

Protecting Human Rights in Prisons while Preventing Radicalization Leading to Terrorism or Violence

A Guide for Detention Monitors



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Maud Raimbault conducted preparatory research during the initial stages of the project that formed the basis for the subsequent development of the guide.



Acronyms and Abbreviations

Acronyms

APT	Association for the Prevention of Torture
CAT	United Nations Committee against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSO	Civil society organization
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECtHR	European Court of Human Rights
EPR	European Prison Rules
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
NHRIs	National human rights institutions
NPMs	National preventive mechanisms
OSCE	Organization for Security and Co-operation in Europe
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OPCAT	Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PRI	Penal Reform International
RAN	European Union Radicalization Awareness Network
SPT	United Nations Subcommittee on the Prevention of Torture
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
VERLT	Violent Extremism and Radicalization that Lead to Terrorism

Abbreviations

Council of Europe Guidelines	The Council of Europe Guidelines for Prison and Probation Services Regarding Radicalization and Violent Extremism
Council of Europe Handbook	The Council of Europe Handbook for Prison and Probation Services regarding Radicalization and Violent Extremism
ODIHR/PRI Guidance Document	Guidance Document on the Nelson Mandela Rules – Implementing the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners, ODIHR and PRI
UN Special Rapporteur on Counter-Terrorism	The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism
UN Special Rapporteur on Torture	The UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
The Paris Principles	Principles relating to the Status of National Institutions adopted by UN General Assembly resolution 48/134
UN Plan of Action	The UN Secretary General's Plan of Action to Prevent Violent Extremism
UN Bangkok Rules	The UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
UN Beijing Rules	The UN Standard Minimum Rules for the Administration of Juvenile Justice
UN Havana Rules	The UN Rules for the Protection of Juveniles Deprived of their Liberty
UNODC Handbook	The UNODC Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons
UN Nelson Mandela Rules	The Revised UN Standard Minimum Rules for the Treatment of Prisoners
UN Tokyo Rules	The UN Standard Minimum Rules for non-custodial Measures

Introduction

Preventing and countering violent extremism and radicalization that lead to terrorism (VERLT)¹ is an area of increasing focus at the international, regional and national levels. This also applies to the prison context, due to fears that prisons may represent breeding grounds for VERLT. Such concerns are heightened after terrorist attacks perpetrated by individuals who appear to have radicalized towards violence while imprisoned.

With an increasing focus on preventing and countering radicalization in prisons leading to terrorism or violence, states are adopting measures that often have profound impacts on prisoners' human rights. Scrutiny by independent monitors is, therefore, pivotal in ensuring that all such measures are based on the rule of law and respect for human rights and fundamental freedoms. This guide seeks to equip detention monitors with tools and knowledge of the subject relevant to their respective monitoring mandates and methodologies, in order to assist them in focusing on this area.²

While generalizations about the extent to which radicalization to terrorism or violence occurs or grows in prisons are difficult to make, prisons are viewed as potential places where detainees may become vulnerable to, reinforce or embrace violent extremist views. This can be, for example, when exposed to peers who recruit for violent extremist groups and/or can be linked to poor conditions of detention and treatment. The deficiencies of some prison systems in adequately supporting violent extremist prisoners in disengaging, rehabilitating and reintegrating into society and, thus, in reducing risks of recidivism, are an additional element to be taken into consideration. Prison administrations need to be properly equipped to handle a growing number of prisoners accused or convicted of offences related to terrorism and violent extremism, not least because of the expanding scope of counter-terrorism laws in many countries in the OSCE region and worldwide.³

States have an obligation to prevent and counter terrorism, but fulfilling this obligation must not come at the expense of human rights. The 2006 United Nations (UN) Global

1 Often also referred to as countering or preventing violent extremism (CVE or PVE). For an overview of the different terms and notions and how they differ from countering terrorism, see OSCE, *The Role of Civil Society in Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Focus on South-Eastern Europe*, (OSCE: Vienna, 2019), pp. 20-21. On some of the conceptual challenges, see also section 1.1. Understanding VERLT, below.

2 So far, the main publications on VERLT in prisons are directed at prison authorities and frontline officers. See, UNODC *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, (New York: UNODC, October 2016), and Council of Europe, "Council of Europe Handbook for Prison and Probation Services regarding Radicalization and Violent Extremism" (Council of Europe Handbook), European Committee on Crime Problems (CDPC) Council for Penological Co-Operation (PC-CP), Council of Europe, 1 December 2016.

3 It is important to note that violent extremism is a policy term and should not be used to define criminal offences. ODIHR, Penal Reform International (PRI) and other international bodies have consistently raised concerns pertaining to "extremism"/"extremist" as a legal concept and the vagueness of such a term, particularly in the context of criminal legislation. See, e.g., ODIHR, "Note on the Shanghai Convention on Combating Terrorism, Separatism and Extremism", Opinion-Nr.: TERR-BiH/382/2020 [AIC], 21 September 2020, para 54. All legislative reviews of ODIHR on "extremism"-related legislation in different OSCE participating States can be found at legislationline.org. See also section 1.1. *Understanding VERLT*, below.

Counter-Terrorism Strategy and related OSCE commitments have acknowledged that the protection and promotion of human rights are critical to effectively preventing and countering terrorism.⁴ A lack of respect for human rights can create conditions conducive to the spread of terrorism or VERLT. Similarly, actions to address VERLT effectively need to be human rights-compliant to ensure that they do not undermine their very purpose, which includes to protect and maintain a democratic society and the rule of law. Thus, ensuring security and respect for human rights are not competing, but complementary and mutually reinforcing goals. When unlawful violent acts are perpetrated, national measures should encompass prosecuting suspected offenders in line with international human rights standards and working towards their reintegration into society.⁵ This echoes the long-standing understanding at the UN, OSCE and Council of Europe that respect for human rights and the rule of law should be at the very core of any effective measures to counter terrorism and VERLT.⁶

The need for a human rights-based approach to preventing and countering radicalization leading to terrorism or violence in prisons has been highlighted, for example, by the UN Secretary General, in his Plan of Action to Prevent Violent Extremism (hereafter “the UN Plan of Action”).⁷ While OSCE participating States have taken note that radicalization to terrorism may take place in prisons,⁸ they have consistently pledged in their commitments to fully respect international law and human rights in preventing and countering terrorism and VERLT.⁹

Purpose of the guide

This guide seeks to provide detention monitors with an enhanced understanding of VERLT and the key human rights issues arising in the context of preventing and countering VERLT in prisons, including the prevention of torture and other ill-treatment, as well as gender considerations. As part of this, this guide explores the vital need to ensure effective steps towards the rehabilitation and reintegration of violent extremist prisoners while in prison to help prepare for their release. It aims to offer practical guidance on how to address the issue of VERLT in prisons when carrying out detention monitoring.

Given other guidance already available, this resource is not a repository of measures to

4 United Nations (UN) General Assembly Resolution 60/288, “The United Nations Global Counter-Terrorism Strategy”, A/RES/60/288, 8 September 2006; OSCE, Ministerial Council Statement 3/07, “Ministerial Statement on Supporting the United Nations Global Counter-Terrorism Strategy”, Madrid, 30 November 2007.

5 Humera Khan, “Why Countering Extremism Fails”, *Foreign Affairs* website, 18 February 2015.

6 See, for instance, UN General Assembly, “The United Nations Global Counter-Terrorism Strategy”, op. cit., note 4; Council of Europe, “Council of Europe Convention on the Prevention of Terrorism”, CETS No. 196, Warsaw, 16 May 2005; Council of Europe, “Guidelines on Human Rights and the Fight against Terrorism”, 11 July 2002; OSCE, Permanent Council Decision No. 1063, “OSCE Consolidated Framework for the Fight against Terrorism”, Vienna, 7 December 2012.

7 UN, “Plan of Action to Prevent Violent Extremism”, Report of the UN Secretary General, A/70/674, 24 December 2015, para. 50(f).

8 OSCE Ministerial Council Declaration 4/15, “Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism”, Belgrade, 4 December 2015.

9 For the list of commitments related to human rights in the fight against terrorism, see OSCE Secretariat Transnational Threats Department, “Overview of OSCE Counter-Terrorism Related Commitments”, July 2020, pp. 7-22.

prevent and counter VERLT in prisons, nor is it a guide on general monitoring methodology. Instead, it examines the human rights risks of VERLT-related measures in prisons and provides guidance to detention monitors with direct relevance to the specific context of terrorism and VERLT. In focusing on terrorism and VERLT, this guide offers a lens through which to analyse and understand particular prison-based security strategies. It will help monitors analyse laws, regulations and practices aimed at preventing and countering terrorism and VERLT, as well as their impact on human rights.

This document is, therefore, primarily intended for independent detention monitors with a mandate to prevent, address or report on human rights violations across the OSCE area, including national preventive mechanisms (NPMs), ombudspersons offices, national human rights institutions (NHRIs), internal inspection mechanisms and civil society organizations (CSOs). It will also be of use to detention monitors operating outside the OSCE region. Given the numerous guidance documents on detention monitoring already available,¹⁰ practical advice in this guide will focus on those aspects of the detention monitoring methodology that are specific to monitoring work on VERLT-related issues.

This guide also seeks to help raise awareness among national authorities and the public on the work carried out by detention monitors, thus contributing to strengthened co-operation with monitoring bodies. Policymakers and prison authorities may also find valuable guidance in this document.

Scope

This guide covers the conditions of detention and treatment of men, women and children held in detention facilities, including pre-trial detainees. It does not address detention in police custody specifically, although the guidance provided could be drawn on for detention monitoring in such facilities as well. The guidance provided focuses on individuals suspected of or convicted for terrorism-related offences, as well as on those suspected of or convicted for other offences who are wrongly or rightly perceived to be affiliated with terrorist or violent extremist groups, or who are considered by prison authorities to be “at risk” of or “vulnerable” to VERLT.

Given the various mandates of detention monitors, this document explores a broad spectrum of human rights, including but not limited to the protection from torture and other ill-treatment. Ombudsperson offices, NHRIs and, to some extent, CSOs may cover a broader range of human rights concerns, including reactive work or the investigation of individual cases. NPMs, established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) have an explicit mandate to prevent torture or other ill-treatment¹¹ and, thus, adopt a preventive forward-looking approach, identifying systemic deficiencies or practices,

10 For a detailed presentation of detention monitoring methodology, see for example: Association for the Prevention of Torture (APT), *Monitoring Places of Detention: A Practical Guide*, (Geneva: APT, 2004); for a list of examples of existing monitoring tools see: ODIHR & Prison Reform International (PRI), *Guidance Document on the Nelson Mandela Rules*, (Warsaw: ODIHR/PRI, 2018), Chapter 7, Box 7.1; regarding the independent monitoring of places of detention during the COVID-19 pandemic, see: ODIHR & APT, *Guidance Monitoring Places of Detention through the COVID-19 Pandemic*, (Warsaw: ODIHR/APT, 2020).

