.

According to recent changes to the *Code of Imprisonment*, as a form of incentive, a prisoner can meet with others not included in the list of close relatives, based on the prison director’s recommendation and on the decision of the head of the penitentiary department.

- 23 The notion of “friends” should be interpreted broadly to include individuals that the prisoner wants to see. Access should also be facilitated with NGO staff members, religious representatives²⁷⁴ and volunteer visitors from the community. Particular efforts should be made to facilitate such visits for those who have no family or who do not want their family and friends to visit, or whose family and friends are unable or unwilling to visit them.

CONTEXT: THE RIGHT TO PRIVATE AND FAMILY LIFE – ECTHR [5.5]

The ECTHR has interpreted the right to private and family life in Article 8 of the European Convention on Human Rights (ECHR) as not confined to legally acknowledged relationships: “Forms of cohabitation or personal relationships which are not recognized as falling in the ambit of ‘family life’ in the jurisdiction of a contracting state can still enjoy protection by Article 8; family life is not confined to legally acknowledged relationships. The Court is led by social, emotional and biological factors rather than legal considerations when assessing whether a relationship is to be considered as ‘family life’”.²⁷⁵

- 24 Prison administrations should carefully consider the requirement for individuals to be named in official documents as members of the prisoner’s family or to provide proof of family connection. Such arrangements can pose problems in countries where not everybody possesses an identification document and may disproportionately affect minority groups, refugees and stateless people.
- 25 The Bangkok Rules state that, “[i]n view of women prisoners’ disproportionate experience of domestic violence, they shall be properly consulted as to who, including which family members, is allowed to visit them.”²⁷⁶ Such safeguards could be applied to all prisoners, particularly those known to have been victims of abuse before their detention.
- 26 If prison authorities have doubts about the authenticity of a visitor, then they should check with the prisoners before allowing the visit to proceed. Prisoners can also initiate the request for a named visitor, or be consulted on a list of approved visitors. Whichever system is in place, the decision on who can visit or not should lie with the prisoner, unless authorities have well-founded concerns against a particular visitor.

274. See: *The Mandela Rules*, *op. cit.*, note 1, Rules 65 and 66 for more information on access to religious representatives.

275. *Right to Family Life*, European Convention on Human Rights at echr-online.info/right-to-family-life.

276. *The Bangkok Rules*, *op. cit.*, note 28, rule 44.



PROMISING PRACTICE: INTER-PRISON COMMUNICATION AND VISITS [5.6]

Consideration should be given to whether a prisoner should be able to visit another prisoner, particularly if they are close family members.

Inter-prison phone calls: In England and Wales there is a system of inter-prison phone calls in the case of prisoners who have partners, or close relatives in another prison. Under this arrangement, the two prison administrations must agree that one prisoner can receive the call on an official telephone at a time convenient to both prisons.²⁷⁷ Some prisons also allow video links for inter-prison 'visits'.

Inter-prison visits: In Belgium prisoners can request a temporary transfer to another facility in order to visit close family members, including

partners of the same or opposite sex, who are also in prison. Under this system both prisoners must make the request. If agreed by the prison administration and depending on the availability of space, the prisoners can spend up to two weeks together in one facility. When prisoners who are partners are held in the same facility they can visit each other once a week in the normal visiting area and can meet visiting family members at the same time. Partners in the same facility can also request to spend time together in a single cell. Decisions on such requests are based on individual assessments and security considerations.²⁷⁸

Types and frequency of communication

- 27 Prisons can enable meaningful contact with the outside world in many ways. In addition to the standard system of visits, phone calls and emails or letters, prison administrations could consider consulting family members or friends if a prisoner is depressed or suicidal, or if the prisoner has behavioural issues.
- 28 The increased use of email and internet-based chat and calling programmes, such as Skype, instead of regular mail can be beneficial for prisoners and their families in terms of costs, speed and frequency of communication. However, it should be noted that letters, phone calls and other forms of remote communication are not substitutes for in-person visits.
- 29 The regularity with which communication is permitted with family and friends should be sufficient to enable prisoners to enjoy their right to family life. The CPT has emphasized the "need for some flexibility as regards the application of rules on visits and telephone contacts" for families who live far away from the prisoner.²⁷⁹
- 30 Standard visiting schedules are important for prison management as well as for prisoners and their visitors. However, prison administrations should also allow a degree of flexibility in these schedules to take into account different working arrangements, school hours, or other personal considerations, such as childcare. If a prisoner has limited out-of-cell time, their use of telephones or computers for emails should not be limited only to this out-of-cell time.
- 31 It is good practice to allow prisoners whose families can only visit infrequently to accumulate prison visits so that they can eventually have longer visits, or visits spanning several days.



PROMISING PRACTICE: PROACTIVE APPROACHES TO FAMILY CONTACT [5.7]

Prison authorities can allow prisoners to proactively participate in important family or community matters, in person or via remote communication. This could include, for example, participation via Skype, or similar telecommunications application software, in matters relating to their child's education, health and development.

In Georgia, as generally only family members can visit prisoners (see promising practice, 5.4), video conference technology has been rolled out to give prisoners the opportunity to speak with other contacts.²⁸⁰

277. *Prison Service Instruction 49/2011*, Prisoner Communications Services UK Ministry of Justice, 26 September 2011, Para. 6.20.

278. As discussed during the ODIHR/PRI regional consultation with prison administrators and staff on 19 and 20 April 2017 in Warsaw, Poland.

279. *2nd General Report on the CPT's activities*, op. cit., note 79, para. 121.

280. *Global Prison Trends 2017*, Penal Reform International and Thailand Institute of Justice, May 2017.

In Belgium, detained fathers are encouraged to maintain contact with their children through video storytelling. Prisoners learn storytelling techniques through group exercises, practice speaking in front of a camera and design the DVD cover themselves. They can choose to record stories about their own lives, a story

they write themselves or an existing children's story. The fathers are able to review the recordings, which are then put on DVDs and are given to their children.²⁸¹ A similar initiative called Storybook Dads and Storybook Mums exists in the United Kingdom.²⁸²

Individual assessments

- 32 In many countries, the type and frequency of visits permitted for each prisoner is determined by prisoner's security classification. However, while prison authorities might have legitimate security concerns for high-security prisoners, visits should never be denied completely. Denial of visits would constitute an additional form of punishment and can be extremely harmful for a prisoner's family relationships and rehabilitation prospects. To address this, there should be minimum visiting entitlements which apply to all prisoners, regardless of their security classification.
- 33 High security prisoners do not necessarily pose a higher risk during visits than other prisoners and they may, in fact, have a greater need for regular visits, especially if they are serving long sentences. Visiting entitlements should, therefore, be based on the risk associated with the specific visits, rather than the prisoner's security classification.
- 34 Visiting rights are often linked to behaviour, but prison officers should be aware that prisoners with behavioural issues may also be those who would stand to benefit most from regular, or extended visits from their families or others.
- 35 UNOPS points out that in low security prisons there should be no need for non-contact visiting facilities. Non-contact visits should not be the default visiting arrangement.²⁸³



PROMISING PRACTICE: ASSESSMENTS FOR HIGH SECURITY VISITS IN SWEDEN [5.8]

Swedish prison authorities recognize that high security prisoners may have a greater need for regular visits than other prisoners. As such, visits to high security prisoners are assessed using the same criteria as for all other prisoners, with a view to reducing the negative impact of long sentences and bearing in mind the key principles of rehabilitation and reintegration.²⁸⁴

A government directive specifies that prisoners with long sentences who are not permitted to take leave/furloughs should, along with prisoners with children, be granted priority in requests to use visitor's apartments.

Accessibility and non-discrimination

- 36 For the different means of communication to be effective and available to all, prison authorities must ensure that there are functional systems in place for their use. They must ensure that telephones are working and accessible to all. If registration for prison visits is required, and visits need to be booked in advance, the systems should be easy to understand and functional.
- 37 The right to have contact with family and friends must be applied without discrimination. Indigent prisoners should be provided with appropriate support (including writing material, envelopes, postage stamps and telephone cards) so that they are not de facto deprived of communication with family and friends. Other positive steps should be taken to help those who need support in contacting their families. Those who are illiterate should be provided with the means to communicate other than in writing.

281. ODIHR/PRI regional consultation 19 and 20 April 2017, *op. cit.*, note 278.

282. For more information, see: www.storybookdads.org.uk.

283. *Technical Guidance for Prison Planning*, UNOPS, *op. cit.*, note 84, p. 131.

284. ODIHR/PRI regional consultation 19 and 20 April 2017, *op. cit.*, note 278.

- 38 The location of prison telephones, post boxes, libraries and other means of communication should be considered at the prison planning stage to ensure equality of access, particularly where different categories of prisoners are held in the same facility. The placement and design of prison telephone areas should also take into account the need for privacy.
- 39 Under no circumstances should prisoners or their families be required to pay for the right to have a prison visit or have to bring materials to prisoners. To avoid the use of bribes, prison administrations should consider displaying prominent signs outside visiting areas stating that payments are neither expected nor required.
- 40 Information about how prison visits are arranged, as well as the prison rules and regulations governing prison visits, should be made available to visitors before they enter the prison. Such information could be prominently displayed at the entrance to the facility and, if prison visitors are illiterate, prison staff could explain the procedures and rules to them verbally. If visitors are made aware of the penalties for smuggling contraband items into the facility, then they may be deterred from doing so.
- 41 The EPR state that, unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners “shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners” and “may receive additional visits and have additional access to other forms of communication”.²⁸⁵



PROMISING PRACTICE: TEMPORARY RELEASE SCHEMES IN THE UNITED KINGDOM [5.9]

The Northern Ireland Prison Service provides online information about the schemes for compassionate temporary release, home visits, pre-release home and resettlement leave, home leave at Christmas and temporary release for medical purposes.²⁸⁶ In summary the schemes available are:

Compassionate temporary release scheme

All sentenced prisoners may apply for compassionate temporary release, which is granted subject to a satisfactory risk assessment. Compassionate temporary release is considered in the case of the death or critical illness of a member of the prisoner’s immediate family.

Home visits scheme

Temporary release may be granted in circumstances where a member of the prisoner’s immediate family is chronically ill or infirm, housebound and is physically unable to visit the prisoner. It is subject to a satisfactory risk assessment and applications will be considered for one day time visit every six months providing certain criteria are satisfied.

Pre-release home and resettlement leave

The purpose of pre-release home and resettlement leave is to help prisoners’ self-confidence by

trusting the prisoner under conditions of complete freedom and to help her or him re-adjust to life outside of prison by providing an opportunity, before final release, to renew home ties and to get in touch with prospective employers. Pre-release leave is a privilege to be earned, rather than a right, and is based on specific criteria.

Home leave at Christmas

Home leave at Christmas may be granted to prisoners who meet the eligibility criteria and who have a satisfactory risk assessment profile. Ministerial approval is required annually for the home leave at Christmas scheme.

Temporary release for medical purposes

All prisoners other than those who are remanded in custody by any court, committed in custody for trial or un-sentenced can be considered for temporary release for in-patient or out-patient hospital care, when such care cannot be delayed until the patient’s release or cannot be provided within the prison. Prisoners who are refused medical leave are advised that the appropriate security and administrative arrangements will be put in place to enable them to receive necessary in-patient or out-patient hospital care.

The visiting environment

- 42 The prison visiting environment depends on the type of visits permitted, yet even the most tightly regulated visits can be enhanced by the surroundings and the behaviour of staff members towards the visitors. Prison authorities have to provide security to both prisoners

²⁸⁵ Technical Guidance for Prison Planning, UNOPS, *op. cit.*, note 84, p. 144.

²⁸⁶ For more information, see: *Temporary Release Schemes*, Department of Justice Northern Ireland Executive at www.justice-ni.gov.uk/articles/temporary-release-schemes.

and visitors, while also respecting the right to privacy and family life. Prison authorities will benefit from consulting prisoners and their visitors with a view to improving the visiting environment.

- 43 The prison visiting environment should be reasonably comfortable and as close to normal life as possible. Thus, authorities should consider, among other things, seating arrangements, décor, lighting, heating and ventilation. They should provide access to toilets for both prisoners and visitors. They could also make water and/or other refreshments available during visits.
- 44 Staff should receive training on how to interact positively with prison visitors, including children. If visitors experience hostility from staff members, this will inevitably impact staff-prisoner relations.



PROMISING PRACTICE: PROMOTING THE RIGHTS OF CHILDREN OF PRISONERS IN ITALY [5.10]

The Italian organization *Bambinisenzasbarre Onlus* signed a Memorandum of Understanding with the Italian Ministry of Justice and the Italian Ombudsman for Children in 2016 to establish a *Charter of Rights of Children of Imprisoned Parents*.²⁸⁷ Following signature of the Memorandum, *Bambinisenzasbarre Onlus* developed a training programme with the Italian

Penitentiary Department and the General Training Directorate to promote and sensitize prison staff who are assigned to meet with families. The training courses are designed to improve the relationship between prison staff, prisoners, their family and children, and to develop professional standards on the duties and behaviour of staff towards family members.

Restrictions and monitoring of visits

- 45 Prison authorities' role in encouraging contact with the outside world must be balanced against the risk of particular visits. The term "under necessary supervision" (Rule 58) "implies an assessment, evaluating the risk for the specific visit and the specific type of communication (...) In the context of most visits, supervision will in particular imply visual control".²⁸⁸ In low security settings visual supervision may be sufficient and it will not be necessary to conduct an individual assessment for every visit.
- 46 Supervision during visits may be necessary, for example, where there are child protection concerns, to prevent crime or to prevent the smuggling of prohibited items and escape. For pre-trial detainees, it might also be necessary to prevent them from influencing witnesses.
- 47 All restrictions and monitoring must be informed by individual risk assessments. As UNODC points out, "[t]o subject high-risk prisoners to severe contact restrictions as a general policy (as opposed to restrictions based on the results of individual risk assessments) is counterproductive to the rehabilitative aims of imprisonment".²⁸⁹ The EPR specify that visits can only be restricted or monitored if, and as far as they are, "necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime". The EPR also specify that "such restrictions shall nevertheless allow an acceptable minimum level of contact".²⁹⁰
- 48 All forms of restrictions and monitoring should be proportionate to security concerns, and must be applied fairly and without discrimination. This applies to prison visits as well as supervision of phone calls, letters and electronic means of communication.
- 49 UNODC has stated that "[m]onitoring should be proportionate to the threat posed by a particular form of communication and should not be used as an indirect way of restricting communication".²⁹¹ The use of restrictions and the means of supervision employed should be monitored to ensure the system is fair and not subject to abuse.
- 50 Prisoners should be informed upon admission that their means of communication with family and friends might be subject to monitoring. It is also good practice to display a notice near all telephones about potential monitoring.

287. The text of the Memorandum can be accessed here: www.bambinisenzasbarre.org/text-rights-charter-of-children-of-prisoners.

288. *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 47.

289. *Handbook on the Management of High-Risk Prisoners*, UNODC, *op. cit.*, note 42, p. 128.

290. *European Prison Rules*, Council of Europe, *op. cit.*, note 74, Rule 24 (2).



PROMISING PRACTICE: FAMILY VISITS FOR HIGH SECURITY PRISONERS IN COLORADO [5.11]

A programme at Colorado State Penitentiary in the United States is designed to help parents in prison manage feelings of failure and build confidence, including by talking about their own experiences as children. The completion of this programme is linked to a family reunification event between the offender and her or his family/children.²⁹²

Restrictions on family visits

- 51 The denial or restrictions of family visits can be particularly harmful to the mental health and wellbeing of prisoners and their family members, including their children. The imposition of such restrictions also indirectly punishes family members.
- 52 Family contact should never be prohibited as a disciplinary measure or for security reasons. Instead, the means of family contact, such as the type of visit or means of communication, may be restricted, but only for a limited time period and as strictly required for the maintenance of security and order. This applies to all forms of family contact, including visits, letters and telephone calls. Restrictions on visits should only be imposed on the particular family member in question and not on the family as a whole, or on visitors in general. Decisions to restrict visits should be made on case-by-case basis and justified on the basis of transparent criteria. Such decisions must also be time-bound and subject to regular review.
- 53 The term “as strictly required” in Rule 43(3) introduces a high bar for imposing restrictions on family contact and requires prison staff to ensure the necessity and proportionality of such restrictions.²⁹³
- 54 UNODC have reiterated that, “[t]o deprive prisoners of such contacts as a disciplinary sanction is not acceptable, except where a specific abuse of the exact contact was the offence. Punishment should never include total deprivation from contact with families”.²⁹⁴ Visits should, therefore, only be restricted if visiting rights have been infringed to break prison rules and regulations, for example, if a family member or friend has attempted to smuggle contraband items into the facility, or if they have been abusive towards staff members.
- 55 The definition of family in Rule 43(3) should not be applied narrowly and should include non-immediate family members, as well as those in non-traditional family structures. The safeguards against prohibiting family contact and restricting the means of family contact should also apply to those who do not receive family visits but who rely on visits from friends or others.