11 UN, “Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (OPCAT), 18 December 2002, Articles 1, 3, 4, and 17-23.

laws and regulations that lead – or might lead in the future – to conditions or treatment amounting to torture or other ill-treatment.

Terminology matters

Individuals targeted or impacted by prison-based measures to prevent or counter VERLT are not a homogenous group. They may include individuals suspected or convicted of terrorism-related offences, as well as those suspected or convicted of other offences who are wrongly or rightly perceived to be affiliated with terrorist or violent groups, and also individuals who are considered by authorities as being “at risk” of or “vulnerable” to being drawn into VERLT. For the purposes of this guide, these individuals will be referred to as “(suspected) violent extremist prisoners.”¹²

Methodology and structure

This guide draws on existing tools on VERLT in prisons and the management of (suspected) violent extremist prisoners and builds on past activities and publications of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Penal Reform International (PRI) on protecting human rights while preventing and countering terrorism and VERLT, on torture prevention and on prison management. Thorough desk research conducted to provide a basis for the content of the guide has been elaborated by a consultative process involving detention monitors and penitentiary representatives, by way of a dedicated expert meeting, interviews, a call for information and peer-review.

The analysis relies on relevant OSCE commitments, international human rights law and standards from the UN – in particular, the Revised UN Standard Minimum Rules for the Treatment of Prisoners (hereafter “the UN Nelson Mandela Rules”)¹³ – from the Council of Europe, the European Union (EU) and the Inter-American system, including those commitments and standards specific to women, children¹⁴ and foreign nationals. This document also includes references to monitoring reports already published by international and national bodies that address the issue of VERLT in prisons or relevant cross-cutting issues.

12 UNODC refers to “violent extremist prisoners”, the Council of Europe uses the phrase “violent extremist offenders”, and the European Union’s Radicalisation Awareness Network (RAN) uses the term “violent extremist and terrorist offenders”.

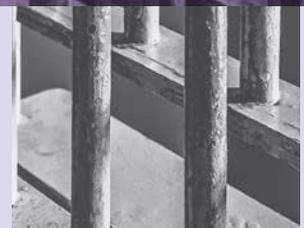
13 UN General Assembly, Resolution 70/175, “United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)”, 17 December 2015.

14 The UN Convention on the Rights of the Child defines a child as “every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier”, “Convention on the Rights of the Child” (CRC), adopted by UN General Assembly Resolution 44/25 of 20 November 1989 and entered into force 2 September 1990, Article 1. Although children are referred to throughout this guide, it is recommended, in line with General Comment 24 from the UN Committee on the Rights of the Child, that the child justice system is applied “to persons aged 18 and older whether as a general rule or by way of exception. This approach is in keeping with the developmental and neuroscience evidence that shows that brain development continues into the early twenties.” UN Committee on the Rights of the Child, “General Comment No. 24 (2019) on Children’s Rights in the Child Justice System”, CRC/C/GC/24, 18 September 2019, para. 32.

The guide highlights the importance of independent monitoring of prison-based measures to address, prevent and counter terrorism and VERLT. It provides detention monitors with background information on terrorism and VERLT in general, and in the prison context in particular (Part 1). It then explores the human rights risk areas that may arise in preventing and countering terrorism and VERLT in prisons and identifies how monitors may address these (Part 2). For each human rights risk area there are suggested questions specifically related to terrorism and VERLT in prisons for detention monitors to look into in the course of their work, as well as sections offering practical advice for detention monitors on how to prepare, undertake and follow up on their monitoring work.

Part 1:

Why are terrorism and violent extremism and radicalization leading to terrorism (VERLT) relevant for detention monitors?



Part 1 addresses the following questions:

- How are terrorism, and violent extremism and radicalization leading to terrorism (VERLT) understood at the international level?
- What are the nature and scale of risks of VERLT in prisons? What are the main drivers behind VERLT in prisons?
- Are there factors of radicalization to terrorism or violence that are specific to certain categories of prisoners?
- What are some of the key challenges that detention monitors may face when working on VERLT-related issues?

Security concerns related to terrorism and VERLT are increasingly cited by authorities as justification for safety and security measures that may lead to limitations of prisoners' rights. With expanding legislation criminalizing a range of conducts associated with terrorism (such as support of terrorism, incitement, recruitment and mobilization for terrorism, and terrorism-related travel or training), detention monitors will encounter a growing number of individuals suspected or convicted of such offences. In an increasing number of OSCE participating States, detention monitors will also visit facilities where individuals convicted for other offences are detained who are involved to varying degrees in violent extremist groups, or who are perceived by prison authorities as "vulnerable" to or "at risk" of VERLT. Therefore, prison-based responses to terrorism and VERLT may affect a broad range of prisoners, with possibly far-reaching consequences for their rights.

As underscored by the UN High Commissioner for Human Rights, any measures and programmes to prevent and counter terrorism and VERLT should be subject to meaningful oversight through independent and effective mechanisms at the national level.¹⁵ Independent human rights monitoring of measures to tackle terrorism and VERLT should similarly apply in prison settings. The Council of Europe "Handbook for Prison and Probation Services regarding Radicalization and Violent Extremism" (hereafter "the Council of Europe Handbook") notes that independent monitoring of prison and appropriate complaint mechanisms "will prevent mismanagement of the services and abuse of rights and freedoms".¹⁶ While acknowledging that safety and security measures in relation to (suspected) violent extremist prisoners may present higher risks of stigmatization, the Handbook further underlines that "organisations monitoring human rights violations will need to be involved".¹⁷

This is where the role of detention monitors, including NPMs and CSOs, is crucial. Detention monitors can ensure that measures to prevent and counter terrorism and VERLT do not violate the rights of people in prison. Detention monitors can also assess often overlooked risk factors faced by specific groups, including women detainees, children

15 At the time, the holder of the mandate of UN High Commissioner for Human Rights was Zeid Ra'ad Al Hussein. UN High Commissioner for Human Rights, "Report on Best Practices and Lessons Learned on How Protecting and Promoting Human Rights Contribute to Preventing and Countering Terrorism", A/HRC/33/29, 21 July 2016, para. 66.

16 Council of Europe, "Council of Europe Handbook", op. cit., note 2, para. 10.

17 Ibid., p. 38.

and foreign nationals who are being held for terrorism-related charges or are considered to be “at risk” or “vulnerable” to VERLT.

Detention monitors are also pivotal to ensuring that the public is aware of prison-based measures to prevent and counter terrorism and VERLT, and of the impact of these measures on human rights. Dialogue between detention monitors and authorities can lead to the design of more human rights-compliant measures, which can both enhance the rights of prisoners and help to address the risk of radicalization to terrorism and recruitment into violent extremist groups in prison more effectively. Indeed, failure to comply with human rights in the overall management of prisons and in efforts to address VERLT may contribute to increased radicalization leading to terrorism or violence.¹⁸ In the words of the former UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter, the “UN Special Rapporteur on Torture”), “torture and ill-treatment only breeds more crime and more terrorism.”¹⁹

Terrorism and VERLT, the dynamics in prisons of potential radicalization leading to terrorism or violence and the responses to counter them, may be new areas for some detention monitors. However, many core components of prison management aimed at containing the spread of violent extremism and radicalization to terrorism will not necessarily represent new areas of work. Detention monitors can rely on their own past work when monitoring security measures. This could include analysis of and recommendations on high-security facilities or heightened security measures. For example, NPMs in the Czech Republic and Switzerland have focused some of their visits and reports on high-security settings and the prevention of torture and other ill-treatment,²⁰ while other NPMs have looked into practices such as body searches, handcuffing, CCTV surveillance and solitary confinement – all of which are relevant to the issues addressed in this guide.²¹

Measures to prevent and counter terrorism and VERLT have a whole myriad of human rights implications. Identifying and assessing these implications should be built into the monitoring protocol of any monitoring body. Monitors can build on the practical experience they have accumulated in monitoring closed institutions and can draw on their existing methodologies and expertise on the protection of human rights in places of detention, including the right to be free from torture or other ill-treatment.

18 Council of Europe, “Guidelines for Prison and Probation Services Regarding Radicalisation and Violent Extremism”, Adopted by the Committee of Ministers on 2 March 2016, Guideline 1.

19 Lauren Frohne, “Torture: It Can Happen Anywhere”, Open Society Foundation Voices, 13 February 2013.

20 Public Defender of Rights-Ombudsman of the Czech Republic, “Report on Systematic Visits Carried Out by the Public Defender of Rights”, 2016; “Rapport d’activité 2013 de la Commission nationale de la prévention de la torture (CNPT)”, Chapter 3.

21 See, for example: “2016 Annual Report of the Office of the Ombudsman as National Preventive Mechanism”, Bulgaria, 2016; “Report on the Performance of Activities of the National Preventive Mechanism for 2016”, Republic of Croatia Ombudsman, November 2017; “Länderkommission Besuchsbericht – Justizvollzugsanstalt Butzow – Frauenabteilung” (in German only), Nationale Stelle zur Verhütung von Folter, 4 May 2017; “Report of the Polish Commissioner for Human Rights on the Activities of the National Mechanism for the Prevention of Torture in 2016”, Warsaw 2017.

1.1 Understanding VERLT

Conceptual challenges

The first challenge to understanding VERLT is the lack of comprehensive and internationally agreed definitions of violent extremism, of what constitutes radicalization leading to terrorism or, indeed, of terrorism.²² The problems connected to the lack of a universally recognized definition of terrorism are well known, and they are further compounded by the proliferation of even broader notions of “violent extremism” and “radicalization to terrorism”. A number of UN resolutions call on UN Member States to take actions to tackle these phenomena, without providing a definition of these terms. Some observers have warned against the definitional lack of clarity of binding UN Security Council resolutions referring to violent extremism and the ample latitude this gives to states, which may result in disproportionate, discriminatory and highly intrusive measures.²³

The conceptual debate about the nature of VERLT and how to differentiate between violent extremism and terrorism remains largely unresolved, and both terms are often used interchangeably without clear boundaries between them.²⁴ The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (hereafter, the “UN Special Rapporteur on Counter-Terrorism”) highlighted that the term “preventing and countering violent extremism” is particularly problematic, as it can encompass a broader array of people than “counter-terrorism” but, at the same time, is not clearly defined. Measures to counter violent extremism should, therefore, be even more carefully scrutinized from a human rights perspective.²⁵

While the issue of defining relevant terms and concepts remains problematic, a growing body of research has focused on the process of VERLT. One useful description to understand the process of radicalization that leads to terrorism is its characterization as “a

22 OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach*, (Vienna: OSCE, February 2014), joint publication by the OSCE Secretariat and ODIHR, p. 35.

23 This concern has been expressed, in particular, about UN Security Council Resolution 2178 (2014), focused on addressing the threat posed by foreign terrorist fighters. The resolution contains a section on countering violent extremism, “which can be conducive to terrorism, including preventing radicalization” as an essential element to tackle such threat. UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (hereafter, UN Special Rapporteur on Counter-Terrorism), “*Preventing and Countering Violent Extremism: A Human Rights Assessment*”, A/HRC/31/65, p. 29 April 2016, para. 20. For concerns regarding the lack of clarity about definitions arising from UN Security Council Resolution 2178, see ODIHR, *Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework*, (Warsaw: ODIHR, 2018), pp. 17 and 22-24.

24 UN Special Rapporteur on Counter-Terrorism, “*Preventing and Countering Violent Extremism*”, *ibid.*, para. 13.

25 “The Special Rapporteur underscores that the lack of semantic and conceptual clarity surrounding violent extremism is an obstacle to any in-depth examination of the impact on human rights of strategies and policies to counter violent extremism, as well as of their effectiveness in reducing the threat of terrorism”, Report of the UN Special Rapporteur on Counter-Terrorism, “*Human Rights Impact of Policies and Practices Aimed at Preventing and Countering Violent Extremism*”, A/HRC/43/46, 21 February 2020, para. 12.

dynamic process whereby an individual comes to accept terrorist violence as a possible, perhaps even legitimate, course of action. This may eventually, but not necessarily, lead this person to advocate, act in support of, or to engage in terrorism”.²⁶ Violent extremism leads “someone [to] promote, support, facilitate or commit acts of violence to achieve ideological, religious, political goals or social change”.²⁷

Experience shows that there is no linear path towards terrorism. VERLT is a dynamic, gradual and phased process that may be accelerated, slowed down or, in some cases, reversed.²⁸ Some individuals may engage on the path of VERLT without attaining its last stage of resorting to terrorist crimes or violence. Even if radicalized, only a small number of individuals actually turn to violence to express their radical views. Holding views or beliefs – even if considered radical or extreme – as well as their peaceful expression are not crimes.²⁹ “Radicalization” and “extremism” in themselves should not, therefore, be objects for law enforcement counter-terrorism measures unless they are directly linked with violence or to another unlawful act (e.g., incitement to hatred). These acts need to be precisely defined in domestic law, in compliance with international human rights law.³⁰

In practice, legislation and related policies to counter so-called “extremism” have been arbitrarily (mis)used, including in the OSCE region, to clamp down on dissenting voices, such as political opponents, human rights defenders, journalists, members of religious minorities and of civil society.³¹ Their implementation has also led to discrimination against particular groups based on their gender, belief, religion or origin.³²

Drivers of VERLT

There is no single profile of a terrorist or violent extremist – the range of people becoming involved in VERLT is broad and heterogeneous. It is furthermore important to note that acts motivated by one specific violent extremist ideology are not increasing in any uniform

26 OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism*, *op. cit.*, note 22, p. 15.

27 UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, *op. cit.*, note 2, p. 143.

28 OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism*, *op. cit.*, note 22, p. 36.

29 Freedom of expression does not only protect the expression of views that are favorably received or regarded as inoffensive or as a matter of indifference, but also those that “offend, shock or disturb” the state or any part of the population (*Handyside v. United Kingdom*, para. 49), i.e., it also protects expression that some may consider radical or extreme. For a discussion on the necessity of intent to commit an act of terrorism and how regulations instead often target legitimate exercise of freedom of expression and freedom of religion, see: UN Special Rapporteur on Counter-Terrorism, “Human Rights Impact of Policies and Practices Aimed at Preventing and Countering Violent Extremism”, *op. cit.*, note 25, para. 26. See also: ODIHR, *Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework*, *op. cit.*, note 23, p. 55-57.

30 See for example, OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism*, *op. cit.*, note 22, pp. 42-43.

31 ODIHR, *Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework*, *op. cit.*, note 23, p. 54.

32 UN Special Rapporteur on Counter-Terrorism, “Human Rights Impact of Policies and Practices Aimed at Preventing and Countering Violent Extremism”, *op. cit.*, note 25, para. 15, para. 24, para. 28. On this issue, see also: ODIHR, *Freedom of Religion or Belief and Security: Policy Guidance*, (Warsaw: ODIHR, 2019).

manner.³³ The reasons why and the way individuals radicalize towards terrorism vary greatly. While some factors may have a pivotal role in a decision to engage in violent extremism and terrorist violence, they may have only a peripheral role (or may play no part at all) in other instances.³⁴ Possible drivers of radicalization leading to terrorism or violence are, therefore various and complex, combining differently in each individual case.³⁵ There is no one factor that would be necessary and sufficient to explain an individual's radicalization to terrorism or violence.

While there is no single determining feature, it is also acknowledged that radicalization to violence or terrorism does not happen in a vacuum.³⁶ Two main sets of factors have been identified, often referred to as “push factors”, making individuals more susceptible to VERLT, and “pull factors”, drawing them into a process of radicalization to terrorism or violence. The manner in which push and pull factors will come into play will vary in each case, as they are linked, for instance, to a person's experience, psychological and cognitive factors, and to real or perceived feelings of exclusion, deprivation, humiliation, injustice, frustration, revolt or superiority.³⁷

- The “**push factors**” stem from conditions conducive to VERLT, including those such as structural, political and socio-economic instability from which VERLT emerges.³⁸ Some of the conditions that make individuals more vulnerable to recruitment and participation in terrorism recognized at the UN and OSCE include, but are not limited to “prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of rule of law, violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance”.³⁹ While these conditions were initially identified as relevant factors in relation to terrorism, they have also been applied to VERLT in policy debate.⁴⁰
- The “**pull factors**” refer to interpersonal and social dynamics, including recruitment dynamics and influences that actively draw an individual to engage in a process of radicalization to terrorism or violence. The group dynamics, both offline and online, and the conviction of radicalizers/groomers and of narratives legitimizing terrorism

33 EUROPOL, “European Union Terrorism Situation and Trend Report”, 23 June 2020, p. 11.

34 Andrew Silke, “Becoming a Terrorist”, in Andrew Silke (ed.), *Terrorists, Victims and Society: Psychological Perspectives on Terrorism and its Consequences* (Hoboken, NJ: Wiley, 2003), p. 34.

35 OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism*, *op. cit.*, note 22, p. 35.

36 UN, “Plan of Action to Prevent Violent Extremism”, *op. cit.*, note 7, para. 3.

37 RAN, “The Root Causes of Violent Extremism”, Issue Paper, 4 January 2016, p. 3; OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism*, *op. cit.*, note 22, pp. 37-38.

38 For a discussion on how the experience or perception of abuse and violations by government authorities are determining factors that contribute to the level of vulnerability to violent extremism, or resilience thereto, see: UN Special Rapporteur on Counter-Terrorism, “Human Rights Impact of Policies and Practices Aimed at Preventing and Countering Violent Extremism”, *op. cit.*, note 25, para. 19-20.

39 “UN Global Counter-Terrorism Strategy”, *op. cit.*, note 4, Pillar I; OSCE, “Ministerial Statement on Supporting the United Nations Global Counter-Terrorism Strategy”, *op. cit.*, note 4, para.4.

40 UN, “Plan of Action to Prevent Violent Extremism”, *op. cit.*, note 7, para. 24-31. These include the following: lack of socio-economic opportunities; marginalization and discrimination; poor governance, violations of human rights and the rule of law; prolonged and unresolved conflicts; and radicalization in prisons.

play a key role in turning thoughts and grievances into violence and directing individuals into VERLT.⁴¹

Men may constitute the majority of perpetrators of violent extremism, but women are also involved in violent extremist groups in various capacities, ranging from support functions to active participation in the planning, preparation and perpetration of terrorist attacks.⁴² They are also mobilizers, recruiting other women and girls, as well as men and boys. Some of the drivers of VERLT may be identical for men and women, but they may be experienced differently along gender lines. Specific factors of women's radicalization to terrorism or violence may include "gender-based inequality and discrimination, violence against women, lack of educational and economic opportunities and lack of opportunities for women to exercise their civil and political rights and engage in the political process with lawful and non-violent means".⁴³

The OSCE participating States have expressed particular concern about the radicalization to terrorism or violence of "youth, including children"⁴⁴ evidenced, for example, by the high number of boys and girls who have left their country as so-called "foreign terrorist fighters".⁴⁵ The motives that drive children towards radicalization to terrorism or violence seem to be as diverse as those for adults.⁴⁶ Children may, however, be more vulnerable to VERLT, owing to their lesser relative level of maturity and the search for identity and purpose.⁴⁷ Violent extremist groups are exploiting real or perceived grievances and resentment to offer the sense of recognition, identity and belonging children are often looking for. Any discourse using the antipodes of "us" versus "the others" resonates particularly well among children. Some may join violent extremist groups, as they offer the material and socio-psychological support they need. The Internet also plays an important

41 OSCE, Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism, *op. cit.*, note 22, p. 35-38; UN, "Plan of Action to Prevent Violent Extremism", *ibid.*, para. 32; OSCE, Understanding the Role of Gender in Preventing and Countering Violent Extremism and Radicalization That Lead to Terrorism Good Practices for Law Enforcement, (Vienna: OSCE, 2020), p. 30.

42 Understanding the Role of Gender in Preventing and Countering Violent Extremism and Radicalization That Lead to Terrorism Good Practices for Law Enforcement, *op. cit.*, note 41, p. 44; Global Counterterrorism Forum (GCTF), Good Practices on Women and Countering Violent Extremism, good practice no. 2, p. 3.

43 ODIHR, "Women and Radicalization leading to terrorism or violence: Final Report", Feb. 2013, para. 5.

44 OSCE Ministerial Council Declaration, "Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism", *op. cit.*, note 8. Reference will be made only to children throughout this document as this is the term used in international law although there are specific vulnerabilities and a need for protection of young adults, in their early twenties for example. There is no clear definition of young adults but, in line with General Comment 24 by the Committee on the Rights of the Child, states should follow good practice in setting a high minimum age of criminal responsibility and in applying juvenile justice rules and regulations to young adults beyond the age of 18 years, UN Committee on the Rights of the Child, "General Comment No. 24 (2019) on Children's Rights in the Child Justice System", *op. cit.*, note 14.

45 For a discussion on the controversies around the term "foreign terrorist fighter" see: ODIHR, Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework, *op. cit.*, note 23, p. 22. Since the term is problematic for its breadth and vagueness and the ensuing rights implications, some research on the topic refers to "foreign fighters" instead. However, the term "foreign terrorist fighters" is most commonly used in international discussions about the phenomenon and, therefore, is also used in this document.