Intimate/conjugal visits

- 56 In countries where conjugal visits are not currently allowed, authorities should consider introducing them. Such visits can have a positive effect on a prisoner and her or his rehabilitation and reintegration prospects. Where there are no suitable facilities currently available, designated rooms could be included as part of future prison developments or upgrades.
- 57 Authorities should consider that the denial or restrictions of conjugal visits may contradict the right to privacy and family life²⁹⁵ and the right to found a family²⁹⁶ for both the prisoner and their spouse or partner, particularly in cases of long-sentence or life-sentence prisoners.
- 58 The denial of conjugal visits would also contradict the principle that limitations to such visits should only be those “demonstrably necessitated by the fact of incarceration”.²⁹⁷ This means that the only freedoms limited should be those that are unavoidable as a result of being in prison. Otherwise, prisoners retain all human rights and fundamental freedoms.

^{291.} *Handbook on Dynamic Security and Prison Intelligence*, UNODC, *op. cit.*, note 160, p. 50.

^{292.} See for example: www.asca.net/news/cdoc-highlights--accomplishments.

^{293.} *Essex paper 3*, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 47.

^{294.} *Handbook on Dynamic Security and Prison Intelligence*, UNODC, *op. cit.*, note 160, p. 22.

^{295.} *ICCPR*, UNGA, *op. cit.*, note 153, Article 17.

^{296.} *Ibid*, Article 23.

^{297.} *Basic Principles for the Treatment of Prisoners*, UNGA, *op. cit.*, note 229, Principle 5, referring to the rights set out in (among others) the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocol.

- 59 In order for women prisoners to have the same right to conjugal visits as men, conjugal facilities must also be made available in women's facilities.
- 60 Some prison administrations deny women conjugal visits because they are concerned about pregnancies. Such policies constitute discriminatory treatment. Also, the consequences of limiting conjugal visits for women prisoners on these grounds may be permanent in that it may de facto deprive women of having children altogether. Moreover, such limitation deny the right to family and private life not only to the female prisoner, but also to her partner.²⁹⁸
- 61 The right to conjugal visits should apply equally to all relationships regardless of legal status.²⁹⁹
- 62 Authorities should provide prisoners with information on sexual health, safe sex and contraception.
- 63 Conjugal visits should take place in private and facilities should be equipped with sanitary facilities and a bed.³⁰⁰ Measures should be in place to protect the visiting spouse or partner from humiliation by other prisoners, for example when passing through the prison facility, and to protect the prisoner, in particular in situations where the prisoner's sexuality is not known to others. Measures to ensure safety and dignity, including the potential of abusive relationships, should also be applied regardless of the sex, sexual orientation and gender identity of the prisoner and visitor.

Pregnant women, parents and the children of prisoners

- 64 Recognizing the importance of the relationship between mother and child, Rule 26 of the Bangkok Rules require that "[w]omen prisoners' contact with their families, including their children, and their children's guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes".³⁰¹ This could include, for example, longer, more flexible visiting hours.
- 65 The preliminary observations of the Bangkok Rules note that some of the rules apply equally to male prisoners and offenders who are fathers.³⁰² The special relationship between father and child, or male care-giver for a child, should also, therefore, be taken into consideration when facilitating family contact. The CRC reiterates the "right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests".³⁰³
- 66 The meaning of "children" should be applied broadly to cover all children for whom the prisoner is a primary care-giver. This could include non-biological children and those who are otherwise dependent on the detained person. There should be no requirement to prove a biological or legal relationship between child and prisoner unless there are concerns about the relationship between the prisoner and the child, or for the safety of the child.
- 67 It may be particularly important for pregnant women to maintain close contact with their family members, not only for support during their pregnancy, but also so that they can properly consider childcare arrangements once their child is born and so that they can organize birth registration with local authorities. Home visits should also be considered for women living in prison with their children.
- 68 Where children are detained in prison with their parent, it is important that they have physical contact with their siblings. In these situations, prison authorities should make extra efforts to allow extended contact visits in a suitable environment.

298. Essex paper 3, Penal Reform International and the University of Essex, *op. cit.*, note 4, p. 49.

299. The ECtHR has interpreted the right to private and family life as not confined to legally acknowledged relationships. See for example: *Keegan v. Ireland*, 26 May 1994, Series A no. 290, pp. 17-18, para. 44; *Kroon and others v. The Netherlands*, Application no. 18535/91, Judgment of 27 October 1994, para. 30; *Mikulic v. Croatia*, Application no. 53176/99, 7 February 2002, para. 51.

300. *Technical Guidance for Prison Planning*, UNOPS, *op. cit.*, note 84, p. 126; see also: *Guidance Document on the UN Bangkok Rules*, Penal Reform International, 2013, Rule 27, p. 74: "Prison authorities should establish accommodation suitable for conjugal visits in women's prisons, with a bed, bedding, sanitary facilities, table and chairs, and a pleasant, non-institutional environment, where women can spend time with their spouses or partners in private".

301. *The Bangkok Rules*, *op. cit.* note 28, Rule 26.

302. *The Bangkok Rules*, *op. cit.*, note 28, para. 12.

303. *Convention on the Rights of the Child*, UNGA, *op. cit.*, note 140, article 9 (3).

- 69 Prison authorities should provide particular flexibility when it comes to visiting hours for children, taking into account school hours, homework requirements and the fact that some children have to take on other responsibilities after the arrest of a care-giver, such as paid work or household chores. Children may also have to move home after their care-giver is arrested, and may need financial or other support to be able to visit the prison.



PROMISING PRACTICE: CREATING A POSITIVE VISITING ENVIRONMENT FOR CHILDREN [5.12]

Contact visits are particularly important for children and their parents and extended visits should be permitted where possible. Visits involving children should take place “in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes”.³⁰⁴ Prison authorities should consider providing some toys, a play area or an outdoors for children.

The Italian organization *Bambinisenzasbarre* has created so-called “Yellow Spaces” in every Italian prison that serve as socio-educational welcome areas for children visiting the prison. These “Yellow Spaces” are places for children to play, voice any needs or challenges they have before and after their visit and make sense of the overall experience.

In Belgium, children’s books have been developed to help prepare children for visiting a parent in prison and to explain the different types of visit. Several Belgian prisons have their own version of the book, corresponding to the particular facility.

In Finland, a 2015 law requires all prisons to have special visiting rooms for children who come to visit their parent. Children are allowed to touch their parents, hug them and sit on their laps during their visits. Parents in prison can also apply for family visits which can be up to a few days in length. These visits take place in rooms that resemble a living room, with a table, a couch and toys for children and their parents to play with.

More information on good practice for children visiting prisoners in several European countries can be found at the website of the organization Children of Prisoners Europe (COPE).³⁰⁶



PROMISING PRACTICE: PROMOTING CHILDREN’S SOLUTIONS FOR IMPROVING PRISON VISITS [5.13]

Every year Children of Prisoners Europe’s (COPE) holds a pan-European campaign called “Not my crime, still my sentence” that aims to raise awareness on the rights and needs of children separated from a parent in prison. In 2017, one of the main aims of the campaign was to give children a space to communicate their views to prison directors in order to improve the prison visiting experience.

COPE received responses from children across Europe which were delivered to prison directors to help them better understand how children experience the visits and to take this on board to improve future visits.³⁰⁷

Children in prison

- 70 Contact with the outside world is especially important for the wellbeing, rehabilitation and reintegration prospects of children in prison and plays a key safeguarding role due to their specific vulnerability. Prison authorities should therefore make particular efforts to facilitate family contact, to allow extended visits, home visits and to encourage other forms of communication for children in prison. Article 47(3) of the CRC specifies that the right to be confined in an age-appropriate manner includes, in particular, the right to maintain contact with family through correspondence and visits, apart from in exceptional circumstances.
- 71 Rule 60 of the Havana Rules specifies that “every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel”. Rule 61 of the Havana Rules notes that “[e]very juvenile should have the right to communicate in writing or by telephone at least

304. *The Bangkok Rules*, *op. cit.*, note 28, Rule 28.

305. For more information, see: www.bambinisenzasbarre.org/english

306. For more information, see: childrenofprisoners.eu/2016/06/10/child-friendly-visits.

307. Some of the children’s ideas can be viewed here: *Not my crime, still my sentence: A selection of the children’s comments from across Europe*, Children of Prisoners Europe, 2017 at childrenofprisoners.eu/wp-content/uploads/2017/05/COPE-campaign-childrens-quotes-external_31.05.2017.pdf.

twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right.” Rule 62 of the Havana Rules also specifies that juveniles should be able to receive “visits of the representatives of any lawful club or organization in which the juvenile is interested”.

- 72 The UN Special Rapporteur on torture has stated that the support given to children in detention to maintain contact with parents and family through telephone, electronic or other correspondence, and regular visits at all times is an important safeguard against torture and other forms of ill-treatment. He recommended that “[c]hildren should be placed in a facility that is as close as possible to the place of residence of their family. Any exceptions to this requirement should be clearly described in the law and not be left to the discretion of the competent authorities. Moreover, children should be given permission to leave detention facilities for a visit to their home and family, and for educational, vocational or other important reasons. The child’s contact with the outside world is an integral part of the human right to humane treatment, and should never be denied as a disciplinary measure.”³⁰⁸

Pre-trial detainees

- 73 Pre-trial detainees should, in principle, have the same rights in terms of contact with the outside world as sentenced prisoners. Applying restrictions for visits and correspondence indiscriminately to all remand prisoners is not acceptable; rather, any restrictions must be based on a thorough individual assessment of the risk a prisoner may present.³⁰⁹
- 74 Restrictions on communication and/or visits of pre-trial detainees for the purpose of protecting an ongoing criminal investigation (e. g, risk of collusion) may only be imposed in individual cases, and only by the competent judicial authority.
- 75 As the CPT emphasizes, remand prisoners should be entitled to receive visits and make telephone calls as a matter of principle, rather than these being subject to authorization by a judicial authority for every instance. According to the CPT, “any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation, require the approval of a judicial authority and be applied for a specific period of time. If it is considered that there is an ongoing risk of collusion, particular visits (or telephone calls) can be monitored.”³¹⁰
- 76 For more details on permissible restrictions, including with regard to segregation or solitary confinement, see **Chapter 4, paragraphs 01–72**.³¹¹

Foreign nationals

- 77 Foreign national prisoners are often at a disadvantage because of their status as foreigners and the fact that they may not speak the local language. This means they are more likely to be isolated from the outside world.



RELEVANT RULES: FOREIGN NATIONALS

Rule 62:

1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the state to which they belong.

2. Prisoners who are nationals of states without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the state which takes charge of their interests or any national or international authority whose task it is to protect such persons.

308. Special Rapporteur on Torture, *A/HRC/28/68 (2015)*, *op. cit.*, note 132, para. 77.

309. *European Prison Rules*, Council of Europe, *op. cit.*, note 74, Rule 99; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 26th General Report of the CPT, Council of Europe, April 2017, CPT/Inf(2017) 5, para. 59 et seq.

310. *Ibid.*, paras. 60, 61.

311. As Section C (Prisoners under arrest or awaiting trial) does not contain specific provisions regarding contact with the outside world, the general provisions set out in Part 1 apply also to untried prisoners (see: Preliminary observation 3(1) and 3(2)).

- 78 Article 36 of the Vienna Convention on Consular Relations states that foreign nationals who are arrested or detained need to be given notice “without delay” of their right to have their embassy or consulate notified of that arrest. The International Court of Justice has clarified that “without delay” does not necessarily mean immediately upon arrest, but that “there is nonetheless a duty upon the arresting authorities to give that information to an arrested person as soon as it is realized that the person is a foreign national, or once there are grounds to think that the person is probably a foreign national”.³¹² However, prisoners should be consulted before any contact with such representatives is made; they can also waive their right to contact consular representatives.
- 79 Refugees or stateless people in prison should be allowed facilities to communicate with any national or international authority whose task it is to protect them, in particular the Office of the UN High Commissioner for Refugees (UNHCR), since contact with a consular representative is not appropriate for them.
- 80 Prison authorities should inform foreign nationals of their right to tell their families, legal and consular representatives or others about their imprisonment, and to assist them if they so wish to.
- 81 Prisons should keep records of consular visits and of any decisions to waive the right to contact consular representatives.
- 82 Foreign national prisoners are likely to require additional help and support in maintaining family links. Those who are unable to communicate regularly with family and friends can benefit from other visitors who speak their language. Particular attention should, therefore, be paid to helping foreign nationals establish and maintain such contact, including providing support and information to family members on the logistics of visiting the prison.³¹³
- 83 Special attention should be paid to helping foreign nationals maintain regular and meaningful contact with their children outside prison. Among other things, such contact will enable them to discuss possible short- and long-term childcare arrangements.
- 84 Foreign nationals and others who do not know any of the main languages used in the prison should be able to communicate to the outside world in a language of their choice, unless there are specific safety or security concerns that would justify preventing them from doing so.³¹⁴ Language limitations should not be used as an indirect way of restricting foreign nationals’ communication with the outside world, and any monitoring should be proportionate to security concerns.
- 85 Information on the prison visiting rules should be available in other languages, including for the benefit of prison visitors.
- 86 Prison authorities should allow for flexibility in visiting hours for foreign nationals to take into account the long journeys that some of their visitors may have made. If there are designated times for making phone calls, then there needs to be flexibility for foreign nationals to allow for time differences.³⁰⁷
- 87 Consideration should be given, where possible, to providing video conferencing and other forms of remote communication with friends and family living far from the prison.

Prisoners with mental or physical health conditions

- 88 Ease of access to visiting areas should be considered when planning a prison visit to take into account the needs of prisoners or visitors with physical disabilities.
- 89 Special attention should be paid to establishing and facilitating contact with the outside world for prisoners with mental health conditions. Such prisoners may be unable to establish contact themselves or may not understand the procedures for contact and should therefore be supported to the greatest extent possible. Those with no family or friends to visit them may benefit from receiving visits from volunteers from the community.

312. Case Concerning Avena and Other Mexican Nationals: *Mexico v. United States of America*, International Court of Justice, 31 March 2004, para. 87-88 at www.icj-cij.org/en/case/128/judgments.

313. Recommendation CM/Rec(2012) 12 of the Committee of Ministers to member States concerning foreign prisoners, Council of Europe, 10 October 2012, Section 22.1.

314. *Ibid.*, Section 22.2.

5.2. ACCESS TO LEGAL ADVICE, REPRESENTATION AND LEGAL AID



RELEVANT RULES: ACCESS TO LEGAL ADVICE, REPRESENTATION AND LEGAL AID

Rule 53: Prisoners shall have access to, or be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings.

Rule 61

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.

2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.

3. Prisoners should have access to effective legal aid.

Rule 119:

1. Every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her.

2. If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.

Rule 120:

1. The entitlements and modalities governing the access of an untried prisoner to his or her legal adviser or legal aid provider for the purpose of his or her defence shall be governed by the same principles as outlined in rule 61.

2. An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider.

See also *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.



WHY IS IT IMPORTANT?

Ensuring fair trial and the rule of law

- 90** The right to legal advice and representation is a basic component of the right to a fair trial as set out in Articles 9 (3) and 14 of the ICCPR.
- 91** Prisoners who have access to legal advice and support are more likely to be aware of, and to benefit from, the possibility of non-custodial sentences and/or alternatives to pre-trial detention, as lawyers can advocate on their behalf for such measures. Lawyers and legal aid providers therefore play an important role in avoiding the unnecessary use of imprisonment, which may reduce prison overcrowding and help to ensure efficient use of state resources.
- 92** Prisoners need to be able to access legal advice not only at the pre-trial and trial stages, but also for appeals and other post-trial matters, including advice on requesting early release. Both pre-trial and convicted prisoners may also require legal advice for civil proceedings, such as marriage, divorce and affairs related to childcare, as well as other personal matters concerning property and inheritance.
- 93** Legal advice and representation may also be sought in relation to complaints about conditions of detention, torture and other ill-treatment, discrimination in the context of disciplinary proceedings or other matters affecting individuals as a result of their imprisonment. It should also be possible to seek legal advice for abuse that occurred before the person was sent to prison, including domestic abuse and human rights violations that took place during arrest or in police custody.

315. *Ibid*, Section 22.3.