46 UNDP, *Journey to Extremism in Africa*, (New York: UNDP, 2017) pp. 4-6.

47 Global Center on Cooperative Security & International Centre for Counter-Terrorism (ICCT), "Rehabilitating Juvenile Violent Extremist Offenders in Detention: Advancing a Juvenile Justice Approach", December 2016, p. 2.

role in children’s radicalization to terrorism or violence, providing a networking platform that can aid the recruitment process.⁴⁸

At the UN and OSCE level, states have underscored the need to promote human rights and the rule of law in all counter-terrorism measures while, at the same time, addressing the conditions conducive to terrorism and VERLT, with the aim of prevention.⁴⁹ Efforts have, however, long focused largely on law enforcement measures to tackle terrorism and VERLT, without addressing their drivers. The international community is increasingly stressing the necessity to adopt a more comprehensive approach towards “preventing” violent extremism.⁵⁰ This should include preventing any period spent in prison from being conducive to VERLT.

1.2 Understanding VERLT inside prisons

Prisons are often considered as incubators of VERLT; there have been highly publicized cases of individuals being involved in terrorist acts after having spent time in prison. Prisons are often portrayed as “safe havens” in which terrorist groups can network, recruit new followers, exchange tactics or even plot deadly attacks outside prisons.⁵¹ In fact, the likelihood of VERLT originating or developing in prisons remains difficult to assess and should not be overstated. Concerns about the perceived *potential* for radicalization to terrorism in certain settings like prisons seems to guide public debate on this topic more than *actual* radicalization to terrorism.⁵²

There is a distinct lack of empirical and qualitative data to help thoroughly understand whether an individual’s radicalization started, was accelerated or otherwise reinforced in prisons. Recent research in the European context suggests that (suspected) violent extremist prisoners in most cases only make up a very small percentage of the general

48 ODIHR, “Youth Engagement to Counter Violent Extremism and Radicalization that Lead to Terrorism: Report on Findings and Recommendations”, July 2013, p. 4. See also: OSCE, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism*, *op. cit.*, note 22, p. 37.

49 “UN Global Counter-Terrorism Strategy”, *op. cit.*, note 4, Pillars I and IV; OSCE, “Ministerial Statement on Supporting the United Nations Global Counter-Terrorism Strategy”, *op. cit.*, note 4.

50 “Addressing “pull factors” has broadly fallen into the domain of countering violent extremism. Interventions relevant to preventing violent extremism are most usefully defined as those that seek to address the structural drivers of violent extremism, or “push factors”. Where preventing and countering violent extremism includes both security and development, there is a need to ensure a balanced approach that does not privilege the former over the latter”, UN Special Rapporteur on Counter-Terrorism, “Human Rights Impact of Policies and Practices Aimed at Preventing and Countering Violent Extremism”, *op. cit.*, note 25, para. 10.

51 EUROPOL, “European Union Terrorism Situation and Trend Report,” *op. cit.*, note 33, p. 13; Rajan Basra and Peter Neumann, *Prisons and Terrorism: Extremist Offender Management in 10 European Countries*, (London: International Centre for the Study of Radicalisation [ICSR], 2020), p. 15; ICCT, “Roundtable Expert Meeting and Conference on Rehabilitation and Reintegration of Violent Extremist Offenders: Core Principles and Good Practices (background paper)”, February 2012, p. 1.

52 For further reading to do with (unfounded) fears about the extent of violent radicalization in prisons and recidivism, see: Andrew Silke, “Physical Facilitating Environments – Prisons and Madrassas: Mechanisms and Vehicles of Violent Radicalization,” in Anthony Richards et al. eds., *Jihadist Terror: New Threats, New Responses* (London: IB Tauris, 2019); Thomas Renard, “Overblown: Exploring the Gap Between the Fear of Terrorist Recidivism and the Evidence”, in CTC Sentinel, April 2020, Vol. 13, Issue 4.

prison population.⁵³ Some prison authorities have questioned claims that prisons are “incubators” of VERLT, stressing that the roots of any prisoner’s radicalization leading to terrorism or violence may also be found in their background and experiences before entering the prison setting.⁵⁴

Also, the importance of preventing and countering terrorist radicalization in prisons is often emphasised in connection with “foreign terrorist fighters” and their potential to radicalize other prisoners.⁵⁵ Policy debate, therefore, often focuses too heavily on religiously motivated violent extremism, as opposed to the many other ideologically motivated forms, and this can have a discriminatory effect on the treatment of individuals from certain religious groups. Equally, it is important to remember that, due to a prisoner’s behaviour, they could be perceived as on a path to VERLT when, in fact, they are acting in a certain way as a result of other grievances – or human rights abuses – experienced in prison that have no connection to any ideology.

While it is crucial to better grasp how VERLT may occur in prisons, the potential consequences of and threats to security posed by radicalization to violence or terrorism in prison legitimately call for tailored and proportionate preventive measures.⁵⁶ VERLT in prisons may take various forms and have multiple consequences, including producing and disseminating propaganda and violent extremist literature, channelling to and receiving such information from the outside world, disruptive activities and active resistance, intimidating prison staff and authorities and instigating violent clashes with staff (and other groups of prisoners).⁵⁷ Alternately, some prisoners who are radicalized to terrorism may be particularly compliant with prison rules and regimes, thus keeping a low profile.⁵⁸

Factors conducive to VERLT in prisons

As with VERLT in general, there is no direct pathway to VERLT in prisons; it is a non-linear process that may develop over a short period or an extended timeline. Likewise, there is also no single profile or determining feature of prisoners who may be “vulnerable” to violent extremism and may become radicalized towards terrorism. The factors described below can make an individual more vulnerable to VERLT, but this does not mean to imply that any of these will always or inevitably lead someone to engage in a process of radicalization to violence or terrorism.

53 “It is 0.4 per cent in Spain, 0.8 per cent in the United Kingdom and Italy, 1.3 per cent in Denmark and Sweden, and 2.3 per cent in Belgium and France. In short, radicalization is a marginal phenomenon, in prison just like in our societies”, *Speech by Thomas Renard*, Senior Research Fellow at the Egmont Institute Arria meeting of the United Nations Security Council Challenges of Radicalization in Prison United Nations, New York, 12 November 2019.

54 See for example, in France, “La prise en charge de la radicalization islamiste en milieu carcéral” (*in French only*), *Contrôleur général des Lieux de Privation de Liberté (CGLPL)*, 11 June 2015, p. 9.

55 United Nations Security Council, *Resolution 2396 (2017)*, S/RES/2396 (2017), preamble and paras. 40, 41.

56 Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, 2 March 2016, II. Scope.

57 UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, *op. cit.*, note 2, p. 107.

58 This has been observed, for example, in French prisons, see “La prise en charge de la radicalization islamiste en milieu carcéral” *CGLPL*, *op. cit.*, note 54, pp. 7-8.

Corruption erodes the security and safety of facilities, prisoners and staff, and may result in the denial of basic needs, such as hygiene items, food, water, medical care and access to visits from legal representation or relatives. Corruption in places of detention may not only create conditions conducive to VERLT but may also lead to a higher risk of torture or other ill-treatment.⁵⁹ Moreover, corruption may allow for VERLT to spread, as it may give recruiters or leaders the opportunity to spread their message and recruit followers, while corrupt staff “turn a blind eye” to the situation. In some cases, prison staff may even be complicit in targeting specific prisoners for recruitment.⁶⁰

Lack of safety and security in prisons: Unsafe and insecure prison environments constitute fertile grounds for VERLT to spread. They provide more time, space and opportunities for (suspected) violent extremist prisoners to operate freely and/or undetected, for leaders to share their message and for recruiters to target potential new members.⁶¹ Some prisoners may seek the protection of (suspected) violent extremist prisoners to ensure their security and satisfy basic needs that the correctional facility fails to provide. Radicalization to terrorism or violence in such cases “may reflect an underlying struggle to survive in prison rather than sincere ideological commitment”.⁶²

Cruel, inhuman or degrading treatment and poor conditions of detention: General living conditions that all prisoners are entitled to equally apply to (suspected) violent extremist prisoners.⁶³ It is widely recognized that torture or other ill-treatment, including prolonged solitary confinement, poor conditions of detention, overcrowding, lack of fulfilment of basic needs, lack of access to healthcare, heightened security measures or discriminatory practices are all factors, among others, that may contribute to VERLT.⁶⁴ Such treatment and conditions are likely to cause grievances, frustration, anger and resentment among prisoners that violent extremist narratives can strategically exploit and may make some more vulnerable to recruitment for VERLT.⁶⁵ In the absence of effective complaint mechanisms or access to detention monitors, grievances about punitive approaches or poor conditions of detention that are perceived as unfair or discriminatory may remain unresolved, and perpetrators of torture or other ill-treatment may not be held to account.⁶⁶

59 For a detailed analysis of the interlinkages between torture and other ill-treatment and corruption, see: Report of the Special Rapporteur, Torture and other cruel, inhuman or degrading treatment or Punishment, A/HRC/40/59, 16 January 2019.

60 International Institute for Justice and the Rule of Law (IJJ), “Prison Management Recommendations to Counter and Address Prison Radicalization”, Recommendation 11; ICSR, “Prisons and Terrorism – Radicalization and Deradicalization in 15 Countries”, 2010, p. 30.

61 IJJ, “Prison Management Recommendations to Counter and Address Prison Radicalization”, *ibid.*, Recommendation 2; ICSR, “Prisons and Terrorism – Radicalization and Deradicalization in 15 Countries”, *ibid.* 1, pp. 29-30.

62 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 112.

63 UN Nelson Mandela 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, healthcare and adequate personal space, shall apply to all prisoners without exception”, UN Nelson Mandela Rules, *op. cit.*, note 13.

64 Penal Reform International (PRI), “Preventing Radicalization in Prisons: Developing a Coordinated and Effective Approach”, 2016, p. 3.

65 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, para. 19.

66 See section 2.2 on request and complaint mechanisms: 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. See ODIHR & PRI, Guidance Document on the Nelson Mandela Rules, *op. cit.*, note 10, Chapter 1, para 135.

Overcrowding, for instance, is likely to cause frustration and anger among prisoners whose access to basic necessities and/or to work, vocational, educational activities or rehabilitation programmes becomes limited. At the same time, overcrowding hampers supervision by prison staff, due to an insufficient staff-to-prisoner ratio and, as a result, can negatively affect the safety of prisoners. A lack of safety and security, combined with inadequate supervision, makes for a dangerous combination that may affect an individual's decision to join violent extremist groups.⁶⁷ Alternatives to imprisonment⁶⁸ are key to both addressing overcrowding and reducing opportunities for recruitment, as fewer individuals would be in contact with violent extremist prisoners. In such cases, more prison resources can also be devoted to the management of prisoners classified as high-risk.⁶⁹

Similarly, the disproportionate, discriminatory or arbitrary use of restrictions, disciplinary measures and sanctions, force, instruments of restraint or searches of prisoners (that can amount to torture or other ill-treatment),⁷⁰ may contribute or reinforce processes of violent radicalization.⁷¹ The unfair or unjust treatment – actual or perceived – of prisoners may provide for violent extremist narratives to take roots, as this reinforces “us” versus “them” thinking or victimization discourse. Such treatment may echo the frustrations and discrimination prisoners experienced outside prisons and may be understood as another manifestation of humiliation of their group, based on ethnic and religious,⁷² political or other grounds. It can also be used by violent extremist groups outside of prisons for propaganda and recruitment purposes.⁷³

Outside of prison, many factors can be conducive to (or even drivers of) VERLT, including ideologies or narratives that sanction the use of violence, as well as the attraction manifested by certain charismatic leaders.⁷⁴ These factors can be all the more appealing to those already dealing with the hardships and burden of prison life. Once again, however, it is crucial that an individual's perceived connection to a specific ideology, political view, religion or belief is not, in itself, misunderstood as an inherent sign of radicalization to terrorism or violence that justifies restrictions of prisoner's rights. Disproportionate measures, such as undue restrictions on access to or possession of literature and information materials of a political nature, or the removal of religious items and the denial of prisoners' rights to observe their religion, likely stigmatize and alienate individuals, and may even fuel VERLT rather than prevent it.

67 IIJ, “Prison Management Recommendations to Counter and Address Prison Radicalization”, *op. cit.*, note 60, Recommendation 2.

68 OSCE participating States have committed themselves “to pay particular attention to the question of alternatives to imprisonment”, OSCE Conference on the Human Dimension of the CSCE, *Moscow Document*, Moscow, 3 October 1991, para. 23.2.ii.

69 IIJ, “Prison Management Recommendations to Counter and Address Prison Radicalization”, *op. cit.*, note 60, Recommendation 2.

70 UN Nelson Mandela Rules, *op. cit.*, note 14, Rules 36-46, 47-49 and 50-53.

71 Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, *op. cit.*, note 56, Guideline 9.

72 *Ibid.*

73 ICSR, “Prisons and Terrorism – Radicalization and Deradicalization in 15 Countries”, *op. cit.*, note 6, p. 22.

74 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 110-113.

By contrast, good prison management helps to avoid situations conducive to VERLT⁷⁵ and facilitates the building of trust and respect between those in detention and prison staff.⁷⁶ This, in turn, is likely to contribute to the diversion of an individual from the path of VERLT, should appropriate and quality rehabilitation and reintegration programmes be in place.⁷⁷

Specific categories of detainees

Some categories of detainees face specific difficulties in prisons that may contribute to an increased likelihood of engagement in a process of radicalization to violence or terrorism.

Women: The general drivers mentioned above may interplay differently in the absence of gender-sensitive conditions of detention. In some jurisdictions, women continue to be detained in a system designed for men, and thus not meeting their specific and unique needs. Women in prison are frequently exposed to gender-based violence, which may amount to torture and other ill-treatment.⁷⁸ As prison health services are usually tailored to male prisoners and merely replicated across prison systems, female detainees tend to lack access to healthcare that takes into account women-specific healthcare needs. Lack of access to hygiene products and exposure to intimate body searches often further compromises the dignity of female prisoners, as do medical examinations conducted or supervised by male staff, in violation of the UN Bangkok Rules.⁷⁹ Such treatment can prompt frustration or anger, producing factors conducive to radicalization to terrorism or violence.

For women who are suspected or convicted of terrorism-related offences, the likelihood that they experienced gender-based violence prior to detention should be recognized, as should the way in which this may "... contribute to drug or alcohol abuse, depression, post-traumatic stress disorder and criminal activity."⁸⁰ A high proportion of women who have been convicted of crimes are victims of prior abuse. They may have been compelled into criminal activity; indeed, the participation of many women and girls in violent extremism, as that of men and boys, is forced or manipulated.⁸¹ Irrespective of the offence suspected or committed, all women and girls in detention who have been victims of sexual and/or gender-based violence should receive support, including psychological assistance. Any

75 "Report to the Government of the Netherlands on the Visit to the Netherlands Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 May 2016", CPT/Inf (2017) 1, para. 50.

76 IJ, "Prison Management Recommendations to Counter and Address Prison Radicalization", *op. cit.*, note 60, Recommendation 10.

77 See section 2.3.

78 For an insight into how women experience SGBV before, during and after being deprived of liberty, see: ODIHR, *Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty*, (Warsaw: ODIHR, 2020), pp. 43-47.

79 Regarding intrusive, including strip and cavity searches, see also: UN Nelson Mandela Rules, *op. cit.*, note 14, Rule 52; UN General Assembly Resolution 65/229, "United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)", adopted on 21 December 2010, regarding searches, see Rules 19-21; personal hygiene, Rule 5 and on healthcare aspects, Rules 6-18.

80 EU RAN, "Approaches to Countering Radicalization and Dealing with Violent Extremist and Terrorist Offenders in Prisons and Probation", 2019, p. 5.

81 OSCE, *Understanding the Role of Gender in Preventing and Countering Violent Extremism and Radicalization That Lead to Terrorism Good Practices for Law Enforcement*, *op. cit.*, note 41, p. 43-44.

failure to support them may reinforce the trauma they have suffered and be a contributing factor to VERLT or, at a minimum, hinder rehabilitation efforts.⁸²

Children may be particularly vulnerable to VERLT in prisons. The radicalization of children in prisons leading to terrorism or violence is a matter of ongoing discussion and requires more research. The fear associated with the arrival in prison and uncertainty related to the experience of detention, together with the separation from their family and social environment, can lead children to join groups or follow strong individuals as an attempt to find security and safety.⁸³ Such relationships are, therefore, “indicative of a need for security and protection, rather than an indicator of risk of radicalization”.⁸⁴ Furthermore, the failure to separate children from adults can increase the risk of violence and abuse, as well as of radicalization leading to terrorism or violence. It is a recognized minimum standard that every child deprived of liberty must be separated from adults unless it is considered in the child’s best interest not to do so,⁸⁵ such as those cases where they would be separated from their parents at an early age.⁸⁶ The practice of placing children charged with terrorism in high security divisions with adults is of real concern in this context.⁸⁷

Some children suspected or convicted of violent extremism-related offences may not have been radicalized to violence but, instead, may have been forced to join a violent extremist group under severe duress.⁸⁸ It is difficult to determine whether a child was recruited voluntarily, or even whether a child has the capacity to give informed consent in this context. Children should, therefore, be considered as victims of recruitment and exploitation.⁸⁹ The UN Security Council has clearly stated that “children who have been recruited in violation of applicable international law by armed forces and armed groups and are accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law.”⁹⁰ Where children are involved, more often they provide functional support to terrorist groups (transferring of funds, acting as couriers, etc.) rather than directly taking part in violent acts.⁹¹ They are often “both

82 *Ibid.*, p. 29; PRI “Preventing Radicalization in Prisons”, *op. cit.*, note 64, p. 8.

83 PRI, “Preventing Radicalization in Prisons”, *ibid.*, p. 8.

84 PRI, “Children and Violent Extremism: International Standards and Responses from Criminal Justice Systems”, p. 11.

85 For the principle of separation of children and adults in places of detention, see UN CRC, *op. cit.*, note 14, Article 37c. See also: United Nations, “International Covenant on Civil and Political Rights” (ICCPR), 16 December 1966, Article 10(2)(b).

86 UN General Assembly Resolution 45/113, “United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)”, 14 December 1990, Rule 29.

87 This is, of course, further to the concern that children are subject to criminal law and criminal courts for adults. UN Committee on the Rights of the Child, “Concluding Observations on the Combined Third to Sixth Periodic Reports of Malta”, 31 May 2019, CRC/C/MLT/CO/3-6, para. 44.

88 For a discussion about human rights challenges pertaining to children who have been recruited and used by armed groups as victims of violations of international law, see: ODIHR, *Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework*, *op. cit.*, note 23, pp. 68-72.

89 UNODC, *Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System*, (Vienna: UNODC, 2017), p. 27 and pp. 40-46.

90 UN Committee on the Rights of the Child, “General Comment No. 24”, *op. cit.*, note 14, para. 100; UN Security Council, Resolution 2427 (2018), S/RES/2427 (2018), 9 July 2018, para. 20.

91 Global Center on Cooperative Security & ICCT, “Rehabilitating Juvenile Violent Extremist Offenders in Detention”, *op. cit.*, note 47, p. 2. See also “Children and Violent Extremism”, *op. cit.*, note 84, p. 7.

victimizers and victims”.⁹² The ability of the prison system to support these children and to ensure that they do not face additional victimization on account of the offences they are accused or convicted of is paramount to protecting them from further risks in prisons of radicalization leading to terrorism or violence. Finally, some children may be living in prisons with a parent convicted of terrorism and violent extremism-related offences and may, in turn, be at risk of VERLT.⁹³ In some situations however, separating the child could be considered counter to their best interest, so the placement decision must be carefully considered by relevant authorities, taking into account the safety of the child.⁹⁴

Foreign terrorist fighters: The expansion of legislation to criminalize offences related to so-called “foreign terrorist fighters” can be expected to lead to “an augmented number of violent extremists in prisons”.⁹⁵ However, the extent to which prospective and returning foreign terrorist fighters may represent a factor driving other detainees to VERLT remains unclear, partly because their levels of motivation and threat may vary greatly.⁹⁶ The actual risks they pose should be thoroughly assessed using rigorous and vetted assessment tools administered by trained professionals. Automatically labelling and treating individuals as violent extremist prisoners who pose high threats will likely result in unnecessary and disproportionate restrictions and reinforce their stigmatization. As some foreign terrorist fighters express regret and their willingness to disengage upon their return, proximity with others convicted of offences related to terrorism or violent extremism would also be counterproductive.⁹⁷

Pre-trial detainees are most vulnerable immediately following their arrest, a vulnerability that may be particularly intensified by their experience in pre-trial detention and utilized by recruiters. In some jurisdictions, pre-trial detention lasts several years, even more so as some OSCE participating States have increased the maximum period of pre-trial detention in counter-terrorism cases, including for children.⁹⁸ Pre-trial detention is also often characterized by poor detention conditions, including fewer programmes and activities available compared to those provided in facilities for convicted prisoners. Moreover, there are more restrictions to contact with the outside world. Sometimes, such facilities are operated by prison staff with less training and experience, and who are assigned on a temporary basis.⁹⁹ Pre-trial detainees tend to experience particular stress during ongoing investigations and criminal proceedings, with increased frustration in particular when these are protracted and/or conducted in a way that is perceived to be discriminatory or unfair.

92 *Ibid.*, p. 2.

93 PRI, “Children and Violent Extremism”, *ibid.*, p. 11.

94 UN Office of Counter-terrorism (UNCCT), “Children affected by the Foreign-Fighter Phenomenon: Ensuring a Child Rights-Based Approach”, para. 196, p. 90.