- 94 Access to legal advice and information about legal proceedings must be provided regardless of the personal wealth of a prisoner. Prisoners need to have access to legal representation, whether they themselves can afford to hire a lawyer or not. The inclusion of provisions on legal aid in the Mandela Rules (Rules 54(b), 61 and 120) underline the requirement to provide assistance to those otherwise unable to afford legal representation.³¹⁶
- 95 Legal aid schemes are a fundamental tool for ensuring equality before the law, equal protection of the law, the right to a fair trial and the right to an effective remedy for human rights violations. The UN Legal Aid Principles and Guidelines recognize “that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process”.³¹⁷

Safeguard against human rights violations

- 96 Effective legal advice and representation constitute a fundamental safeguard against torture and other ill-treatment and can constitute a deterrent against human rights violations, including arbitrary detention and enforced disappearance.
- 97 Legal representatives can advise prisoners on complaints procedures and other avenues for taking action. If prisoners feel unable to lodge a complaint themselves, a legal representative can do so on their behalf.

316. *ICCPR*, UNGA, *op. cit.*, note 153, Article 14.3: states that “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality (...) (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.





PROMISING PRACTICE: ACCESS TO LEGAL AID [5.14]

In Malawi, the Paralegal Advisory Service Institute (PASI)³¹⁸ provides frontline legal assistance in places of detention to address the country's over-reliance on pre-trial detention and to promote greater access to legal assistance. The organization also advocates for reforms and seeks ways of establishing a sustainable system of paralegal aid.

PASI initiatives include the creation of “camp courts” inside prisons where paralegals screen the case-load of pre-trial detainees, help suspects complete bail forms and prepare them for pre-trial hearings. The paralegals draw up a list of pre-trial detainees who are held unlawfully, who have been held beyond the legal time limit for pre-trial

detention and who have been granted bail but cannot afford the terms set by the court. Magistrates attend court with the court clerk, police prosecutor and work through the list, granting bail to some, reducing the bail amount set by an earlier court, dismissing cases where the accused should already have been released, or setting a date when the accused must appear for trial.

Over a period of ten years Malawi's Paralegal Advisory Service Institute (PASI) contributed to reducing the percentage of detainees held in pre-trial detention from around 60 per cent to around 12 per cent.³¹⁹

Reducing tension in the facility and strengthening public trust

- 98 Prison staff have reported that when prisoners are informed about their legal situation it has a positive impact on their conduct and mental health, reducing the risk of self-harm and suicide attempts. Legal representatives can also explain or reinforce prison rules and regulations to prisoners and the likely implications of breaking the rules. They can explain rights and responsibilities, and how prisoners' actions might influence their eventual length of time in prison, contributing to overall improvement in their behaviour.
- 99 As the UN Legal Aid Principles and Guidelines point out, legal aid plays a role in promoting greater community involvement in the criminal justice system.³²⁰ The *Principles and Guidelines* also note how a legal aid system can contribute to a properly functioning criminal justice system.³²¹



PUTTING IT INTO PRACTICE

Establishing legal aid schemes

- 100 The UN Legal Aid Principles and Guidelines define legal aid providers broadly, to include “a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia”.³²²
- 101 Legal aid in criminal procedures should be offered in all cases, regardless the nature of the crime. The UN Legal Aid Principles and Guidelines also note that the term “legal aid” is “intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.”³²³
- 102 While the UN Legal Aid Principles and Guidelines cover legal aid in relation to criminal proceedings, legal aid schemes may also exist for other legal matters. Prison authorities should facilitate access to such schemes.

317. *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, *op. cit.*, note 260, preambular para. 9.

318. For more information, see: pasimalawi.org.

319. See: *Improving Pre-trial Justice in Malawi*, Open Society Justice Initiative and PASI Paralegal Advisory Service, 2013.

320. *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, *op. cit.*, note 260, para. 4.

321. *Ibid.*, para. 11.

322. *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, *op. cit.*, note 260, annex, para. 9.

323. *Ibid.*, para. 8.

- 103** The UN Legal Aid Principles and Guidelines also state that authorities should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed or denied, or if detainees have not been adequately informed of their right to legal aid.

Ensuring access to legal advice, representation and legal aid

- 104** The requirement to promptly inform untried prisoners of the reasons for their detention and the charges against them is primarily the function of police and judicial authorities. However, prison administrations have an obligation to ensure that prisoners have received this information, and to take action if this is not the case. This might include checking with prisoners on admission that they have been informed of their right to a lawyer and recording their responses. Those who already have a lawyer must be able to inform their lawyer of their situation.
- 105** Prison authorities should play an active role in making legal advice and representation practically available to all in relation to the case against them, in relation to their treatment, conditions of detention and on any other legal matter. Rule 54(b) requires prison authorities to provide every prisoner with information about her or his rights, including access to legal advice and legal aid.³²⁴ Prison officers should inform prisoners of their right to communicate and consult with a legal adviser of their own choosing or a legal aid provider, not only in the context of the criminal procedure, but on any legal matter. Information should be made available not only upon a prisoners' admission, but also throughout the period of imprisonment. Prison officers should also make prisoners aware of the potential consequences if they choose to waive their right to legal representation.
- 106** While the establishment of legal aid schemes falls to policymakers, prison authorities need to facilitate access to such schemes, including by providing information about them, and enabling prisoners to apply for legal aid through them.
- 107** In countries where legal aid systems do not exist, or are limited, including in areas of a country where there are no legal aid lawyers, prison authorities should encourage and facilitate communication with others who can provide legal advice, including NGOs.
- 108** The CPT has emphasized that the “right of access to a lawyer should be enjoyed by everyone who is deprived of their liberty, no matter how ‘minor’ the offence of which they are suspected”.³²⁵
- 109** Prison officials should be proactive in talking to prisoners directly about whether they have legal support, and, if they do not, what additional help they might require to access such support, including the means to contact legal representatives.
- 110** The procedure for contacting lawyers and legal aid providers should be prominently displayed in areas of the prison where all prisoners can see it. Those who cannot read must be provided with the information in another format.
- 111** In order to analyse the availability and accessibility of legal support, it is good practice for prison administrations to collect information on how many prisoners are represented by lawyers, including legal aid providers.³²⁶ Such information is useful for policymakers to analyse gaps in legal support, including whether legal assistance is equally available to women, children and other groups. The data could also provide useful information on the availability of legal services in rural, remote and economically and socially disadvantaged areas of the country, and can better inform policy-making and planning in relevant ministries.

³²⁴ For more information on legal aid, see: *Global Study on Legal Aid*, UNODC and UNDP, October 2016; and *Model Law on Legal Aid in Criminal Justice Systems with Commentaries*, UNODC, March 2017.

³²⁵ *21st General Report, CPT, op. cit.*, note 224, para. 20.

³²⁶ *The Mandela Rules, op. cit.*, note 1, Rule 8 (a): states that ‘Information related to the judicial process, including dates of court hearings and legal representation’ should be entered in the prisoner file management system.

Confidentiality of communication

- 112** Telephones for making calls to legal representatives must be located in areas where privacy and confidentiality can be assured. Prisoners must also be able to write to their representatives without their correspondence being censored or surveilled, including by email or other electronic forms of communication.
- 113** Facilities for prisoners to meet with their legal representatives need to be designed in such a way that they enable prisoners to communicate in full privacy and confidentiality with their legal representative, whilst allowing staff to monitor them if necessary for security purposes, such as ensuring the safety of the lawyer. In most cases, the presence of a prison officer will not be necessary. Doors and windows of meeting rooms for lawyers must close securely and the room must be located or designed so that it is sound-proof.
- 114** Erecting a glass sound-proof panel between the lawyer's room and observers can allow consultations to take place in sight, but not within hearing of prison staff. Any observation should be monitored to ensure that prison staff do not engage in any visually threatening or intimidating behaviour.
- 115** Prisoners should be provided with writing materials for such meetings and other legal matters, to enable them to give their lawyers confidential instructions and to take notes of the meeting if they wish to do so.³²⁷ **Chapter 2, paragraphs 69–72** of this guidance document deals with searches of legal representatives.

Means of communication

- 116** While phone calls and other remote forms of communication are important means of communicating with legal representatives they must never be considered a substitute for in-person meetings unless the use of such communication tools has been specifically requested by a prisoner. Direct contact with a lawyer or legal aid provider is essential for establishing client-lawyer trust and for effective representation.
- 117** The number and location of private rooms needed for meetings with legal representatives should be considered in the earliest stages of planning the construction of a prison and be based on the number of prisoners that will be held there. The percentage of pre-trial prisoners held within the facility is a relevant consideration in this planning stage because they will likely need to consult on a more regular basis with their legal representatives than those who have already been sentenced. The location of telephones to enable confidential conversations should also be considered at the planning stage.
- 118** The location of meeting rooms and telephones for contacting legal representatives should also take into account the needs of prisoners with physical disabilities.
- 119** There must be no limits on the numbers of visits or phone calls a prisoner can have with their legal representatives, or on the amount of time they need to consult with them. There should also be no unreasonable delays in allowing communication to take place between a prisoner and her or his legal representative.

Other safeguards

- 120** Prison authorities must allow lawyers and legal aid providers to carry out their work without intimidation, threats, harassment or hindrance.
- 121** Preferential access applies to all legal advisors and legal aid providers, including where the legal aid provider is an NGO staff member, as defined in the UN Legal Aid Principles and Guidelines.

³²⁷. *Ibid.*, Rule 120 (2): states that “an untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider”. Rule 61, in requiring “adequate opportunity, time and facilities” also makes clear that such materials must be made available to all prisoners for any legal matter; the *Commentary on European Prison Rules*, Council of Europe, *op. cit.*, note 74: also states that “prisoners should be provided with writing materials to make notes and with postage for letters to lawyers when they are unable to afford it themselves” (Commentary on Rule 23, with reference to ECtHR, *Cotlet v Romania*, 3 June 2003, appl. Nr. 38565/97).

- 122** Authorities should enable prisoners to inform their legal advisors before they are transferred to another prison or to hospital, and should enable them to contact them upon arrival at their new location.
- 123** Authorities should ensure that prisoners are never required to disclose their reasons for wishing to meet or otherwise communicate with a legal representative. Disclosing these reasons may put them at risk of harm, particularly if they wish to complain about their treatment in prison or their conditions of detention.

Restriction of access

- 124** Access to and communication with a legal representative should never be suspended or restricted by prison authorities unless there are specific orders from judicial authorities to do so. Principle 18 (3) of the UN Body of Principles states that the right to consult and communicate with legal representatives “may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.” Jurisprudence has also clarified that restrictions on the principle of confidentiality are only justified if there are “compelling reasons” for it, and that they must be subject to review.³²⁸
- 125** The UN Special Rapporteur on torture has made it clear that “[i]n exceptional circumstances, under which it is contended that prompt contact with a detainee’s lawyer might raise genuine security concerns and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association”.³²⁹ Similarly, the CPT has stated that if it is exceptionally necessary to delay access to a lawyer, this must not result in the denial of a lawyer and, in such cases, the individual should have “access to another independent lawyer who can be trusted not to jeopardise the legitimate interests of the investigation”.³³⁰

Women

- 126** Prison authorities should pay particular attention to assisting women prisoners to obtain legal assistance. The commentary to Rule 26 of the Bangkok Rules recognizes that women need particular assistance “due to their lower educational, economic and social status in most societies, as well as due to abandonment by families on imprisonment experienced by many women in different countries”.³³¹

Children in prison

- 127** Children in prison may also require specific assistance from prison authorities to understand their right to legal support, and in establishing and maintaining contact with their representatives. Prison staff should provide information on their legal rights in a manner appropriate for their age and maturity, and using language that they can understand.
- 128** Children in prison have a right to have legal matters determined in the presence of their parents or legal guardian, unless it is not considered to be in the best interests of the child. Prison staff may need to also provide information to the child’s parents, guardian(s) or care-giver(s) to supplement the information provided directly to the child.

³²⁸ See: *Ibid*, commentary on Rule 23, with reference to jurisprudence of the European Court of Human Rights.

³²⁹ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report to the General Assembly*, 3 July 2001, A/56/156, para. 39(f).

³³⁰ *21st General Report*, CPT, *op. cit.*, note 224, para. 22; Report to the Turkish government on the visit to Turkey carried out by the CPT, 13 March 2014, CPT/Inf (2014) 7, para. 19.

³³¹ *The Bangkok Rules*, *op. cit.*, note 28, Commentary to Rule 26.

5.3. NOTIFICATIONS



RELEVANT RULES: NOTIFICATIONS

Rule 68: Every prisoner shall have the right, and shall be given the ability and means, to inform immediately his or her family, or any other person designated as a contact person, about his or her imprisonment, about his or her transfer to another institution and about any serious illness or injury. The sharing of prisoners' personal information shall be subject to domestic legislation.

Rule 69: In the event of a prisoner's death, the prison director shall at once inform the prisoner's next of kin or emergency contact. Individuals designated by a prisoner to receive his or her health information shall be notified

by the director of the prisoner's serious illness, injury or transfer to a health institution. The explicit request of a prisoner not to have his or her spouse or nearest relative notified in the event of illness or injury shall be respected.

Rule 70: The prison administration shall inform a prisoner at once of the serious illness or death of a near relative or any significant other. Whenever circumstances allow, the prisoner should be authorized to go, either under escort or alone, to the bedside of a near relative or significant other who is critically ill, or to attend the funeral of a near relative or significant other.



WHY IS IT IMPORTANT?

- 129** Contact with family or others in the early stages following arrest and imprisonment can serve to reassure and calm prisoners in a stressful time. Family and friends need to know about their whereabouts, and the person arrested may need to find out what has happened to their children and other dependents. Early notification of arrest and detention also enables family and friends to visit as soon as possible for emotional and material support.
- 130** The right to inform family or other points of contact about imprisonment or transfer is a key safeguard against torture and other ill-treatment, *incommunicado* detention and enforced disappearance. The ability to inform family about serious injuries can also act as a preventative measure against ill-treatment in detention.



PUTTING IT INTO PRACTICE

Recording contact persons

- 131** In order to be able to notify, or enable prisoners to notify, their emergency contact in case of death, illness, injury or transfer, prison authorities must keep accurate records of prisoners' emergency contact details and information on their next of kin, as required by Rule 7(g).
- 132** Various contact details must be kept, according to the Mandela Rules, including "emergency contact details and prisoners' next of kin" (Rule 7), "family (or another dedicated contact person)" (Rule 68), a "near relative or any significant other" (Rule 70) and "individuals designated by a prisoner" (Rule 69). In all cases, the definition of family and friends should be defined broadly, as noted in **Chapter 5, paragraphs 22–26** of this guidance document.
- 133** Prisoners should be consulted at the early stages of detention concerning who their emergency contact and next of kin is. If they do not wish for their contacts to be notified of their imprisonment, or in case of injury, illness, death or transfer, then their wishes should be respected. Prisoners should be given the opportunity to amend these details if they wish to change their initial decision.

Means of notification

- 134** When a prisoner is transferred to another detention facility or to hospital, family members or other emergency contacts should be informed before the actual transfer takes place. Notification of the transfer should be noted in the prisoner case file. In cases of serious injury or illness it is good practice for the prison administration to notify the relevant emergency contacts, because prisoners are unlikely to be able to do so themselves.
- 135** In case of transfer, family members should be notified in advance. This avoids the possibility that visitors arrive at the detention facility only to find that the prisoner has been moved. It also makes it easier for family members to arrange to visit or call the prisoner soon after arrival at the new facility. In cases where the form of communication is not immediate, such as with postal services, sufficient time should be given so that the family receives the communication before the transfer takes place.
- 136** Prisoners must be given access to telephones, writing materials, and electronic means of communication where available, in order to make contact with family or others in the event of imprisonment, transfer and serious illness or injury. It is the responsibility of the prison administration to provide prisoners with the ability and means to notify their contact person, and to assist them if they cannot afford to, or otherwise lack the ability to do so without help.
- 137** Rule 70 states that the prison administration should inform a prisoner immediately of the serious illness or death of a close relative or significant other. In order for such intimate news to be delivered sensitively, the prison administration could give a family or close contact the opportunity to inform the prisoner directly.
- 138** The Human Rights Council Resolution on the rights of the child, adopted in March 2012, emphasizes the need to ensure that children outside prison or their legal guardians are also kept informed of the place of their parent's imprisonment, as well as any transfer or other developments.³³²

Attending bedsides and funerals

- 139** The term “whenever circumstances allow” in Rule 70 should be interpreted favourably and take into account the social and emotional significance of attending to sick relatives, especially in cases of severe illness and funerals.
- 140** When making arrangements for the transport of a prisoner to attend the bedside of a near relative or loved one, authorities should, as far as possible, consider cultural norms and implications, such as the usual time a person might expect to sit with a sick or dying loved one, and the different types of mourning and funeral arrangements.
- 141** Prisoners should be able to wear their own clothes when attending sickbeds or funerals.