95 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, para. 42-43.

96 For in-depth discussion on the threats and challenges of FTFs see: ODIHR, Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework, *op. cit.*, note 23.

97 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, para. 42.

98 For instance, France has “increase[d] the maximum period of pre-trial detention for children aged 16 and older up to three years, depending on the [terrorism-related] offence”, see Amnesty International, “Dangerously Disproportionate: The Ever-Expanding National Security State in Europe”, 17 January 2017, p. 15.

99 IIJ, “Prison Management Recommendations to Counter and Address Prison Radicalization”, *op. cit.*, note 60, Recommendation 1.

1.3 Practical challenges for detention monitors

Given their highly political and emotional dimensions, terrorism and VERLT are sensitive topics, and that sensitivity and the associated secrecy, coupled with the specificities of prison regimes in the VERLT context, create challenges for detention monitors. Prison officers may not perceive persons deprived of their liberty on terrorism- and violent extremism-related charges and offences as deserving of the protection of their human rights. This context may result in a more difficult – even hostile – environment during a monitoring visit. Moreover, external scrutiny may not be welcome in a field that remains highly sensitive and dominated by security concerns. Given the potential human rights implications of state actions and approaches in this field, the external scrutiny provided by independent monitors is clearly necessary.

Monitoring bodies should dedicate adequate capacity and resources to addressing VERLT-related issues, irrespective of their specific mandate. At the same time, the existing legal framework in any particular situation will invariably have a bearing on the issue of access to detention facilities, detainees and information. While NPMs may draw on their extensive powers as enshrined in the OPCAT, other monitors may face greater challenges. Nonetheless, legal limitations regarding the access for detention monitors to places, people and information can be overcome or, at a minimum, mitigated.

Access to facilities, detainees and documentation

Having only limited access to relevant facilities and detainees – either because this is not included in their mandates or an inability to access accurate information – can be a challenge both for NPMs and civil society monitors when working on VERLT-related issues.¹⁰⁰

Gaining access to places of detention remains problematic in some OSCE participating States,¹⁰¹ and monitors need to be prepared to face opposition in attempts to monitor detention facilities where (suspected) violent extremist prisoners are held. Monitors may require a higher security clearance to access such places, due to the introduction of counter-terrorism measures.¹⁰²

Some NPMs have noted that it is difficult to maintain a comprehensive list of all places of deprivation of liberty, especially in the context of counter-terrorism, as ad hoc detention or holding places are sometimes used.¹⁰³ Nevertheless, a number of detention monitoring

100 See for example: UNODC Regional Office for Central America and the Caribbean in Panama (ROPAN), “Working Paper Series on Prison Reform Working Paper 1: Civil Society and Prisons: The “Invisible Bars” Challenge”, February 2014.

101 The SPT, for instance, decided to suspend its May 2016 visit to Ukraine after being denied access to several facilities under the jurisdiction of the State Security Service of Ukraine.

102 Open Society Justice Initiative & University of Bristol Human Rights Implementation Centre, “The Challenges to the Preventive Monitoring under OPCAT in the Context of Counter-Terrorism and Anti-Radicalization Measures”, p. 4.

103 *Ibid.*, p. 3.

bodies in the OSCE region have secured access to high-security detention facilities where suspected or sentenced violent extremist prisoners are being – or most probably will be – held.¹⁰⁴ Unhindered access to private and fully confidential interviews (without the presence of prison staff or under surveillance of any kind) with all prisoners, regardless of the charges against them, the sentences they are serving or their security status, must be granted to NPMs,¹⁰⁵ as well as to other monitoring bodies. Similarly, NPMs and other detention monitoring bodies should be able to conduct private and fully confidential interviews with prison staff and other relevant people (e.g., healthcare staff or other service providers working in the prison). If access is impeded, NPMs are encouraged to notify the UN Subcommittee for the Prevention of Torture.

CSOs may also produce monitoring reports based on desk research and interviews with former detainees, among others, to compensate for any lack of access to closed institutions or to individual prisoners. Amnesty International and the Open Society Justice Initiative, for example, reported that they have declined meetings requested by prisoners of the Terroristenafdeling (TA), the special high-security detention section in the Netherlands that holds people suspected or convicted of terrorism offences, because of restrictive conditions proposed by the authorities (e.g., the monitoring and recording of their interviews).¹⁰⁶ Nonetheless, the organizations published an analysis based on research and interviews with former detainees, family members of detainees and lawyers, as well as with relevant experts, officials and others.

Detention monitors may also face a lack of co-operation from prisoners or a reluctance on their part to interact with them, sometimes as a sign of defiance. The prisoners might perceive the monitoring body as associated with the authorities or fear that they could face reprisals for speaking to monitors.¹⁰⁷ There are prisoners who are prepared to speak to monitors. In France, for example, the NPM noted prisoners' readiness to meet with them – 61 out of the 64 detainees held in “dedicated units” were willing to be interviewed.¹⁰⁸

In relation to VERLT, some prison management and staff may demonstrate a lower level of co-operation, given the sensitivity of the issue being addressed, while others might perceive co-operation in this area as of the same nature as on any other topic. Based on a 2015 French NPM report, it appears that prison authorities and staff viewed its visits as opportunities to share their viewpoint – sometimes disregarded – to correct some misconceptions about VERLT in prisons and to shed some light on the challenges they face.¹⁰⁹

104 The Kazakh NPM has, for instance, secured its access to the detention facilities under the National Security Committee, where national security detainees (including, most probably, detainees held in relation to terrorism-related charges and offences) are kept. See for instance, the [2016 Annual Report of the Kazakh NPM](#) (in Russian only), Section 3.

105 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 26 June 1987, Articles 4 and 20; SPT, [Guidelines on National Preventive Mechanisms](#), 9 December 2010, CAT/OP/12/5, para. 25.

106 Amnesty International and Open Society Justice Initiative, [“Inhuman and Unnecessary Human Rights Violations in Dutch High-Security Prisons in the Context of Counter Terrorism”](#), October 2017, p. 12.

107 Report of the UN Special Rapporteur on Counter-Terrorism, [Visit to Kazakhstan](#), A/HRC/43/46/Add.1, 22 January 2020, para. 29-31.

108 Contrôleur général des lieux de privation de liberté (CGLPL), [“Radicalization islamiste en milieu carcéral: les unités dédiées ouvertes en 2016”](#), 7 June 2016, p. 4.

109 CGLPL, [“La prise en charge de la radicalization islamiste en milieu carcéral”](#), 2015, *op. cit.*, note 54.

Another potential challenge is limitations on access (or no access at all) to individual prisoner files, based on the argument that they include classified information. In the case of NPMs, however, Article 20 of OPCAT requires full and unimpeded access to all information about the treatment of prisoners and the conditions of detention, regardless of security classification. In the case of NHRIs, the denial of such access runs contrary to the international principles on detention monitoring work, namely the Paris Principles.¹¹⁰ Thorough preparation prior to a visit, including communication of the monitors' mandate and methodology and of the purpose of the visit, can help monitors address any refusal by the detaining authorities to provide information, whether on grounds of national security or otherwise.¹¹¹

Drafting reports and recommendations

Detention monitors need to consider carefully how information is presented and how recommendations are formulated, in light of the politically sensitive context of terrorism and VERLT.¹¹² The storage and sharing of data on interviewees has to ensure security and privacy. Monitoring bodies should be prepared for particular scrutiny of their reports and statements by the general public, media and state authorities, which may include attempts to undermine their credibility, accusations that they unjustifiably understate the threat of VERLT in prisons, or even accusations of sympathy with terrorist and violent extremist groups. Criticism and scrutiny of detention conditions and the treatment of prisoners are more likely to be disregarded in a general climate where the threat of terrorist and violent extremist acts is high or is perceived to be so.

As always, monitoring reports should be grounded on solid objective facts, gathered from multiple sources of information and interviews, and be validated and thoroughly formulated. It is critical that detention monitors acknowledge, to the proper extent, the threat that VERLT may pose inside prisons, based not just on existing data but also considering new factors, such as the increasing return of "foreign terrorist fighters". They may want to frame their views and recommendations in a way that stresses the link between human rights violations and the increased risk of VERLT in prisons. This can be done by demonstrating that measures that do not meet human rights standards are counterproductive to effectively preventing and countering VERLT in prisons, as set out in this guide.

110 According to the Paris Principles, national institutions shall within the framework of its operation, the national institution shall: "(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence". Regarding access to information more generally, which will be relevant for all monitors (NPMs, NHRIs and civil society), see also, for example, *The Global Principles on National Security and the Right to Information (Tshwane Principles)*.

111 See also *Tips for monitors 1: planning and preparing visits*.

112 Specific guidance on how to make effective recommendations is already available to monitors and will not be repeated for the purpose of this document. See for example, APT, "Detention Monitoring Briefing No. 1: Making Effective Recommendations", November 2008.

Summary of Part 1

- Violent extremism and radicalization that lead to terrorism have to be distinguished from extremism and radicalization alone. The expression of radical and extreme views, no matter how radical they may be, should not in itself be considered a crime.
- Radicalization is no threat to society unless it is connected to violence or other unlawful acts, such as incitement to hatred, as defined in compliance with international human rights law. All legislation and policies to counter terrorism and to prevent VERLT must be firmly grounded in the respect for human rights and the rule of law.
- Both outside and inside prisons, there is no direct pathway to terrorism, and no single profile of a terrorist or violent extremist. VERLT is driven by push and pull factors that combine differently in each individual case. These factors may also differ in the cases of men and women, and boys and girls.
- Human rights violations are widely recognized as conditions that may contribute to VERLT. In prisons, contributing factors may include torture and other ill-treatment, poor conditions of detention, overcrowding, lack of safety and security, discrimination, lack of effective complaint mechanisms, poor prison management and corruption.
- The risk of radicalization to terrorism or violence in detention should be recognized, but not overstated.
- Detention monitors may face particular challenges when addressing the topic of VERLT in their work, in terms of access to facilities, detainees and information, and may come in for close scrutiny and/or criticism when making recommendations to state authorities.

Part 2:

What are the main human rights issues related to VERLT in prisons?



Part 2 addresses the following questions:

- How are risks of VERLT detected and assessed in prisons? What are the main human rights concerns that may arise in this regard?
- What are the different placement policies and security regimes adopted by states in the context of VERLT? How do they impact the rights of those detained?
- What programmes are available to support those convicted of terrorism- and violent extremism-related offences to disengage from VERLT and reintegrate into society? What human rights implications arise?
- What are the specific challenges for prison staff in working with (suspected) violent extremist prisoners? How can these be addressed by prison administrations?
- How do prison-based measures in the area of VERLT impact the following rights:
 - the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;¹¹³
 - the right to humane treatment of persons deprived of their liberty?¹¹⁴
 - the right to a fair trial; presumption of innocence;¹¹⁵
 - the respect for private and family life, privacy and data protection;¹¹⁶

113 OSCE participating States agreed to uphold the absolute prohibition on torture in the Vienna, Copenhagen and Moscow Documents, see OSCE, “Vienna Document 2011, on Confidence- and Security-Building Measures” (Vienna Document), Vienna, 30 November 2011; OSCE, “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE” (Copenhagen Document), Copenhagen, 29 June 1990; OSCE, “Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE” (Moscow Document), 3 October 1991; as well as in the “Charter for European Security: III. Our Response”, Istanbul, 19 November 1999; in OSCE Ministerial Council Decision No. 12/05, “Upholding Human Rights and the Rule of Law in Criminal Justice Systems”, Ljubljana, 6 December 2005; in the “CSCE Helsinki Document 1992 – The Challenges of Change” (Helsinki Document), 10 July 1992; OSCE Ministerial Council “Ministerial Declaration on the Occasion of the 25th Anniversary of the Adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, Athens, 2 December 2009; ICCPR, *op. cit.*, note 85, Article 7; Council of Europe, “Convention for the Protection of Human Rights and Fundamental Freedoms” (hereafter European Convention on Human Rights, ECHR), 4 November 1950, Article 3; EU, “Charter of Fundamental Rights of the European Union” (CFREU), 2 October 2000, Article 4; and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *op. cit.*, note 105.

114 ICCPR, *op. cit.*, note 85, Article 10, including the right of prisoners to treatment “the essential aim of which should be their reformation and social rehabilitation” (Article 10.3).

115 OSCE, Copenhagen Document, *op. cit.*, note 113 para. (5.19); ICCPR, *ibid.*, Article 14(2); ECHR, *op. cit.*, note 113, Article 6(2); CFREU, *op. cit.*, note 113, Article 48; the American Declaration of the Rights and Duties of Man (ADRDM), 1948, Article, 26; UN General Assembly, Resolution 43/173, “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment”, Principle 36(1). See also, UN Human Rights Committee (hereafter referred to as UN CCPR), “General Comment No. 32 – Article 14: Right to Equality before Courts and Tribunals and to Fair Trial”, CCPR/C/GC/32, 23 August 2007.

116 OSCE, Moscow Document, *op. cit.*, note 113; ICCPR, *op. cit.*, note 85, Article 17; ECHR, *op. cit.*, note 113, Article 8; CFREU, *op. cit.*, note 113, Article 7; and ADRDM, *ibid.*, Articles 5, 9 and 10.

- freedom of thought, conscience, religion or belief;¹¹⁷
- freedom of opinion and expression;¹¹⁸
- the principle of non-discrimination;¹¹⁹
- the right to the highest attainable standard of physical and mental health¹²⁰; and
- the right to an effective remedy.¹²¹

The deprivation of liberty carries with it a duty of care for states to ensure that the dignity of all detainees is respected.¹²² States have the obligation to both **protect** prisoners against abuse, including by other prisoners, and to **refrain** from imposing conditions of detention, treatment and prison routines that contravene with prisoners' rights, including the right to be free from torture or other ill-treatment.

International standards are unequivocal that any person deprived of liberty shall enjoy all human rights and fundamental freedoms, except for those restrictions that are necessary and proportionate in a closed environment.¹²³ The specific needs of different genders and age groups should be addressed as outlined in the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the UN Convention on the

117 ICCPR, *op. cit.*, note 85, Article 18; ECHR, *ibid.*, Article 9; CFREU, *ibid.*, Article 10; OSCE Vienna Document, *op. cit.*, note 113, para. 16; OSCE Copenhagen Document, *op. cit.*, note 113, para. 9.4 and 32.

118 ICCPR, *ibid.*, Article 19; ECHR, *ibid.*, Article 10; CFREU, *ibid.*, Article 11.

119 ICCPR, *ibid.*, Articles 2(1), 3, 26; ECHR, *ibid.*, Article 14 and Protocol 12.

120 United Nations, "International Covenant on Economic, Social and Cultural Rights" (ICESCR), 16 December 1966, Article 12(1).

121 OSCE, Vienna Document, *op. cit.*, note 113, para. 13.9; OSCE, Copenhagen Document, *op. cit.*, 113, paras. 5.12-5.19, 12; OSCE, "Ljubljana, 2005, Thirteenth Meeting of the Ministerial Council, 5 and 6 December 2005", 6 December 2005; ICCPR, *op. cit.*, note 85, Articles 2(3) and 9(4); ECHR, *op. cit.*, note 113, Articles 3(4) and 13; CFREU, *op. cit.*, note 113, Article 47.

122 ICCPR, *ibid.*, Articles 10 and 2.

123 "Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other UN covenants", UN General Assembly, Resolution 45/111, "Basic Principles for the Treatment of Prisoners", 14 December 1990, para. 5; "1. All persons deprived of their liberty shall be treated with respect for their human rights. 2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody", Council of Europe Committee of Ministers, "European Prison Rules" (EPR), Appendix to Recommendation Rec(2006)2, 11 January 2006, Part I, Basic principles, para. 1 and 2; "Persons deprived of liberty shall enjoy the same rights recognized to every other person by domestic law and international human rights law, except for those rights which exercise is temporarily limited or restricted by law and for reasons inherent to their condition as persons deprived of liberty", Inter-American Commission on Human Rights (IACHR) Resolution 1/08, "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas", OEA/Ser/L/V/II.131 doc. 26, Washington D.C., 13 March 2008, Principle VIII, Rights and restrictions; "The participating States will ensure that all individuals in detention or incarceration will be treated with humanity and with respect for the inherent dignity of the human person", OSCE Vienna Document, *op. cit.*, note 113, para. 23.2.

Rights of the Child,¹²⁴ the UN Nelson Mandela Rules,¹²⁵ the UN Bangkok Rules and the UN Havana Rules.¹²⁶ Pre-trial detainees are to be presumed innocent and need to be treated accordingly.¹²⁷ The rights of foreign nationals have to be equally respected, including their right to consular assistance and to receive information in a language they understand.¹²⁸

In addition to those international standards, all OSCE participating States have committed themselves to “treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person”.¹²⁹ Human rights must be respected for all prisoners, regardless of what they are accused or convicted of, including (suspected) violent extremist prisoners. While certain human rights are absolute and cannot be limited under any circumstances,¹³⁰ limitations on all others must meet the principles of legality, necessity and proportionality, and must be non-discriminatory. Furthermore, failure to ensure the human rights of these detainees may fuel violent extremism narratives, playing into the hands of recruiters and attracting more followers, as highlighted in Part 1.

The inherent dignity of every human being, an overarching principle of the UN Nelson Mandela Rules,¹³¹ entails the protection of every individual in detention from torture and other ill-treatment, as well as the provision of adequate material conditions and personal safety and security. No circumstances whatsoever can be invoked as a justification for torture and other ill-treatment, including the aim of preventing and countering terrorism and VERLT.

Protecting human rights while ensuring safety and security in prisons

States have a responsibility to ensure the safety and security of prisoners, staff, service providers and visitors at all times.¹³² This includes preventing any risk of escape, of disruption within prisons and of potential violence between those detained or between prisoners and staff. Preventing violence may be particularly challenging in facilities housing (suspected) violent extremist prisoners from a wide spectrum of ideologies, as some of these may demonstrate particularly disruptive behaviours towards others and

124 UN United Nations, “Convention on the Elimination of All Forms of Discrimination against Women” (CEDAW), 18 December 1979; UN CRC, *op. cit.*, note 14.

125 UN Nelson Mandela Rules, *op. cit.*, note 13.

126 UN Bangkok Rules, *op. cit.*, note 79; UN General Assembly Resolution 40/33, “Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)”, New York, 29 November 1985; UN Havana Rules, *op. cit.*, note 86; UN General Assembly Resolution 45/112, “Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)”, New York, 14 December 1990; IACHR “Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas”, *op. cit.*, note 123, Principles II, III, X, XII, XIII, XIX, XX, XXII, EPR, Rules 11.1, 11.2, 19.1, 34, 35 and 36.

127 UN Nelson Mandela Rules, *op. cit.*, note 13, Rules 111-120.

128 *Ibid.*, Rule 55 and 62.; EPR, *op. cit.*, note 123, Rule 37. See also, *Human Rights in Counter-Terrorism Investigations: A Practical Manual for Law Enforcement Officers*, (Warsaw: ODIHR, 2013), pp. 72 and 87.

129 OSCE Moscow Document, *op. cit.*, note 113, para. 23. See also: OSCE Vienna Document, *op. cit.*, note 113, para. 23.2.

130 Such as the right to be free from torture and other ill-treatment or the prohibition of slavery.

131 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 1. For a complete analysis of the Nelson Mandela Rules, see also ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10.

132 UN Nelson Mandela Rules, *ibid.*, Rule 1. See also: IACHR, “Report on the Human Rights of Persons Deprived of Liberty in the Americas”, OEA/Ser.L/V/II.Doc. 64, 31 December 2011, para. 77.

prison staff. At the same time, prison authorities have the responsibility to ensure that the deprivation of liberty is no more restrictive than necessary and does not aggravate the suffering inherent in imprisonment.¹³³

Too often, security and human rights in prisons are wrongly perceived as conflicting objectives. On the contrary, these are not only compatible but mutually reinforcing. Disproportionate and excessive security and safety measures may result not in more control but, instead, contribute to increased risks of disruption, violence, tension or disorder. Human rights abuses may result in prisoners being less likely to comply with the prison rules and more likely to follow a path of radicalization to violence or terrorism.¹³⁴ On the other hand, treating prisoners with dignity and fairness has demonstrable positive effects on order and compliance with detention rules, as prisoners are more likely to acknowledge the legitimacy and authority of prison staff.¹³⁵

A dynamic security approach should be promoted (together with physical and procedural security arrangements) to create a positive climate where prison staff are able to foresee potential problems for the safety and security of both prisoners and staff.¹³⁶ Dynamic security is based on the importance of developing professional, positive and respectful staff-prisoner relationships. Together with fair treatment and purposeful activities, this will contribute to prisoner reintegration upon release and enable staff to better anticipate problems and security risks.¹³⁷ Good relationships between prisoners and prison 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.”¹³⁸

2.1 Human rights risk area 1: Classification, risk and needs assessments

As outlined in the UN Nelson Mandela Rules, prisoners should be separated based on their legal status (pre-trial from sentenced detainees), gender (men from women) and age (children from adults),¹³⁹ independently from any risk and needs assessments. Furthermore, the purpose of classification shall be “to separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;” and “to divide the prisoners into classes in order to facilitate their treatment

133 UN Nelson Mandela Rules, *ibid.*, note 13, Rule 3.

134 International Committee of the Red Cross (ICRC), “Radicalization in Detention – the ICRC’s Perspective”, Geneva, 10 June 2016, p. 2.