CONTEXT: ATTENDING FAMILY FUNERALS – ECTHR CASE [5.15]

In the case of *Kanalas vs Romania*, the ECtHR found that authorities had breached the applicant's right to respect for private and family life by rejecting his request for leave in order to attend his mother's funeral. The prison director had rejected his request on the grounds that his remaining sentence was too long and that he had already been rewarded in the same month for his conduct. Significantly, the Court found that “measures of temporary leave could contribute to the social rehabilitation of prisoners, even where they had been convicted of violent crimes” and that “the principle of limiting rewards to one per month did not apply in the case of permission for prison leave to attend the funeral of a family member.” The Court also observed that the prison administration had not examined the possibility of providing Mr. Kanalas with an escort to the place of the funeral, and concluded that “the national authorities had not weighed in the balance the various interests at stake, namely Mr. Kanalas' right to respect for his family life, on the one hand, and public safety, or the prevention of disorder or crime, on the other”.³³³

³³². *Rights of the child*, General Assembly resolution 19.37, 19 April 2012.

³³³. European Court of Human Rights, *Kanalas v. Romania*, Application no. 20323/14, 6 December 2016.





HEALTH-CARE

6.1 HEALTH-CARE PROVISION

6.2 ADVISORY DUTIES OF HEALTH-CARE PERSONNEL

6.3 EMERGENCY AND SPECIALIZED CARE

6.4 DOCUMENTING AND REPORTING SIGNS OF TORTURE

6.5 ETHICAL AND PROFESSIONAL STANDARDS

6.6 MEDICAL FILES

6.

6. HEALTH-CARE

- 01 Every human being has a right to the highest attainable standard of physical and mental health and, when a state deprives someone of their liberty, it takes on the duty of care to provide medical treatment and to protect and promote their physical and mental health and wellbeing. Authorities must, therefore, devote sufficient resources to ensure that prison health-care is adequate in relation to the size and needs of the prison population.

Those in prison are entitled to receive the same standard of health-care as is provided in the community outside of prison. As in the community, the primary responsibility of all health-care professionals is the care and treatment of their patients, based on individual assessments of their medical needs. Their fundamental ethical obligations are to respect the autonomy and best interests of the patient, to evaluate, promote, protect and improve the physical and mental health of prisoners, and to avoid harm being done to them.

The institutional set-up of health-care in prison will vary from one facility to another, but must include doctors, nurses, psychiatrists, psychologists and dentists. Depending on the prison population other specialists, such as midwives, gynaecologists and paediatricians may be required. For some medical conditions or examinations, and in emergency situations, prisoners will need to be transported to a hospital or to specialist clinics.

The Mandela Rules were revised to bring the provisions related to health-care in line with modern standards, including in relation to medical ethics. The new rules provide specific guidance on how health-care services in prisons should be organized and the specific duties and responsibilities of health-care staff. In addition, the Rules provide more detail on addressing the needs of those with mental health conditions or other specific health-care needs. The Rules also reiterate the absolute prohibition of torture or other ill-treatment by health-care staff and their obligation to document and report cases they become aware of.



RELEVANT RULES: HEALTH-CARE

Rule 24:

1. The provision of health-care for prisoners is a state responsibility. Prisoners should enjoy the same standards of health-care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

Rule 25:

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.

2. The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner.

Rule 27:

1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.

Rule 30:

A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

- (a) Identifying health-care needs and taking all necessary measures for treatment;
- (b) Identifying any ill-treatment that arriving prisoners may have been subjected to prior to admission;
- (c) Identifying any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and undertaking all appropriate individualized measures or treatment;

(d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;

(e) Determining the fitness of prisoners to work, to exercise and to participate in other activities, as appropriate.

Rule 31: The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality.

Rule 33: The physician shall report to the prison director whenever he or she considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

6.1. HEALTH-CARE PROVISION



WHY IS IT IMPORTANT?

Addressing physical and mental health needs

- 02 Newly arrived prisoners may have pre-existing, untreated health conditions and/or undiagnosed mental health conditions. Physical and mental health conditions are likely to be exacerbated by imprisonment and should, therefore, be identified as soon as possible after admission so that the prisoner can receive appropriate treatment. If not properly managed, even those who have no health problems on admission may develop health issues during the course of their incarceration that they might not otherwise experience.
- 03 Prisoners often come from poor and marginalized backgrounds. As such, they may have experienced greater exposure to transmissible diseases, inadequate nutrition and had fewer opportunities to access good quality health-care. Additionally, they may have a history of substance abuse and may have a high level of substance dependency. In prison they may, therefore, suffer from withdrawal symptoms. They may also have neglected their physical health more generally, and some prisoners may have never been treated by a qualified doctor before their incarceration, particularly if they come from remote, rural areas.
- 04 Diagnosis and treatment of communicable diseases, such as tuberculosis (TB), hepatitis and HIV/AIDS in prison reduces the likelihood of such diseases spreading in the prison and in the wider community because of infection of other prisoners, staff members, visitors, or upon release of a prisoner.
- 05 The initial medical screening of a prisoner provides an important opportunity to identify prisoners at risk of suicide or self-harm. It is particularly important to detect these signs at an early stage, as the risk of suicide or self-harm is much greater than normal during the first days of imprisonment. Additionally, early identification of such risks can help to determine the safe and appropriate allocation and supervision of prisoners that have been placed on suicide/self-harm alert.



HOW SHOULD HEALTH-CARE BE ORGANIZED IN PRISONS?

INDEPENDENCE OF HEALTH-CARE STAFF [6.1]

Health-care staff operating in prisons should be independent of the prison administration to ensure that clinical and any health assessments of detainees are based solely on medical criteria. To guarantee the independence of physicians practicing in a police or prison setting, direct hierarchical or even contractual relationships with prison management should be avoided. Nursing staff may only receive medical instructions from the attending physician.

Irrespective of their conditions of employment (whether they are a civil servant, public employee or private contractor), physicians must always be independent of police or prison authorities. The WHO and UNODC argue that the best way to safeguard the independence of health-care staff is to ensure that they are employed by health-care authorities rather than correctional authorities.³³⁴

The WMA states that individual physicians should “have the freedom to exercise their professional judgment in the care and treatment of their patients without undue influence by outside parties or individuals” and that “clinical independence [is] not only [important] as an essential component of high quality medical care and therefore a benefit to the patient that must be preserved, but also as an essential principle of medical professionalism”.³³⁵

If health-care staff are not independent of prison management, they may experience a conflict of interest and feel a greater sense of duty towards the prison administration, as their employer, than the patient. They may also operate in fear of negative consequences, including dismissal, if they do not comply with requests from prison staff, and may themselves be subjected to retaliatory actions.

The independence of health-care staff is crucial for prisoners to feel that they can trust the health-care provider regarding their health conditions, but can also speak to them openly to report torture or other ill-treatment. If health-care staff are directly

employed by the prison service, or if they appear to be overly friendly with regular prison staff, prisoners are unlikely to trust them, particularly if they have been ill-treated by prison staff.

STATE RESPONSIBILITY [6.2]

The provision of health-care for prisoners is a responsibility of the state. States bear a particular duty of care for those detained because prisoners have no alternative but to rely on prison authorities to promote and protect their health. Prisoners, as human beings, retain their right to health enshrined in Article 12 of the ICCPR and Principle 9 of the Basic Principles for the treatment of Prisoners.

The WHO and UNODC have pointed out that “the management and coordination of all relevant agencies and resources contributing to the health and wellbeing of prisoners is a whole-of-government responsibility” and that “health ministries should provide and be accountable for health-care services in prisons and advocate healthy prison conditions”.³³⁶

EQUIVALENCE OF HEALTH-CARE [6.3]

Health-care professionals themselves have a duty to provide equivalence of care, meaning that they must provide the same standard of health-care a prisoner could expect to receive in the outside world. As is explained in the UN Principles of Medical Ethics “[h]ealth personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained”.³³⁷

If prison administrations are to provide the same standards of health-care available in the outside world, then they must be able to employ sufficient numbers of suitably trained staff.

³³⁴. *Good Governance for Prison Health in the 21st Century: A policy brief on the organization of prison health*, United Nations Office on Drugs and Crime (UNODC) and World Health Organization (WHO), 2013.

³³⁵. *Declaration of Seoul on Professional Autonomy and Clinical Independence*, 59th World Medical Association General Assembly, October 2008 at www.wma.net/policies-post/wma-declaration-of-seoul-on-professional-autonomy-and-clinical-independence.

³³⁶. *Good Governance for Prison Health in the 21st Century*, UNODC and WHO, *op. cit.*, note 334, p. viii.

³³⁷. *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, General Assembly resolution 37/194, 18 December 1982, Principle 1.

This will only be possible if the salaries and terms and conditions of prison health-care staff are good enough to attract and retain those skilled staff members. To provide equivalence of care, prison health-care services must also be adequately equipped and funded.

Rule 24(1) is clear that prisoners should have access to necessary health-care services free of charge. The *UN Body of Principles* similarly states that following a prisoner's initial medical examination, "medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge".

CONTINUITY OF CARE [6.4]

Continuity of care is important not only on admission to prison, but also upon release, and will generally be easier to manage when prisoners are allocated close to their usual place of residence.

The requirement to provide continuity of care also includes a duty to properly manage and transfer a prisoner's medical files. Rule 26(2) makes it clear that medical files must be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.

When individuals with specific medical conditions are released from prison, health-care professionals should consider whether they need to provide them with some medication to account for the time it may take them to arrange further medical consultations and a regular supply of medication.

The principle of equivalence of care does not mean that prisons have fewer obligations to prisoners in communities where there are no local health facilities, or where health-care is particularly poor.

The most effective way of ensuring continuity of care is to assign responsibility for providing health-care in prisons to the national health authority. If this is not possible, there should be close links between community and prison health-care providers.

SPECIFIC TRAINING FOR PRISON STAFF AND HEALTH-CARE PROVIDERS [6.5]

To adequately respond to health-care needs in prisons, both prison staff and prison health-care providers may require specific training opportunities and support services. This is particularly important given the difficult working conditions health-care staff may face in places of detention, and especially in remote locations.

Prison health-care staff should receive training on how to report torture or other ill-treatment within the prison system, including in cases where it may have occurred outside prison and is identified upon a prisoner's arrival. To this end, all health-care staff should be provided with a copy of the Istanbul Protocol and be trained in applying it. The UNSPT has specified that medical examinations should "be carried out in private by a health professional trained in the description and reporting of injuries, include an independent and thorough medical and psychological examination, and the results be kept confidential from police or prison staff, and shared only with the detainee and/or the detainee's lawyer, in accordance with the Istanbul Protocol".³³⁸

All prison health-care staff should receive training on human rights and medical ethics, including the particular challenges that may be faced in detention settings.

In accordance with Rule 76(d), all prison staff should receive training on first aid. This is important because they are often the first responders in the event of an emergency health situation.

Rule 76(d) also requires that all staff receive training on the psychosocial needs of prisoners, social care and assistance, including early detection of mental health conditions. **Chapter 1, paragraphs 167–220** of this guidance document deals with staff training and development in more detail.

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338. Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Kyrgyzstan, 28 February 2014, CAT/OP/KGZ/1, para. 57.

- 06** Initial medical screening enables health personnel to detect and record any injuries, including potential signs of torture and other ill-treatment.
- 07** Access to a medical professional as soon as possible upon admission ensures that prisoners with pre-existing health conditions continue to receive the care they need and have access to appropriate medication and other treatment. Newly arrived prisoners are unlikely to have medication with them, or may be too disoriented and stressed to remember to take their medication as required. It may also be that prison medical services need time to acquire and provide the specific type and quantities of medical supplies needed by individual prisoners.
- 08** Communicable diseases³³⁹ need to be identified, treatment provided and any necessary measures put in place to prevent such diseases from spreading within the prison. The risk of communicable diseases spreading in prisons is high due to the close confinement of large groups of people. Overcrowding exacerbates the risk of infection, and increases the likelihood of diseases being overlooked. Prisoners may also have a history of high risk behaviour, including drug use, self-tattooing and unprotected sex that may continue in prison and contribute to the spreading of diseases.
- 09** Prisoners are also more likely to develop mental health conditions due to their confinement. Such developments should therefore be identified as soon as possible so that the prisoner can receive appropriate treatment.
- 10** Lack of access to sufficient nutritious food, safe drinking water and adequate opportunities for physical exercise, which are common in prison settings, constitute further factors for the deterioration of health. Poor sanitary conditions within detention facilities increase the chances of skin diseases or parasitic diseases, and the lack of sunlight, fresh air, heating or ventilation can also seriously affect a prisoners' health.
- 11** In a joint letter to the Chairperson of the fifty-second session of the UN Commission on Narcotic Drugs, the UN Special Rapporteur on torture and the UN Special Rapporteur on the right to health noted that "the failure to ensure access to controlled medicines for the relief of pain and suffering threatens fundamental rights to health and to protection against cruel, inhuman and degrading treatment".³⁴⁰

Rehabilitation and reintegration

- 12** Ill-health and/or mental health conditions make rehabilitation even more difficult upon release from prison. Prisoners with such conditions may find it difficult to secure appropriate, sustainable employment and housing, and their capacity to successfully engage with the world outside prison may be compromised, particularly if their condition remains undiagnosed and/or untreated.
- 13** The timely identification and appropriate treatment of health issues, including drug and alcohol dependency, mental health conditions and any history of previous abuse, can play a significant role in the successful rehabilitation of prisoners. Even where specialized support has not yet been established in prisons, identifying prisoners' specific needs can help to inform individualized treatment programmes. It can also, more broadly, help with the rehabilitation and reintegration needs of prisoners, including in relation to allocation, family contact and appropriate work and training programmes.

Prison management and resource planning

- 14** Identifying health needs soon after admission helps prison administrations to plan the relevant health-care provision, staffing and other resource requirements, including special dietary needs of prisoners. It will also assist prison management in planning transport, staffing and other logistical arrangements for scheduled hospital visits.

³³⁹ Communicable or infectious diseases are those that can be spread from one person to another, by pathogenic microorganisms, such as bacteria, viruses, parasites or fungi. Defined by *Health topics: Infectious Diseases*, WHO at www.who.int/topics/infectious_diseases/en; and *Health topics: Communicable Diseases*, WHO Europe at www.euro.who.int/en/health-topics/communicable-diseases.

³⁴⁰ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report to the Human Rights Council*, 1 February 2013, A/HRC/22/53, para 56.

- 15 By diagnosing health problems, or potential health problems, as soon as possible after admission, prison administrations can save financial resources by preventing illness or deteriorating health conditions, and by preventing communicable diseases from spreading to other prisoners or staff.
- 16 By knowing the health situation of each prisoner, prison administrations can also better plan for individualized rehabilitation programmes, including appropriate training and work opportunities. It may be that those who have health problems are unable to participate in established work programmes or such programmes may need to be tailored to their needs.
- 17 A healthy prison environment provides a healthier work place for staff, which, in turn, helps to improve relationships between prisoners and staff.

CONTEXT: FUNDAMENTAL PRINCIPLES OF HEALTH-CARE PROVISION IN PRISONS [6.1]

Protection

Imprisonment should not increase the health risk of prisoners.

Equivalence of care

The health-care available in prison should be equivalent to that available in the community outside prison.

The right to the highest attainable standard of health

To meet this fundamental right of all human beings, health facilities, medical goods and services have to be available in sufficient quantity, be accessible to everyone without discrimination, be in line with medical ethics principles and be culturally appropriate. They must also be scientifically and medically appropriate and of good quality.³⁴¹

Independence

Health-care staff must be able to act with full clinical independence, basing treatment on patients' needs. Clinical decisions must be taken based on medical grounds only and may not be overruled or ignored by non-medical prison staff (Rule 28(2)). This includes decision-making on the need for emergency or specialized treatment or surgery.

Non-discrimination

Rule 24(1) notes that prisoners should have access to necessary health-care services without discrimination on the grounds of their legal status. The principle of non-discrimination set out in Rule 2 also applies in relation to the provision of health-care. This does not mean that all prisoners should receive the same treatment, rather, it means that different groups of prisoners should receive appropriate health-care based on their needs, including gender-sensitive treatment.

Confidentiality

Prisoners should be able to access health-care services in full safety and confidentiality.

Informed consent

The principle of free and informed consent to treatment and medication must apply equally in detention.

Links to community health services and continuity of care

Health-care service providers should have a close relationship with the public health administration to ensure continuity of treatment and care.

State responsibility

The state is responsible for providing prisoners with free medical treatment and to protect and promote their physical and mental health and wellbeing.

341. General Comment No. 14: *The Right to the Highest Attainable Standard of Health (Art. 12)*, Twenty-second Session of the Committee on Economic, Social and Cultural Rights, 11 August 2000, E/C.12/2000/4.



PUTTING IT INTO PRACTICE

Initial medical screening

- 18 Principle 24 of the *UN Body of Principles* mirrors the Mandela Rules, stipulating that “[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment”. It may not always be possible to conduct medical screenings for all prisoners immediately upon admission, especially if large groups of prisoners arrive at the same time. The CPT has clarified that “as soon as possible” should be understood to mean within 24 hours of admission.³⁴²
- 19 When identifying any ill-treatment that may have occurred prior to a detainee’s admission to prison, including previous exposure to sexual and/or domestic violence, any signs of psychological or other stress and the risk of suicide/self-harm, it is important that the health-care professional has a conversation with the prisoner about her or his current health and health history. Information on the requirements for documenting and reporting signs of torture or other ill-treatment can be found in **Chapter 1, paragraphs 161–162, Chapter 3, paragraphs 77–83 and Chapter 6, paragraphs 76–101** of this guidance document.
- 20 It is good practice to have a psychologist involved in initial medical assessments, particularly because signs of torture and other ill-treatment and suicidal/self-harm tendencies are not always obvious.
- 21 The assessment of stress or other mental health conditions, as well as the risk of suicide or self-harm and drug or alcohol dependency, should form part of the overall prisoner needs and risk assessment and should be included in the prisoner’s medical file.
- 22 Initial medical screening should include systematic screening for Tuberculosis and prisoners should be offered voluntary testing for other communicable diseases (such as HIV or Hepatitis B and C).
- 23 During the initial screening prison staff should check if any accessibility measures need to be put in place to accommodate a prisoner’s disability. This could include different types of disabilities, such as physical, mental, intellectual or sensory disabilities.
- 24 It may not always be possible for a qualified doctor to conduct the initial medical screening. In these cases, the screening should instead be carried out by a qualified nurse. However, nurses should always act under the supervision of prison doctors and bring prisoners who have arrived with health problems or injuries to the attention of the doctor.
- 25 The requirement to have sufficient qualified personnel in each prison, as stipulated in Rule 25(2), must take into account staffing needs for the initial medical screenings.
- 26 If prisoners are placed back into police custody for further investigation pertaining to the case against them, they should also be provided with a medical screening as soon as possible after their return to prison. This constitutes a key safeguard against torture and other ill-treatment, in particular due to the common risk of coercion of confessions and statements during interrogations through ill-treatment or even torture. It is also in the interest of prison staff to identify any such abuse so they are not falsely accused of ill-treatment themselves.
- 27 Health-care personnel should open a medical file for every newly arrived prisoner. Medical files are dealt with in more detail in **Chapter 6, paragraphs 125–132** of this guidance document.

342. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *23rd General Report of the CPT – CPT/Inf (2013) 29*, Council of Europe, 6 November 2013, para. 73 at www.refworld.org/docid/528490ba4.html.

CONTEXT: HIV TESTING³⁴³ [6.2]

Offering HIV testing and counselling in prisons is good practice, but it should never be mandatory.

Isolation is not required for prisoners living with HIV/AIDS because infection does not usually occur through everyday physical contact, but by either unprotected sex or contaminated needles. This risk can be tackled by providing information and appropriate means of harm reduction, such as condoms, substitution treatment for those dependent on substances and clean injecting materials.

Prisoners living with HIV/AIDS do not pose a risk to other prisoners as long as prisoners are properly informed about how to protect themselves and are given the appropriate means of prevention and harm reduction. Furthermore, when treated with antiretroviral therapy, which slows the spread of HIV in the body, HIV positive prisoners are no longer infectious and do not pose any HIV risk to third parties.

Fitness to work determinations

- 28 Fitness to work determinations should be conducted on an individual basis, taking into account the physical and mental health of prisoners in evaluating their ability to undertake specific work tasks.
- 29 The requirement to determine fitness to work is raised in Rule 4(2), which specifies that all programmes, activities and services be delivered in line with the individual treatment needs of prisoners.

343. For more information on HIV testing and HIV in prisons, see: *HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*, UNODC/WHO/UNDP/ILO/UNAIDS, June 2013; *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care For Key Populations*, WHO, July 2014 at www.who.int/hiv/pub/guidelines/keypopulations/en; *WMA Statement on HIV/AIDS and the Medical Profession*, 57th WMA General Assembly, October 2006 (amended October 2017) at www.wma.net/policies-post/wma-statement-on-hiv-aids-and-the-medical-profession; UN Special Rapporteur on torture, *A/HRC/22/53*, *op. cit.*, note 340, para. 71.



- 30 Rules 96 to 103 detail the terms and conditions of prison labour in relation to sentenced prisoners. Rule 96 specifies that they should have the opportunity to work and/or to actively participate in their rehabilitation “subject to a determination of physical and mental fitness by a physician or other qualified health-care professionals”.

Ongoing health-care provision

- 31 The Mandela Rules make it clear that health-care professionals should see, talk with and examine every prisoner, not only on admission, but also as is necessary thereafter. To have full access to all prisoners, medical staff must be informed about where they are located, including those undergoing disciplinary sanctions.
- 32 Prisoners must have the opportunity to seek medical care and must be able to access health-care services in confidentiality. They should not have to give a reason for wanting to see a health-care professional. Arrangements for ensuring access to health-care must take into account that access to health-care in confidentiality will be more difficult in shared dormitories. The involvement of “gatekeepers”, such as cell leaders or prison staff in processes for prisoners to obtain a medical appointment should be avoided.
- 33 Medical care must be available at all times, including when cells are locked and staffing levels are reduced. This may be a particular concern at night time, during weekends and on national holidays. The requirement for health services to be available at all times also ties in with the need for adequate staffing levels of both prison officers and health-care personnel at all times.
- 34 Prison staff should alert health-care staff if they feel that a particular prisoner is in need of medical attention.
- 35 Prison authorities must allow those engaged in prison work programmes, training or other activities to access health services even if they are usually working during regular clinic hours.
- 36 For all prisoners to be able to access health-care services, careful consideration should be given to the location of health-care facilities. Facilities should be easily accessible, including for those with physical disabilities. In facilities that hold both male and female prisoners, or both adults and child prisoners, there should either be separate facilities, or designated times when women and child prisoners can access health-care services without having to mix with male or adult prisoners respectively.
- 37 Prison staff should never be involved in providing health-care other than in the provision of first aid if no health-care staff are available.
- 38 Prison authorities should ensure that prisoners who are medically trained are only involved in the health-care of other prisoners in cases of emergency when there are no other health-care staff available. However, such prisoners may lead or contribute to health-care education programmes in the prison.



PROMISING PRACTICE: ACCESS TO HEALTH-CARE [6.3]

In Serbia, the majority of dormitory cells in prisons have emergency buttons for prisoners to call prison staff, including if prisoners need to access health-care services.

A system in Belgium called *PrisonCloud* provides prisoners with the opportunity to book medical appointments from their cells. The secure, online system allows prisoners to book medical appointments and deal with other prison issues from a computer in their cell via a workflow system.

The messages are confidential so only medical staff are able to access information sent to them.

Following recommendations from the French National Preventive Mechanism (NPM), the majority of prisons in France contain special post boxes which allow prisoners to request medical consultations in full confidentiality. Only medical staff have permission to open these boxes, which are checked on a daily basis.³⁴⁴

344. ODIHR/PRI regional consultation 19 and 20 April 2017, *op. cit.*, note 278.



PROMISING PRACTICE: COMMUNITY-BASED HEALTH AND FIRST AID IN ACTION [6.4]

The Community Based Health and First Aid programme was originally designed by the International Federation of the Red Cross and Red Crescent Societies to be deployed in communities worldwide. Ireland was the first country to introduce the programme in a prison setting, and it has now implemented it in all 14 prisons in Ireland through groups of Irish Red Cross (IRC) volunteer prisoners.³⁴⁶

The programme operates under a partnership between the Irish Red Cross, the Irish Prison Service (IPS) and Education Training Boards (ETBs). As part of the programme, groups of volunteer prisoners in each prison attend a weekly training session over the course of four to six months.

Once prisoners have completed the community assessment module of the programme, they can work on a peer-to-peer basis, and with support of staff to raise awareness of and implement projects aimed at improving the overall health and wellbeing of prisoners in their community.

The programme has recruited more than 577 volunteer prisoners since 2009 and benefits over 4,000 prisoners directly every day. Projects successfully implemented under the programme include:

- Personal, in-cell and prison hygiene awareness, including good hand-washing techniques;
- Awareness raising on TB, seasonal flu, winter vomiting bugs, hepatitis, nutrition, exercise, dental hygiene, the importance of checking blood pressure and cholesterol awareness;
- HIV and AIDS awareness and anti-stigma campaigns including voluntary HIV testing;
- Overdose prevention programmes;
- Courses to help prisoners stop smoking;
- Mental health and wellbeing awareness, including the risks of self-harm and suicide prevention;
- Promotion of men’s health awareness;
- Exercise and weight reduction projects; and
- Work to care for elderly prisoners, including providing ‘meals on wheels’, cell cleaning and social activities.

6.2. ADVISORY DUTIES OF HEALTH-CARE PERSONNEL



RELEVANT RULES: ADVISORY DUTIES OF HEALTH-CARE PERSONNEL

Rule 35

1. The physician or competent public health body shall regularly inspect and advise the prison director on:

- (a) The quantity, quality, preparation and service of food;
- (b) The hygiene and cleanliness of the institution and the prisoners;
- (c) The sanitation, temperature, lighting and ventilation of the prison;
- (d) The suitability and cleanliness of the prisoners’ clothing and bedding;
- (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

2. The prison director shall take into consideration the advice and reports provided in accordance with paragraph 1 of this rule and rule 33 and shall take immediate steps to give effect to the advice and the recommendations in the reports. If the advice or recommendations do not fall within the prison director’s competence or if he or she does not concur with them, the director shall immediately submit to a higher authority his or her own report and the advice or recommendations of the physician or competent public health body.

³⁴⁵ For more information, see: www.redcross.ie/CBHFA.



WHY IS IT IMPORTANT?

- 39 In addition to providing treatment to prisoners, prison administrations are responsible for ensuring that the conditions of imprisonment and daily life of prisoners do not adversely affect their physical and mental wellbeing. Many prisoners are dependent on prison authorities for the provision of sanitation, good nutrition and drinking water, among other things, in order to maintain or improve their health.
- 40 The conditions in which people are detained have a significant impact on their health and wellbeing. Those with existing health problems are likely to experience a deterioration of their situation and possible complications, particularly if they are held in poor conditions and if they cannot access sufficient, nutritious food and clean drinking water. Those who are healthy when they are admitted to prison may develop health problems if prison conditions do not meet the basic requirements to sustain good health.
- 41 It is particularly important that prison health-care staff are able to inspect and advise the prison director on detention conditions and the provision of basic goods because prisoners may not themselves be able to complain about these issues or may not feel safe doing so for fear of reprisals. Prison administrations are also more likely to take effective action to address any shortcomings if they are equipped with recommendations from health-care staff.



PUTTING IT INTO PRACTICE

- 42 In assessing the detention conditions of prisoners in relation to their health, medical professionals should pay particular attention to the situation of prisoners with particular health-care needs, including pregnant women and breastfeeding mothers, children in prison with their parent, child prisoners, elderly prisoners and others with specific physical and mental health conditions.
- 43 For prison medical staff to effectively inspect and advise on all aspects of detention that impact health, the prison's medical team should be made up of staff with adequate training in nutrition, sanitation, physical education and other specialist subjects. If the prison staff do not have such expertise, they should be able to seek the input of external experts.
- 44 When assessing detention conditions, health-care staff must ensure that they inspect all areas of the detention facilities where prisoners are detained, including conditions in segregation cells. The inspection must also include all areas of the prison where prisoners spend time, including food preparation and eating areas, the prison shop, medical, search and work areas, training rooms and libraries.
- 45 In assessing detention conditions, health-care staff should bear in mind Rules 12 to 23, all of which provide guidance on aspects of life in prison that can impact health, including accommodation, personal hygiene, clothing and bedding, food, exercise and sport. For example, Rule 13 specifies that “[a]ll accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”.
- 46 Those inspecting prison facilities should also consider assessing all areas of the prison where staff spend time, including staff living quarters and staff meeting rooms.
- 47 Health-care staff should be provided with data on relevant prisoner complaints so that they can focus their inspections on areas of particular concern, including, for example, complaints about the quality and quantity of food.



PROMISING PRACTICE: IMPROVING THE DIET OF PRISONERS [6.5]

In Georgia the Ministry of Corrections and Ministry of Health-Care, Labour and Social Security signed a joint order in 2015 defining standards for the nutritional needs of prisoners and including special dietary requirements. The order regulates the number of meals prisoners should receive every day, nutritional values and

includes separate requirements for particular groups, including juveniles, pregnant women and breastfeeding mothers. It also factors in those with special health-care needs in relation to conditions such as diabetes, liver diseases and gastrointestinal problems.³⁴⁶

6.3. EMERGENCY AND SPECIALIZED CARE



WHY IS IT IMPORTANT?

- 48 Prompt access to medical attention in urgent cases is essential to prevent death or serious health complications in prison. Most emergency examinations, treatment and surgery cannot be provided in prison and transfer to specialized institutions or civil hospitals is required.
- 49 When specialized health-care needs are identified at an early stage and referred to external health-care staff, the burden on prison health services and the longer-term health impact on the prisoner is reduced.



PUTTING IT INTO PRACTICE

- 50 While some prisons have full hospital facilities and many specialist staff on site, others can only offer very basic health-care services and will need to transfer prisoners to external health-care staff more frequently for emergency or specialized treatment.
- 51 To ensure that prisoners can access urgent health-care, specialized treatment or surgery in a timely manner and without undue complications, prison administrations should develop close links with community health services and other health-care providers. Such links are also important for the purposes of ensuring continuity of care.
- 52 When planning new detention facilities, authorities should consider what medical needs the prison population is likely to have and how these needs can be met, either by planning for the delivery of respective services in the new prison, or by ensuring they are located close to existing health-care facilities, or in locations where health-care facilities can be easily, and quickly, reached by road.
- 53 When transporting prisoners with urgent health-care needs, vehicles used should contain emergency medical equipment and prisoners should be accompanied by a health-care professional.
- 54 As has been noted in **Chapter 5, paragraphs 129–141** of this guidance document, the prison director should inform designated individuals when a prisoner is transferred to a health-care institution.
- 55 Prisoners should be allowed to wear their own (civilian) clothing when they are transferred to hospitals or clinics for treatment in accordance with Rule 19(3). This is important to preserve their dignity and to protect against unwarranted attention.

³⁴⁶ *Imprisonment Code*, Law of Georgia, Article 23 at www.ombudsman.ge/uploads/other/1/1476.pdf.

CONTEXT: DRUG-RELATED PREVENTIVE HEALTH-CARE [6.6]

The *Drug Policy Guide* of the International Drug Policy Consortium sets out a series of recommendations for prison authorities for delivering treatment to prisoners who use drugs, including the prevention of infections and overdoses, noting that prison authorities often have to deal with some of the most extreme aspects of drug-related health issues.

The guide points out that, “Prison authorities have usually focused on preventing drug use in prison through stringent security measures and drug-testing programmes, while dedicating little attention and resources to the provision of health-care, drug dependence treatment and harm reduction programmes. [...] However, the practice has shown a number of problems, including the diversion of financial and staff resources away from evidence-based treatment and prevention services, a negative effect on the prison regime and the risk of prisoners switching to more harmful drugs because these are not being tested for or are harder to detect.”³⁴⁷

The UNODC, the International Labor Organization (ILO), the United Nations Development Program (UNDP), the WHO and the Joint United Nations Programme on HIV/AIDS (UNAIDS) recommend a comprehensive package for HIV prevention, treatment and care in prisons and other closed settings that comprises 15 key interventions. They are detailed in the *Drug Policy Guide* as summarized below:

Education and information

Many prisoners are unaware of health and infection risks they are taking. Simple information on the risks of infection and the steps prisoners can take to protect themselves and others should be widely distributed to prisoners in a diction that is appropriate to their language skills and education. Some prison administrations have also used educational videos or lectures to deliver the same messages, leading to higher levels of awareness.

Vaccination programmes

Effective vaccinations exist to protect against hepatitis B, and a period of imprisonment is an opportunity to encourage people (many of whom do not use preventive health services in the community) to have the vaccination. The vaccination consists of two injections, six months apart. Many prison administrations have targeted hepatitis vaccination programmes at drug-using prisoners, who are a specific risk group, and report high levels of engagement and compliance.

Access to safer sex measures

Many prison administrations have allowed the distribution of condoms to prisoners, offering them access to the same protection that is available outside prison. Further measures have also included providing information, education and communication programmes for prisoners and prison staff on sexually transmitted diseases, consisting of voluntary counselling and testing for prisoners or measures to prevent rape, sexual violence and coercion.

Needle and syringe programmes

Programmes involving the distribution of clean injecting equipment to those who inject drugs have been effective at preventing HIV and hepatitis infections. However, there has been great reluctance to introduce these public health programmes in prison settings. Nonetheless, studies have shown that in countries that have introduced needle and syringe programmes in prisons, the outcomes have been very positive and the sharing of injecting equipment has dramatically reduced.

Preventing drug overdose

Drug-using prisoners are a very high risk group for accidental overdose, particularly in the period immediately after release. As drug dependent persons reduce their use while in prison, they lose their tolerance to drugs. This means that their body can no longer cope with the doses they were used to taking before prison, and if they resume similar doses when released they face a high risk of overdose and death. Overdose prevention programmes, therefore, need to be targeted at prisoners, and should involve information, awareness-raising and practical measures, such as the distribution of naltrexone, a medication that temporarily blocks the effects of opiates.

Drug treatment and rehabilitation

Prisons can sometimes provide a useful location for a range of evidence-based treatment programmes to break the cycle of substance dependence and crime.

347. *Drug and Policy Guide*, International Drug Policy Consortium, Edition 3, 2016, p. 101 at files.server.idpc.net/library/IDPC-drug-policy-guide_3-edition_FINAL.pdf.

- 56 Besides drug treatment and rehabilitation programmes an integrated model of care to tackle alcohol problems among prisoners should be available.³⁴⁸

Female prisoners, pregnancy and childbirth

- 57 The Bangkok Rules (Rules 6-18) supplement the Mandela Rules with more detailed guidance on health-care provision for women and their children in prison, making it clear that the specific health-care needs of women must not be limited to pre- and post-natal care. Rule 48 of the Bangkok Rules also provides more guidance on the medical and nutritional needs of pregnant women, breastfeeding mothers and mothers with children in prison.³⁴⁹ The situation of children in prison with a parent is dealt with in **Chapter 2, paragraphs 63–87** of this guidance document.
- 58 In order to adequately respond to the health-care needs of female prisoners, female-specific services need to be provided, including sexual and reproductive care and preventive health-care. The usually higher rates of substance dependency and mental health issues among women prisoners also need to be taken into account in health-care staffing. Rule 15 of the Bangkok Rules states that prison health services shall provide or facilitate specialized treatment programmes designed for women with substance dependencies, taking into account prior victimization, the special needs for pregnant women and women with children, as well as their diverse cultural backgrounds. Female prisoners also tend to have more pre-existing health problems than men due to barriers to accessing health services in the community.



RELEVANT RULES: FEMALE PRISONERS, PREGNANCY AND CHILDBIRTH

Rule 28: In women's prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison.

If a child is born in prison, this fact shall not be mentioned in the birth certificate.

See also *Bangkok Rules* 5, 15, 39 and 48.

- 59 A high proportion of female prisoners have experienced severe and repeated violence during their lives, including domestic violence and sexual abuse and are at a heightened risk of abuse while in detention, including sexual and gender-based violence.
- 60 If a female prisoner requests that she be examined by a female health-care professional, then a female physician or nurse should be made available wherever possible. If a female physician or nurse is not available, then a female staff member should be present during any examination by a male health-care professional. To this end, enough female health-care staff should be appointed to work in prisons housing female prisoners.
- 61 Women have the right to refuse vaginal examinations and to refuse to provide information on their reproductive health history. Under no circumstances must female prisoners be subjected to so-called "virginity testing" (Bangkok Rules, Rule 8).
- 62 Female prisoners need to be provided with sufficient sanitary towels free of charge (Bangkok Rules, Rule 5), as an integral part of both women-specific hygiene and health-care, and to respect their dignity.

Children in prisons

- 63 As the UN Special Rapporteur on torture has pointed out, "[a] number of studies have shown that, regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development. Even very short periods of detention can undermine the child's psychological and physical wellbeing and compromise cognitive development. Children held in detention are at risk of post-traumatic stress disorder, and may exhibit such symptoms as insomnia, nightmares and bed-wetting. Feelings of hopelessness and frustration can be manifested in acts of violence against themselves or others.

348. For more guidance, see for example: *Alcohol problems in the criminal justice system: an opportunity for intervention*, Lesley Graham, Tessa Parkers, Andrew McAuley and Lawrence Doi, World Health Organisation (WHO), Regional Office for Europe, 2013.

349. For more information, see: *Guidance Document on the UN Bangkok Rules*, PRI/Thailand Institute of Justice, *op. cit.*, note 138.

Reports on the effect of detention on children have found higher rates of suicide, suicide attempts and self-harm, mental disorder and developmental problems, including severe attachment disorder.”³⁵⁰

- 64 All children in prison are to be properly interviewed and physically examined by a medical doctor (preferably a pediatrician) or qualified nurse reporting to a doctor as soon as possible upon admission to a detention facility, preferably on the day of arrival. In the case of girls, access to gynaecologists and education on women’s health-care are to be provided.³⁵¹
- 65 Both male and female child prisoners may come from difficult family or social backgrounds. They may have been subjected to sexual abuse and other violence and may have substance dependencies and/or mental health-care needs. Some will have been victims of sexual exploitation. Young prisoners are also at high risk of ill-treatment, including sexual abuse, within prisons.
- 66 Rules 38 and 39 of the Bangkok Rules address the specific health-care needs of juvenile female prisoners, including the need for age- and gender-specific programmes and services, such as counselling for sexual abuse. This is particularly important given that the needs of juvenile female prisoners are often overlooked due to their small numbers within many prison systems.
- 67 Prison administrations should ensure specific treatment and care is provided related to the health and wellbeing of girls in prison by paediatricians. This should include comprehensive education on sexual and reproductive health.

Foreign nationals

- 68 In order to meet the health-care needs of foreign nationals and others who do not speak the main language of the prison, information about available health-care services should be explained in a language they understand both verbally and in writing.
- 69 As health related issues require a specific, technical vocabulary in a foreign language, efforts should be made to employ health-care professionals who can communicate in other languages commonly spoken in the prison. Where this is not possible independent interpreters should be provided, with the prisoner’s consent. Other prisoners should not normally be used as interpreters during medical consultations.

LGBTI prisoners

- 70 Prison health staff should receive training on the potential health-care needs of LGBTI prisoners, including mental health conditions and their risks of ill-treatment in prison.”³⁵²
- 71 The principle of equivalence of health-care also applies in this context and LGBTI prisoners should be able to access specialized health-care services that are available in the community outside prison, including gender reassignment for transgender individuals.”³⁵³

Elderly and terminally ill prisoners

- 72 In many countries there are increasing numbers of elderly prisoners, who are likely to have specific health-care needs, including in relation to mobility, dementia, mental health and the loss of various faculties, including eye-sight, hearing and intellectual capacity. These prisoners have significant additional health-care needs and may require more frequent health monitoring.
- 73 The WHO points out that “[t]he physical and mental health status of older prisoners should be assessed by focusing on geriatric syndromes, such as sensory impairment, functional impairment, incontinence and cognitive impairment, which are common and may pose unique risks in prison”.³⁵⁴

350. UN Special Rapporteur on torture, *A/HRC/28/68*, *op. cit.*, note 132, para. 33.

351. *Ibid.*, para. 28; The Bangkok Rules, *op. cit.*, note 28, Rules 6-18.

352. For more guidance, see: *Handbook on Prisoners with Special Needs*, UNODC, *op. cit.*, note 87, p. 115.

353. *Ibid.*, p. 117.

354. *Prisons and Health*, WHO, Regional Office for Europe, 2014, pp. 165-172.

- 74 Terminally ill prisoners also have specific health-care needs in prison, including palliative treatment and constant monitoring.
- 75 Prisoners who enter the later stages of chronic or terminal illnesses – including but not limited to HIV and AIDS – require specialized end-of-life care. As the WHO points out, very often prisons are not equipped to provide such care, prison staff lack the necessary training and resources and the prison environment itself is not conducive to end-of-life care. For this reason, many prison systems have introduced compassionate release programmes to allow terminally ill prisoners to be released from prison earlier in their sentence. Such early-release programmes fulfil a compassionate role but also recognize that the life expectancy of terminally ill prisoners may be lengthened as a result of receiving care in the community.³⁵⁵



PROMISING PRACTICE: ADAPTING PRISONS TO THE NEEDS OF ELDERLY PRISONERS [6.7]

In an article titled *Old Age Behind Bars: How can Prisons Adapt to the Needs of Increasingly Elderly Populations?*, HelpAge International outlines some of the challenges elderly people face in prisons.³⁵⁶

These include:

- The layout of the prison facility, including stairs, access to sanitary facilities and upper bunk beds;
- Unsuitable rehabilitation programmes, which tend to cater for younger offenders;
- Release programmes that may not address the resettlement challenges elderly offenders face;
- The lack of appropriate health-care; and
- Assistance with daily activities such as eating, getting dressed and going to the toilet.

Whatton prison in the United Kingdom, for example, has a significant population of elderly prisoners³⁵⁷ and has been commended by the United Kingdom Prisons Inspectorate for its management and support of elderly prisoners.³⁵⁸ This includes peer support across the prison, social care advocates and the Older Prisoner Activities and Learning (OPAL) group.

The OPAL project provides several activities each weekday supported by volunteers from Age UK and the Soldiers and Sailors Families Association (SSAFA). Some units of Whatton prison have been adapted specifically for elderly prisoners, including adapted gymnasium facilities and activities. There is also a dementia care suite, a drop in centre and pre-release services for elderly prisoners. Additionally, the prison provides palliative care facilities and services.

6.4. DOCUMENTING AND REPORTING SIGNS OF TORTURE

- 76 States are obliged to undertake an effective investigation whenever there are indications of torture or other ill-treatment (Article 12 of CAT). Policymakers should ensure that investigations into allegations of torture and other ill-treatment are launched whenever there are reasonable grounds to suspect it has taken place, even without a formal complaint.³⁵⁹

Health-care staff play an important role, not only in treating a prisoner that has been injured either physically or mentally, but also because documentation of injuries and other signs of such treatment are a pre-requisite for an effective investigation, and subsequent accountability.

^{355.} *Health in prisons: A WHO guide to the essentials in prison health*, op. cit., note 123.

^{356.} See: *Old age behind bars: how can prisons adapt to the needs of increasingly elderly populations?*, Bridget Sleep, Penal Reform International blog, 25 September 2014 at www.penalreform.org/blog/age-bars-prisons-adapt-increasingly-elderly-populations.

^{357.} *Report on an unannounced inspection of HMP Whatton*, HM Chief Inspector of Prisons, 2017. The report noted that in 2016, one in five of the prisoners at HMP Whatton were over the age of 50.

^{358.} For more information, see: www.justiceinspectorates.gov.uk/hmiprison/inspections/hmp-whatton.

^{359.} UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report to the General Assembly*, 23 September 2014, A/69/387, para. 22.

Especially in prison, health-care personnel may be the only ones aware that a prisoner has been subjected to torture or other ill-treatment. They may detect signs of ill-treatment during initial medical screenings or during subsequent medical examinations. Prisoners may tell them about torture and other ill-treatment, while in other cases health-care staff may observe physical signs of torture, or psychological or psychiatric disturbances that indicate that the prisoner has been subjected to ill-treatment.



RELEVANT RULES: DOCUMENTING AND REPORTING SIGNS OF TORTURE

Rule 34: If, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority. Proper procedural safeguards shall be followed in order not to expose the prisoner or associated persons to foreseeable risk of harm.

See also the *Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)* and the *UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.



WHY IS IT IMPORTANT?

Preventing further ill-treatment

- 77 Health-care staff working in prisons have an ethical and professional obligation to document and report any instances of torture and other ill-treatment that they become aware of. No obligation to a third party can override the duty to protect an individual from torture or other ill-treatment and to report such cases.³⁶⁰
- 78 If perpetrators of torture or other ill-treatment, including law enforcement officials, know that prisoners can report such abuse to health-care staff and that this may result in investigation and accountability, they may be deterred from committing such acts.

Effective documentation and victim support

- 79 Documentation of injuries provides crucial evidence for any complaint by the victim and for the investigation of allegations of torture and other ill-treatment. A quick response by health-care professionals is critical to ensure documentation of ill-treatment because signs of physical ill-treatment may only be visible for a short period of time.³⁶¹
- 80 When ill-treatment is documented and reported in a timely manner, it will be easier to put in place appropriate care, support and rehabilitation programmes for the victim. This applies equally to those who were subject to abuse before their detention and those who were subjected to ill-treatment in detention.



PUTTING IT INTO PRACTICE

- 81 Health-care personnel have a professional duty to document any signs of torture or other ill-treatment. They must seek the consent of the victim prior to examination and inform the victim fully, in words they can understand, about the risks and benefits of reporting torture

^{360.} World Medical Association (WMA) Declaration of Tokyo Guidelines for physicians concerning torture and other cruel, inhuman, or degrading treatment or punishment in relation to detention and imprisonment, 29th WMA, October 1975, Article 1: states that "The physician shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures". The WMA resolution on the responsibility of physicians in the documentation and denunciation of acts of torture or cruel or inhuman or degrading treatment, 54th WMA General Assembly, September 2003, sets out in more detail the obligations of doctors in relation to evidence of torture at www.wma.net/policies-post/wma-resolution-on-the-responsibility-of-physicians-in-the-documentation-and-denunciation-of-acts-of-torture-or-cruel-or-inhuman-or-degrading-treatment.

^{361.} For more information on the role of forensic and medical science in the investigation, prosecution and prevention of torture and other ill-treatment, see: *UN Special Rapporteur on torture, A/69/387, op. cit.*, note 359.

and other ill-treatment to the relevant authorities. The WMA has consistently reiterated its policy on the responsibility of physicians to denounce acts of torture or cruel, inhuman or degrading treatment or punishment of which they are aware.³⁶²

Consent of the victim for reporting torture

- 82** In all cases when health-care staff document and report ill-treatment, they should do so in a manner that respects the privacy and confidentiality of the person or people involved.
- 83** There is an ethical dilemma in cases where health-care staff find themselves balancing the principle of informed consent with the obligation to report torture. Medical ethics require health-care staff to receive informed consent from patients before passing on any health-related information, including about injuries inflicted through torture or ill-treatment. The Bangkok Rules (Rule 7), which deal explicitly with the treatment of women prisoners, suggest that legal action should only be pursued if a woman prisoner agrees to it.
- 84** However, the CPT has suggested that, in the interest of preventing human rights violations as egregious as torture, mandatory reporting should be an overruling principle to prevent torture from remaining undetected and possibly becoming systemic.³⁶³
- 85** The Istanbul Protocol summarizes the potential conflict of these two ethical obligations and points out that the moral arguments for doctors to denounce evident ill-treatment are strong, since prisoners themselves are often unable to do so effectively.³⁶⁴ It elaborates that, in some cases patients may refuse to give consent to being examined for such purposes or to have information about them gained from examinations disclosed to others out of fear of reprisals for themselves or their families. “In such situations, health professionals have dual responsibilities: to the patient and to society at large, which has an interest in ensuring that justice is done and perpetrators of ill-treatment are brought to justice. The fundamental principle of avoiding harm must feature prominently in consideration of such dilemmas”.³⁶⁵ Health-care professionals should, in consultation with reliable agencies such as national medical associations or NGOs, seek solutions that promote justice without breaching the individual’s right to confidentiality.
- 86** In seeking the consent of prisoners, health-care staff should properly explain the process for follow-up action, and give prisoners enough time to properly consider their decision. Health-care staff should bear in mind that those who have been subjected to ill-treatment may be fearful, ashamed and confused, and they may find it difficult to understand the processes involved, or to make decisions on consent. They may also be under pressure from others not to report the ill-treatment. There are additional obstacles for victims of sexual abuse, due to the particular stigma and shame associated with sexual abuse and rape in many cultures, and due to reluctance on the part of a prisoner to undergo physical examinations or probing questions that might be humiliating to the victim. (See Bangkok Rules, Rule7).
- 87** It may be that those who initially refuse to give their consent later change their mind if they are able to reflect on their options, and if they can trust assurances that they will be protected from reprisals. Prisoners should also be given the option to discuss their decision with family members, friends or relevant professionals.
- 88** Those who have been subjected to torture and other ill-treatment should never feel that they are being forced into taking action against their will, especially if authorities are unable to protect them against further ill-treatment or if they cannot deal effectively with the allegations. Where consent is not given, health-care staff might consider reporting the incident with anonymized information, providing it is possible to provide sufficient details without identifying the victim. In all cases, health-care staff are required to document the ill-treatment even if they do not report it to the authorities.

³⁶² See: *WMA Resolution on the Responsibility of Physicians*, *op. cit.*, note 360.

³⁶³ *23rd General Report, CPT/Inf (2013) 29, op. cit.*, note 342, paras. 77-80.

³⁶⁴ *The Istanbul Protocol, op. cit.*, note 205, para. 72.

³⁶⁵ *Ibid*, para. 69.



- 89 When such treatment is reported, health-care staff should select a reporting avenue that reduces, to the extent possible, the risk of the prisoner being retaliated against (see Rule 34, “report such cases to competent medical, administrative or judicial authority”), and should ensure that every measure possible is taken to protect the prisoner from retribution as a consequence of reporting ill-treatment.
- 90 Rule 7 of the Bangkok Rules affirms the position that “if the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved”.
- 91 On the issue of consent, the Bangkok Rules assert the requirement for health-care staff to gain the consent of the victim before reporting abuse, specifying that appropriate staff can be informed, and the case referred to the competent authority for investigation only if the woman prisoner agrees to take legal action.

Protection against reprisals – the role of health-care staff

- 92 To avoid knowingly putting individuals in danger of reprisals, the Istanbul Protocol suggests that doctors could report ill-treatment to a responsible body outside the immediate jurisdiction or report it in a non-identifiable manner.³⁶⁶
- 93 The UN Special Rapporteur on torture has suggested that to “sufficiently guarantee confidentiality and protection (of the alleged victim), medical reports of detainees reporting possible cases of torture or other ill-treatment are the property of the detainee and should be addressed directly to the judge, prosecutors or other independent body according to national rules”.³⁶⁷
- 94 In reporting torture and other ill-treatment to authorities, the health-care staff should also consider the implications for their own safety, particularly if the alleged perpetrator is a member of the prison staff.

Documenting ill-treatment and the protection of evidence

- 95 The CPT has stated that “[t]he record drawn up after the medical screening (...) should contain: i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment), ii) a full account of objective medical findings based on a thorough examination, and iii) the health-care professional’s observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings. The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and of any further procedures performed. Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the prisoner. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded”.³⁶⁸ Evidence could include photographs of visible injuries.
- 96 Prison authorities are responsible for safeguarding any evidence related to torture and other ill-treatment, in particular in the immediate aftermath of an incident before investigative bodies can take charge. They should ensure that such files are stored safely and confidentially. Health-care staff must ensure that any medical evidence, including forensic samples, is stored safely and cannot be accessed by unauthorized individuals.³⁶⁹

³⁶⁶. *Ibid.*, para. 73.

³⁶⁷. UN Special Rapporteur on torture, *A/69/387*, *op. cit.*, note 359, para. 30.

³⁶⁸. *23rd General Report*, CPT/Inf (2013) 29, *op. cit.*, note 342.

³⁶⁹. For more information on the role of forensic and medical science in the investigation, prosecution and prevention of torture and other ill-treatment, see: UN Special Rapporteur on torture, *A/69/387*, *op. cit.*, note 359.

CONTEXT: MANUAL ON THE EFFECTIVE INVESTIGATION AND DOCUMENTATION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ISTANBUL PROTOCOL)³⁷⁰ [6.8]

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) is a set of international guidelines for the assessment of individuals who allege torture and ill-treatment, for investigating cases of alleged torture and for reporting such findings to the judiciary and any other investigative body.

The Istanbul Protocol reflects existing obligations of states under international treaty and customary international law. Specifically, the Protocol provides guidance on professional ethical obligations for medical professionals and lawyers in relation to documenting torture and other ill-treatment. It also provides information on the medical and psychological effects of torture and other ill-treatment, how to assess them and important considerations to take into account when interviewing alleged victims.

The Protocol also contains standards and procedures on how to identify and document signs of torture so the documentation may serve as valid and useful evidence in court and provides standards for producing and evaluating, medico-legal reports for use as evidence and for investigations. Additionally, it provides states with guidance concerning the procedures that need to be established in places of detention and elsewhere to allow for effective medical documentation of allegations of torture and other ill-treatment, in line with the obligations of states under international human rights law

- 97 In addition to recording all signs of ill-treatment and the related observations of medical staff in the individual prisoner medical file, the CPT recommends that the health-care service should also compile periodic statistics of injuries observed in prison, for the attention of prison management and relevant ministries.³⁷¹ Such statistics must never include any details that allow individual prisoners to be identified.

Support and care programmes

- 98 In all cases of ill-treatment the victim should be immediately provided with appropriate, professional psychological support and counselling. Rule 7(2) of the Bangkok Rules is clear that such support must be available whether or not the woman concerned chooses to take legal action. The PRI/TIJ *Guidance Document on the Bangkok Rules* elaborates on the responsibilities of authorities if sexual violence is diagnosed.³⁷² Such support should also be extended to male prisoners who are victims of abuse.³⁷³
- 99 If sexual abuse is detected during a medical examination, experts on documenting sexual abuse and responding to victims of it should be involved.
- 100 The UNCAT has emphasized the need to provide victims of torture or ill-treatment with the means for full and prompt rehabilitation. These include: “a procedure for the assessment and evaluation of an individual’s therapeutic and other needs (...)and may include a wide range of inter-disciplinary measures.³⁷⁴” Rehabilitation measures should take into consideration the strength and resilience of the victim, as well as risks of re-traumatisation through acts that remind them of the torture or ill-treatment they endured. Therefore, any assistance should be provided in a confidential manner.
- 101 Where no specialized rehabilitation programmes for victims of torture are available within the prison, external service providers such as national centres for rehabilitation of victims should be allowed access to the prison.

370. *The Istanbul Protocol*, *op. cit.*, note 205, p. 1.

371. *CPT Standards*, CPT/Inf/E (2002) 1 Rev. 2011, *op. cit.*, note 15, para. 62.

372. *Guidance Document on the UN Bangkok Rules*, PRI/Thailand Institute of Justice, *op. cit.*, note 138, p. 38.

373. *The Bangkok Rules*, *op. cit.*, note 28, para. 12 of preliminary observations suggests that some of the rules “address issues applicable to both men and women prisoners” and suggest application of some rules to male prisoners.

374. These can include medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training and education. See: UN Committee against Torture (UN CAT), *General Comment No. 3: Implementation of article 14 by States parties*, 13 December 2012, A/69/387, CAT/C/GC/3.

6.5. ETHICAL AND PROFESSIONAL STANDARDS



RELEVANT RULES: ETHICAL AND PROFESSIONAL STANDARDS

Rule 31: The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality.

Rule 32:

1. The relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community, in particular:

(a) The duty of protecting prisoners' physical and mental health and the prevention and treatment of disease on the basis of clinical grounds only;

(b) Adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship;

(c) The confidentiality of medical information, unless maintaining such confidentiality would result in a real and imminent threat to the patient or to others;

(d) An absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation that may be detrimental to a prisoner's health, such as the removal of a prisoner's cells, body tissues or organs.

2. Without prejudice to paragraph 1 (d) of this rule, prisoners may be allowed, upon their free and informed consent and in accordance with applicable law, to participate in clinical trials and other health research accessible in the community if these are expected to produce a direct and significant benefit to their health, and to donate cells, body tissues or organs to a relative.



WHY IS IT IMPORTANT?

- 102** All health-care staff caring for prisoners, including nurses, psychologists and psychiatrists are bound by the same ethical and professional standards.
- 103** Principle 3 of the UN Principles of Medical Ethics points out that "it is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health".
- 104** Informed consent, patient autonomy and confidentiality of medical information are key components of the right to health and must apply equally to prisoners as patients. Such principles are crucial for building trust between the patient and the health care staff.
- 105** If prisoners do not trust prison health-care staff, they may be reluctant to approach them about health conditions or they may disregard their medical advice, leading to complications of their health condition or endangering the health of others within the prison population. Prisoners may refuse health treatment, not because they do not wish to receive it, but because they do not trust the prison medical staff.



PROMISING PRACTICE: HUMAN RIGHTS AND ETHICAL DILEMMAS FOR DOCTORS WORKING IN PRISONS – ONLINE LEARNING TOOL [6.9]

The Norwegian Medical Association, in co-operation with the World Medical Association developed a web-based course *Doctors Working in Prison: Human Rights and Ethical Dilemmas*.³⁷⁵

³⁷⁵ *Doctors Working in Prison: Human Rights and Ethical Dilemmas*, Norwegian Medical Association, 2014, at nettkurs.legeforeningen.no/enrol/index.php?id=39.



PUTTING IT INTO PRACTICE

Medical confidentiality

- 106** Prisoners have the same right to confidentiality of medical information as patients in the community. Confidentiality should, therefore, be assured at all times, unless, as set out in the Mandela Rules, maintaining such confidentiality would result in a real and imminent threat to the patient or to others. Even in such cases medical information should only be disclosed on a “need to know” basis.
- 107** Non-medical staff, including prison directors, do not need to know details of the specific medical conditions of prisoners or the information contained in the medical files. However, staff members may need to know how to protect themselves and others against any damaging health conditions suffered by prisoners. Non-medical staff should, therefore, be provided with preventive health education and the means to protect themselves from harm. This could include, for example, gloves to prevent them from being injured by contaminated needles while searching cells.
- 108** Non-medical staff also need to know the possible risks of self-harm. They may need to know the medical risks associated with particular prisoners and how to respond, including for example, to the risk of sudden seizures for patients that suffer from epilepsy.
- 109** The WMA Declaration of Lisbon on the Rights of the Patient stipulates that confidentiality should be maintained for “all identifiable information about a patient’s health status, medical condition, diagnosis, prognosis and treatment and all other information of a personal kind”.³⁷⁶ The Declaration adds that such information should be kept confidential even after death, except in exceptional circumstances if a descendant has a right to access information that would inform them of their own health risks (e.g., if there is a genetic predisposition for particular illnesses).
- 110** Special security measures may be required during medical examinations, particularly when a prisoner is perceived by medical staff to pose a threat. However, as emphasized by the CPT, there can be no justification for custodial staff being systematically present during such examinations; their presence is detrimental to the establishment of a proper doctor-patient relationship and usually unnecessary from a security point of view. Alternative solutions can and should be found to reconcile legitimate security requirements with the principle of medical confidentiality. One possibility might be the installation of a call system, whereby a doctor can rapidly alert prison officers in cases when a prisoner becomes agitated or threatening during a medical examination.³⁷⁷
- 111** The WHO and the CPT have stressed that prisoners should not be handcuffed during medical consultations. This practice infringes their dignity, inhibits the development of a proper doctor-patient relationship and can be detrimental to the objectivity of a health-care practitioner’s medical findings.³⁷⁸

Sharing information on a “need to know basis”

- 112** If there is cause to believe that maintaining the confidentiality of medical information could result in a real or imminent threat to the patient or others, as set out in Rule 32(1)(c), medical staff should first ask for the explicit consent of the patient, including by clearly explaining the reasons for disclosing the information and how it would be disclosed.

³⁷⁶ WMA Declaration of Lisbon on the rights of the Patient, reaffirmed by the 200th WMA Council Session, April 2015, para. 8 at www.wma.net/policies-post/wma-declaration-of-lisbon-on-the-rights-of-the-patient.

³⁷⁷ Report on the visit to Armenia carried out by the European Committee for the Prevention of Torture from 2 to 12 April 2006, 13 December 2007, CPT/Inf (2007) 47, paras. 19 and 91.

³⁷⁸ Prisons and Health, *op. cit.*, note 354, 2014, p. 11; and Report on the authorities of the Kingdom of the Netherlands on the visit carried out by the CPT, European Committee for the Prevention of Torture in June 2007, 5 February 2008, CPT/Inf(2008) 2, para. 18.

- 113** Only relevant information should be disclosed on a “need to know” basis. The determination of who needs to know, and what they need to know, should be carried out by the facility’s medical professional and should involve an assessment of the specific medical condition the prisoner suffers from and the risks to the patient or others posed by that condition.
- 114** Only a medical professional can take the decision to disclose medical information without the consent of the patient. The prisoner should be informed in advance that medical information will be disclosed in order to protect their health or the health of others, and it should be explained that information will be shared on a “need to know” basis only.
- 115** There should be designated rooms for medical examinations that ensure full confidentiality, as required by the Mandela Rules. If either the prisoner or the medical professional requests the presence of guards during a medical examination out of concerns for their safety, then guards may be present. Otherwise, medical consultations in prison should always be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff.

Informed consent and autonomy

- 116** As with patients in the community, all prisoners have a right to autonomy in decision-making on matters related to their health, although, in a prison context, the choice of doctor is limited. They have the right to make informed choices about their health-care, including the right to refuse treatment. The principle of free and informed consent is a basic principle in all medical care settings. The purpose and the possible benefits and risks of any recommended procedure should be explained and the patient’s consent be sought.
- 117** Before starting the medical screening, health-care staff should clearly explain to prisoners the reason for the examination and why it is important, not only for their own health, but also for the health of others. Prisoners have a right to refuse a medical examination, but if they do agree, they need to be informed of the potential negative consequences. If a prisoner refuses to grant consent for a medical examination, health-care staff should discuss the prisoner’s reason for refusing with a view to addressing any concerns they may have. Health-care staff should also make it clear to any prisoner refusing an initial health assessment that an examination can be done later at any time. Such examinations should be offered to prisoners regularly.
- 118** As set out in the Lisbon Declaration, if the prisoner is unconscious or otherwise unable to express her or his will, informed consent must be obtained whenever possible, from a legally entitled representative and “if a legally entitled representative is not available, but a medical intervention is urgently needed, consent of the patient may be presumed, unless it is obvious and beyond any doubt on the basis of the patient’s previous firm expression or conviction that he/she would refuse consent to the intervention in that situation.” The Lisbon Declaration adds that physicians should always try to save the life of a patient unconscious due to a suicide attempt.³⁷⁹

CONTEXT: HUNGER STRIKES AND FORCED FEEDING: [6.10]

In cases where a prisoner stops eating with the intention of protesting to achieve some change in the regime or to obtain perceived or actual rights, different human rights are at stake such as the right to health, the right to life and the absolute prohibition of torture and ill-treatment. For prison administrations and health-care teams two of their duties clash:

- The duty to preserve the physical integrity and life of a person; and
- The right of every individual to dispose freely of his/her own body.

³⁷⁹ WMA Declaration of Lisbon on the rights of the Patient, reaffirmed by the 200th WMA Council Session, *op. cit.*, note 376, Principle 4 (c).

An important piece of guidance for prison health-care teams is the WMA Declaration of Malta.³⁸⁰ It describes in detail what ethical aspects and practical actions prison doctors need to consider in such situations. It states that the autonomy of a patient must be respected, that a thorough examination of the patient's needs to be undertaken and that the patient should be made fully aware of the consequences of launching a hunger strike.

It states that forced feeding of prisoners is never ethically acceptable.³⁸¹ This applies regardless of the danger caused to life or health by the hunger strike. Such a procedure can only be justified if a serious mental disorder affects the decision-making capacity of the patient and subsequently constitutes artificial nutrition, not forced feeding.³⁸²

International and regional human rights bodies such as the UN Special Rapporteur on torture, the UN Special Rapporteur on the right of health and the Inter-American Commission on Human Rights have concluded that, in cases involving prisoners on hunger strike the duty of medical personnel to act ethically and to respect individuals' autonomy must be respected. Under these principles, it is unjustifiable to engage in forced feeding of individuals contrary to their informed and voluntary refusal of food. Moreover, it is not acceptable to use threats of forced feeding or other types of physical or psychological coercion against individuals who have voluntarily decided to go on a hunger strike. In order to preserve a prisoner's physical integrity and life, authorities have a duty to look for other solutions to the crisis created by the hunger strike, including good faith dialogue with prisoners about their grievances.³⁸³

- 119 In non-emergency situations, prisoners must be properly informed about any treatment proposed by a health-care practitioner in a language and format they understand. This includes information about the likely outcomes of the treatment and any risks involved. In addition, the prisoner concerned should be able to participate in treatment planning and decision-making as he or she would if receiving treatment in the community.

Persons with mental disabilities

- 120 The implementation of supported decision-making processes³⁸⁴ can be challenging in prisons, especially where resources are scarce. However, as the UNODC has noted, "there is particular risk of abuse in custodial settings, so adequate safeguards to protect prisoners with mental disabilities against treatment without free and informed consent are all the more vital".³⁸⁵
- 121 Article 25(d) of the CRPD, the scope of which includes all individuals, including those in detention, makes it clear that health professionals must provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health-care.
- 122 Prisoners who are considering participating in clinical trials and health research must receive the same level of information about the research as those in the community would. This information should be provided directly by those conducting the research. In cases where a prisoner wants to participate, an ethics committee should be involved to provide an independent view on whether the treatment is likely to produce a direct and significant benefit to health. It is the duty of the prison authorities to ensure that the research has been approved by an appropriate body.

380. *Declaration of Malta on Hunger Strikers*, 43rd World Medical Assembly, November 1991, revised October 2006 at www.wma.net/policies-post/wma-declaration-of-malta-on-hunger-strikers.

381. *Ibid.*, Article 21: "Forcible feeding is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment. Equally unacceptable is the forced feeding of some detainees in order to intimidate or coerce other hunger strikers to stop fasting".

382. *Health in prisons: A WHO guide to the essentials in prison health*, *op. cit.*, note 123, p. 14.

383. *Towards the Closure of Guantanamo*, Inter-American Commission on Human Rights, 3 June 2015, OAS/Ser.L/V/II, para. 148; see also: *Situation of detainees at Guantanamo Bay*, UN Commission on Human Rights, 27 February 2006, E/CN.4/2006/120, para. 79–80; *Hearing on the human rights situation of detainees at Guantanamo Naval Base, United States*, UN Special Rapporteur on torture, 28 October 2013 at antitorture.org/wp-content/uploads/2013/10/SRT-IACHR-Hearing-Guantanamo-statement-Oct-28-13.pdf.

384. Supported decision-making is a process in which an individual is provided with as much support as they need in order for them to be able to make a decision themselves and/or express their will and preferences within the context of substitute decision-making.

385. *Handbook on Prisoners with Special Needs*, UNODC, *op. cit.*, note 87, p. 34.

6.6. MEDICAL FILES



RELEVANT RULES: MEDICAL FILES

Rule 26:

1. The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access his or her medical file.

2. Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.



WHY IS IT IMPORTANT?

- 123 The principle of medical confidentiality is a fundamental tenet of medical practice and must be applied with the same care in prisons as in the general community. This is particularly important given the high risk of abuse, stigmatization and discrimination that prisoners may face if their medical or mental health condition is known to others.
- 124 Detailed and accurate medical files are essential for ensuring continuity of treatment, including in cases where prisoners are transferred and released.
- 125 While the details of individual medical conditions must be kept confidential, general data on the health status of the prison population is useful for prisoner management purposes, including to assess what medical resources are needed, how many staff are needed and how frequent transportation to hospitals or clinics is likely to be.



PUTTING IT INTO PRACTICE

- 126 Medical files must be maintained solely by health-care staff, be kept separately from the main prisoner file and be equally secure. Medical files should be kept in a locked cabinet, in a lockable room and be safe from flood, fire and other damage. In many facilities medical files are stored securely within the health centre itself. Electronic medical files should also be properly protected against unauthorized access.
- 127 Medical files should not be made available to non-medical staff or other prisoners unless the prisoner has specifically given their consent for non-medical staff to access them (Rule 26(2)).
- 128 Medical files should be comprehensive and must be regularly updated. As noted by the CPT, such files should contain diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he or she has undergone.³⁸⁶ For purposes of accountability, entries to the file should include the identity of the author.
- 129 If medical staff have any reason to believe that medical files are not confidential then they should take action to strengthen protection of the files including by raising the issue with the prison director.
- 130 Prisoners must be made aware that they have a right to access their medical files upon request, or to appoint a third party to access their file. Authorities should ensure that there are proper, consistent procedures in place on how prisoners or third parties can access the files and how their confidentiality can be protected.

386. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Extract from the 3rd General Report on activities of the CPT*, 1993, para. 39 at rm.coe.int/16806ce943.

CONTEXT: WHO GUIDELINES ON THE CONFIDENTIALITY OF INFORMATION REGARDING HIV/AIDS [6.11]

The *WHO Guidelines on HIV infection and AIDS in Prisons*³⁸⁷ deal specifically with the issue of confidentiality in relation to HIV/AIDS. While information on the health status and medical treatment of prisoners is confidential, the guidelines state that with the consent of the patient, health-care staff may provide prison managers or judicial authorities with information that will assist in the treatment and care of the patient.

With specific reference to HIV/AIDS, the guidelines state that “information regarding HIV status may only be disclosed to prison managers if the health personnel consider, with due regard to medical ethics, that this is warranted to ensure the safety and wellbeing of prisoners and staff, applying to disclosure the same principles as those generally applied in the community. Principles and procedures relating to voluntary partner notification in the community should be followed for prisoners”.³⁸⁸

The guidelines also specify that health-care staff should never routinely communicate the HIV status of prisoners to the prison administration and that “no mark, label, stamp or other visible sign should be placed on prisoners’ files, cells or papers to indicate their HIV status”. *Ibid*, para. 33.

387. *WHO guidelines on HIV infection and AIDS in prisons*, UNAIDS, September 1999.

388. *Ibid*, para. 32.



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**EXTERNAL
MONITORING**

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7. EXTERNAL MONITORING



RELEVANT RULES: EXTERNAL MONITORING

Rule 83:

1. There shall be a twofold system for regular inspections of prisons and penal services:

(a) Internal or administrative inspections conducted by the central prison administration;

(b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.

2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.

Rule 84:

1. Inspectors shall have the authority:

(a) To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention;

(b) To freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview;

(c) To conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits;

(d) To make recommendations to the prison administration and other competent authorities.

2. External inspection teams shall be composed of qualified and experienced inspectors appointed by a competent authority and shall encompass health-care professionals. Due regard shall be given to balanced gender representation.

Rule 85

1. Every inspection shall be followed by a written report to be submitted to the competent authority. Due consideration shall be given to making the reports of external inspections publicly available, excluding any personal data on prisoners unless they have given their explicit consent.

2. The prison administration or other competent authorities, as appropriate, shall indicate, within a reasonable time, whether they will implement the recommendations resulting from the external inspection.

- 01 Given the numerous publications and resources that exist on external monitoring, in particular in the context of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) system and National Preventive Mechanisms (NPMs), this guidance document does not seek to comprehensively cover all related aspects. More guidance on internal inspections can be found in **Chapter 1, paragraphs 221–232**.



WHY IS IT IMPORTANT?

- 02 External monitoring of places of detention, including through unannounced visits, is one of the most effective ways of preventing torture and other ill-treatment, and of detecting systemic factors contributing to such treatment.



PUTTING IT INTO PRACTICE

Two-fold systems of inspection

- 03** The Mandela Rules provide for a two-fold system of inspection, which includes internal or administrative inspections, as well as external scrutiny through independent external monitoring bodies.
- 04** While both systems share some of the same objectives, their mandate usually differs and internal inspections, in general, include issues such as staff training, financial and administrative performance, whereas external mechanisms typically focus on the rights of prisoners and the implementation of national and international standards. They are meant to complement each other.
- 05** The most commonly known external monitoring bodies are dedicated to the prevention of torture, such as NPMs set up under the OPCAT and comparable bodies. However, the Mandela Rules presents external inspections in a broad and comprehensive manner as being carried out by bodies independent of the prison administration, and involving inspections by the judiciary, National Human Rights Institutions (NHRIs), Ombuds Institutions, parliamentary committees and also, potentially, health inspections or anti-corruption bodies established in the respective jurisdiction.
- 06** Rule 83(1)(b) also refers to regional and international bodies such as the SPT, UN Special Procedures, the CPT, the Special Rapporteur on Prisons and Conditions of Detention and Policing in Africa, the Rapporteurship on the Rights of Persons Deprived of Liberty in the Americas and the International Committee of the Red Cross (ICRC) – as relevant in the respective country.
- 07** Whereas the Mandela Rules draw on the positive experience of regional and international preventive monitoring models, the obligation to establish external monitoring bodies, as prescribed in the Mandela Rules, applies irrespective of whether a state has ratified the OPCAT and established an NPM.



Objectives of inspections

- 08** Rule 83(2) states that the objectives of internal inspections and external monitoring should be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and ensuring that the rights of prisoners are protected.
- 09** The objectives of preventive monitoring and investigation into individual cases, including complaints, are often confused. While inspections and monitoring serve to detect systemic problems and recommend measures to prevent repetition, complaints and investigations need to establish the facts of individual cases, ensure accountability and redress for the victim. It is, therefore, not the role of internal inspections or external monitoring bodies to investigate individual cases of deaths, (serious) injuries, disappearance or torture and other forms of ill-treatment. Rather, such incidents, including individual complaints and allegations, are to be investigated, prosecuted and punished by authorities established with the mandate and competency to investigate and take a decision that establishes the facts and any sanction against the perpetrator. Depending on the seriousness of a case, an investigative mechanism may refer it to the criminal justice system or to the body responsible for internal disciplinary proceedings.
- 10** Guidance for effective external monitoring of treatment and conditions in prisons should be taken from the CPT, OPCAT and the SPT, and the focus of such monitoring should be on the prevention of torture and other ill treatment. Preventative visits scrutinize the physical facility, rules and procedures, and the adequacy of any safeguards to identify risk factors that lead, or might lead in the future, to torture, or constitute conditions or treatment amounting to ill-treatment or torture. They should aim to identify and analyse systemic factors and patterns of failures, and recommend measures to address the root causes.
- 11** The information gathered by external monitoring bodies is assessed against national, regional and international standards and good practice, and should be seen to be helpful in assisting prison management and others to maintain standards and implement improvements in prison management. The recommendations of external monitoring bodies constitute the basis for constructive dialogue with authorities on how to improve the treatment of prisoners and conditions in prisons. This can include working conditions for prison staff, which also constitute a key factor for the treatment of prisoners.³⁸⁹



PUTTING IT INTO PRACTICE

Powers external monitors require

- 12** External monitors need to be granted access to all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention (Rule 84(a)). This includes unlimited access to places of detention, including the right to move around within such places without restriction.
- 13** Like internal inspectors, external monitors need to be able to freely choose which prisons to visit, including by making unannounced visits on their own initiative, and to freely select which prisoners to interview (Rule 84(b)).
- 14** They need to be able to conduct private and fully confidential interviews with prisoners, prison staff and other relevant people (e.g., health-care staff) in the course of their visits (Rule 84(c)).
- 15** They should have a mandate to make recommendations to the prison administration and other competent authorities. (Rule 84(d)). This includes analysing and commenting on draft legislation with a view to identifying possible risk factors of torture or other ill-treatment.³⁹⁰

³⁸⁹. For more information, see: *Staff working conditions Addressing risk factors to prevent torture and ill-treatment*, PRI/APT, *op. cit.*, note 71.

³⁹⁰. For comparison, see OPCAT, *op. cit.*, note 20.

- 16** Rule 84(2) provides that external monitoring bodies should be established in legislation, with guarantees of independence and appropriate resourcing. They should be composed of qualified and experienced staff, including health-care professionals with balanced gender representation.

The role of prison administrations

- 17** Prison staff and administrations should ensure that all external monitors are able to perform their functions effectively and should cooperate with them, including by agreeing to be interviewed by them.
- 18** Monitors should be able to perform their functions without interference, threats or harassment. At the same time, monitors should respect prison rules and regulations, and their presence should not interfere with the smooth running of the prison. It is the role of governments and prison administrations to ensure that external monitors are able to perform their functions effectively, in accordance with Rule 84(1), which sets out the powers needed.
- 19** Those who engage with the external monitors need to be protected from any form of sanction or reprisals as a result of having done so. States must refrain from ordering, applying, permitting or tolerating any sanction or reprisal to be suffered by any person or organization for having communicated with the monitoring body or for having provided it with information, irrespective of its accuracy, and no such person or organization should be prejudiced in any way.³⁹¹

Cooperation of authorities with inspectors and monitors

- 20** Rule 85 provides that every inspection, both internal and external, should be followed by a written report to be submitted to the competent authority.
- 21** With regard to external monitoring, Rule 85(1) specifies that due consideration should be given to making the reports of external inspections publicly available, excluding any personal data on prisoners unless they have given their explicit consent.
- 22** In reaction to the reports of external monitors, the prison administration or other competent authorities, depending on who the recommendation is directed to, are requested to respond to the external monitoring body within reasonable time. Authorities may not be able to implement every recommendation directed to them, due to competency issues, resources or the need for laws to be changed to implement a given recommendation.
- 23** Rule 85(2) requires that the authorities get back to the monitoring body with a decision on whether they will implement the recommendations resulting from the external inspection. Prison administrations, therefore, have a responsibility to take the recommendations of the monitoring bodies seriously, to consider them carefully and implement them within a reasonable time, or to provide good reasons why they will not implement the recommendations.
- 24** There should be an ongoing, constructive dialogue between external monitors and prison management that focuses on implementing recommendations.

³⁹¹ For provisions on this issue, see *Ibid*, Article 21.



EXAMPLES OF EXISTING MONITORING TOOLS [7.1]

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Office of the UN High Commissioner for Human Rights (OHCHR), *Professional Training Series No. 7 – Training Manual on Human Rights Monitoring – Chapter IX: Visits to Persons in Detention* (2007), available in Arabic, English, French, Russian and Spanish: at www.ohchr.org/EN/PublicationsResources/Pages/MethodologicalMaterials.aspx.

Association for the Prevention of Torture (APT), Asia Pacific Forum of National Human Rights Institutions (APF) and Office of the UN High Commissioner for Human Rights (OHCHR), *Preventing Torture: An Operational Guide for National Human Rights Institutions* (2010), available in Arabic, English, French, Serbian and Spanish: at www.apt.ch/en/resources/national-human-rights-institutions.

Penal Reform International (PRI) and Association for the Prevention of Torture (APT) – ***Detention Monitoring Tool: Addressing risk factors to prevent torture and ill-treatment*** (2nd edition, updated 2016), at: www.penalreform.org/priorities/torture-prevention/preventive-monitoring/tools-resources, including thematic papers and factsheets on:

- *Institutional culture in detention: a framework for preventive monitoring* (available in English, French, Georgian, Russian and Spanish);
- *Women in detention: a guide to gender-sensitive monitoring* (available in Arabic, English, French, Georgian, Russian and Spanish);
- *LGBTI persons deprived of their liberty: a framework for preventive monitoring* (available in English, French, Georgian, Portuguese, Russian and Spanish);
- *Balancing security and dignity in prisons: a framework for preventive monitoring* (available in English, French, Georgian, Russian, Spanish and Turkish);
- *Body searches* (available in English, French, Georgian, Russian and Spanish);
- *Instruments of restraint* (available in English, French, Georgian, Russian and Spanish);
- *Pre-trial detention* (available in English, French, Georgian, Russian and Spanish);
- *Staff working conditions* (available in English, French, Georgian, Russian and Spanish);
- *Video-recording in police custody* (available in English, French, Georgian, Russian and Spanish);
- *Incident management and independent investigations* (available in English and Georgian, other languages forthcoming).
- *User guide* (available in English, Georgian and Russian)

Association for the Prevention of Torture (APT), *Detention Focus Database*, available in English, French and Spanish: at www.apt.ch/detention-focus.

Harm Reduction International, *Monitoring HIV, HCV, TB and Harm Reduction in Prisons: a Human Rights-Based Tool to Prevent Ill-Treatment* (2016): at www.hri.global/contents/1674.

United Nations Office on Drugs and Crime (UNODC), *Assessing compliance with the Nelson Mandela Rules – A checklist for internal inspection mechanisms* (2017), available in Arabic, English, French, German, Russian and Spanish: at www.unodc.org/unodc/en/justice-and-prison-reform/tools.html.

International Committee of the Red Cross (ICRC), *Health Care in Detention – Health Systems and Needs Assessments in Prisons – Practical Guide and Toolkit* (2018): at www.icrc.org/en/publication/champ-dapplication-du-droit-dans-les-conflits-armes-ricr-no-893.

Omega Research Foundation, *Monitoring Weapons and Restraints in Places of Detention: A Practical Guide and Pocketbook* (2018), available in English, French and Spanish: at omegaresearchfoundation.org/publications/monitoring-weapons-and-restraints-places-detention-practical-guide.



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