135 PRI and the APT “Balancing Security and Dignity in Prisons: A Framework for Preventive Monitoring”, 2013, p. 5.

136 See: UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 76c, Guidance Document on Treatment of Prisoners, pp. 16, 41-42, 48, 61, 78, 82, 112-113; and UNODC, *Handbook on Dynamic Security and Prison Intelligence*, (Vienna: UNODC, 2015), p. 29.

137 PRI and the APT, “Balancing Security and Dignity in Prisons: A Framework for Preventive Monitoring”, *op. cit.*, note 135, p. 7.

138 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. 45.

139 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 11.

with a view to their social rehabilitation”.¹⁴⁰ Classification deals with the categorization of individuals to enable the most effective allocation to an appropriate security regime and to ensure this aligns with the placement in a prison setting with relevant resources.¹⁴¹ 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 and recreational and vocational activities. Conversely, if prisoners are not properly classified, they may be placed in prisons that are not equipped to meet their particular needs, including their social, legal, health-care and rehabilitation needs. In this way, an effective classification system is crucial to the protection of the human rights of prisoners, and “the ability to individualize case and sentence planning and the efficient use of limited correctional resources.”¹⁴²

Prisoners should be classified and allocated according to the findings of their risk and needs assessments, in order to ensure that individualization of treatment is possible.¹⁴³ This should similarly apply in the VERLT context.¹⁴⁴ Risk and needs assessments are essential to evaluating the danger the individual poses to themselves or to others, including to the overall safety and security of the prison and the risk of violence, escape, recidivism and instigating others, as well as to assessing their specific needs and vulnerabilities, including mental health conditions, previous instances of victimization and protection from potential violence.¹⁴⁵ The assessment of a prisoner’s needs is crucial to the planning of rehabilitation programmes.¹⁴⁶ The initial assessments should be carried out as soon as possible at admission,¹⁴⁷ be individualized, and be regularly reviewed and updated through a participatory process.¹⁴⁸ Assessments will also assist with evaluating the relevance of disengagement from VERLT interventions and the progress made, etc., so necessary adaptations can be made to the interventions and approaches.¹⁴⁹

140 *Ibid.*, Rule 93.

141 UNODC, *Handbook on the Classification of Prisoners*, (Vienna: UNODC, 2020), p. 33. See also section 2.2, regarding the placement of (suspected) violent extremist prisoners in relation to the wider prison population and each other: separation, isolation, concentration or dispersal or integration.

142 *Ibid.*, p. 4.

143 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 89.

144 Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, *op. cit.*, note 56, Guideline 20; UN Nelson Mandela Rules, *op. cit.*, note 13, Rules 93-94.

145 UNODC, *Handbook on the Classification of Prisoners*, *op. cit.*, note 141, pp. 48-49. For further reading on risk-need-responsivity model of prisoner assessment and rehabilitation, see p. 38. Whereas risk and needs assessments are traditionally used by prison administrations to ensure a proper security classification and, therefore, ensure the highest possible safety and security within their facilities, the identification of potential risk or vulnerability to VERLT also bears an element of security and safety for the outside world, meaning society as a whole. Importantly however, a person’s risk to the public upon release should not be conflated with their classification denoting the risk they pose to prison safety and security.

146 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para. 71.

147 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.

148 For more on the risk assessment of high-risk prisoners or dangerous offenders see also: UNODC, “*Handbook on the Management of High-Risk Prisoners*”, 2016, p.34; and Council of Europe, “Recommendation CM/REC (2014) 3 of the Committee of Ministers to Member States Concerning Dangerous Offenders”, 19 February 2014. See also, ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1.

149 Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, *op. cit.*, note 56, Guideline 18; Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, paras. 56, 58-59.

Use of indicators to identify prisoners “vulnerable” to VERLT

The line between individuals considered as violent extremists, due to the offence they were convicted of or charges against them, and those considered as radicalizing or “vulnerable” to VERLT can be blurred. Some prisoners may have been convicted of terrorist crimes for an offence that did not involve the direct use of violence (for example, downloading materials produced by a terrorist group), while others may have been convicted for non-terrorist-related crimes because the motivation was not relevant or was taken into account only at sentencing.¹⁵⁰ “Vulnerability” to VERLT is a concept difficult to define, and detecting potential risks of radicalization leading to terrorism or violence is a challenging task.

In an attempt to more accurately and consistently classify individuals, prison systems often rely on “indicators” to identify potential vulnerability to VERLT. The Council of Europe and UNODC handbooks name a number of such indicators. While emphasizing the limits inherent in any system using such indicators, the UNODC, for instance, refers to three main factors: (a) expressed opinions; (b) material (possession of violent extremist literature, symbols and imagery, or of literature on weapons, explosives or on military training, skills and techniques, or attempts to access, become a member of, or contribute to violent extremist websites and/or chat rooms); and (c) behaviour and behavioural changes (loss of interest and withdrawal from contact with the outside world, association with violent extremist groups or individuals in prisons, changing of the style of dress or personal appearance, such as tattoos to accord with the group, day-to-day behaviour becoming increasingly centred around a violent extremist ideology, or attempts to recruit others).¹⁵¹ The Council of Europe refers to indicators ranging from “an increasing commitment to the ideology or narrative that supports the use of violence”, “an increasing willingness to use violence to achieve ideological goals” and “an increasing engagement with physical or virtual (cyber) networks supporting the use of violence”, to “changes in attitudes and values” and “changes in personal behaviour patterns, interest in or development of new skills and capacities that enable the use of violent action”.¹⁵²

There is a definite need to equip prison staff with tools to identify and report concerns about potential risks of VERLT. Being in everyday contact with prisoners, such staff are not only well-placed to detect such risks but are under significant pressure to do so. However, as the reliance on early signs or indicators of VERLT as a basis for risk and needs assessments appears to be a growing trend across the OSCE area, authorities should be cautioned against the use of simplistic models and be aware of their potential human rights implications. A prisoner who meets one or more indicators may signal that they are being radicalized to violence to some extent, but this does not yet indicate that they will engage in violent extremism.¹⁵³ Prison staff should be adequately trained, for example, to distinguish between the practice of ones’ religion, political stance, culture,

150 EU Radicalisation Network (EU-REN), “Dealing with Radicalization in a Prison and Probation Context: Practitioners Working Paper”, 21 March 2016, p. 4.

151 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 116-117.

152 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, para. 26-29.

153 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 117.

traditions and expression of views on the one hand, no matter how extremist these may be perceived to be, and the aggressive and violent manifestation of those views on the other hand.¹⁵⁴

Moreover, for a number of reasons, indicators raise practical problems and have limited reliability. It cannot be assumed that an individual is violently radicalized on the sole basis of a limited set of indicators without regard to broader contextual and case-specific considerations (the path to VERLT and the combination of push and pull factors are unique in each case).¹⁵⁵ In the absence of any determining feature of VERLT, it is particularly difficult, if not impossible, to predict with a high degree of probability whether an individual will support a cause with violent means. Some may spot signs of radicalization leading to terrorism or violence in the change of a prisoner's behaviour or day-to-day habits, while these may, for example, only be "external or behavioural markers of enhanced religious practice"¹⁵⁶ or of alignment to certain political or other ideologies. This lack of reliability is further exacerbated when indicators are based on discriminatory assumptions and stereotypes about the profile of individuals considered "vulnerable" to VERLT.

Leaders and recruiters may also be circumventing indicators and profiles by conforming – at least superficially – to the prison regime or by displaying attitudes or behaviours that do not raise any suspicions. Common indicators also often disregard the specificities of violent radicalization of gender- and age-specific actors. Proper identification of VERLT in prisons requires tools that are individualized and tailored to specific categories of prisoners.

Finally, relying on simplistic indicators may also have counterproductive effects. It may alienate and stigmatize particular prisoners or groups of prisoners, thus creating or feeding into feelings of frustration and humiliation that form a breeding ground for VERLT. These frustrations can be exploited for propaganda and recruitment purposes both inside and outside prisons. If prison staff rely too heavily on a limited set of indicators, as opposed to other observations they may have and input from other staff, for example, this can lead to preconceptions or misconceptions about the real risk an individual poses. Ultimately, such a scenario may jeopardize the day-to-day contact between prison staff and prisoners, and efforts to build trust based on the dynamic security approach.

It is crucial to ensure that indicators or any similar tools based on indicators used do not discriminate against particular prisoners or groups of prisoners and do not unnecessarily or disproportionately interfere with prisoners' rights.

Freedom of religion or belief: Indicators used to detect radicalization leading to terrorism or violence in prison sometimes focus on religious conversion and prisoners' manifestation of their religious beliefs. Indicators have been said to include, for instance, physical and conspicuous religious signs, a sudden interest in religion, a desire to convert fellow prisoners, the expression of support for radical extremist causes or leaders, and

154 Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, Chapter Two, para. 38.

155 Council of Europe, "Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism", *op. cit.*, note 56, Guideline 32.

156 Council of Europe CDPC PC-CP, "Commentary by Francesco Ragazzi, Scientific Expert, to the Guidelines for Prison and Probation Services Regarding Radicalization and Violent Extremism", 2 December 2015, p. 10.

the possession of materials expressing sympathies to extremist behaviours/actions.¹⁵⁷ Other detection grids explicitly mention Islam.¹⁵⁸

Religious practice and conversion in prison is a complex topic – people in prison may turn to religion to cope with the hardship of prison life or personal circumstances, to find meaning, hope or forgiveness.¹⁵⁹ Indicators centred on a prisoner’s choice or change of religion or religious practice can, therefore, be misleading. More importantly, such indicators are discriminatory and may infringe on the freedom of religion or belief, which is protected under international law, and in particular under article 18 of the International Covenant on Civil and Political Rights (ICCPR) and included in OSCE commitments.¹⁶⁰ This includes both the freedom “to have or to adopt a religion or belief of [one’s] choice” and the freedom to “manifest” such religion or belief. The former may not be limited under any circumstances. The latter may only be restricted subject to the principles of legality, necessity, proportionality and non-discrimination; national security is not a legitimate ground to justify limitations.¹⁶¹ Prison authorities should ensure that all prisoners can continue to enjoy this freedom, including – but not limited to – by taking part in private or communal prayers, having access to qualified representatives of their religion, and possessing the books of religious observance and instruction of their choice.¹⁶² The banning of openly reading religious texts, such as the Bible or the Koran, and, in particular, the mistreatment and even torture of prisoners, including beatings, for openly praying, for example, are clear violations of international human rights law.¹⁶³

Freedom of opinion and expression: The use of indicators can impact an individual’s freedom of opinion and expression, as it may result in self-censorship out of fear of being branded a “(violent) extremist”.¹⁶⁴ Individuals categorized on the basis of indicators as

157 Examples from the United Kingdom and the Netherlands, ICSR, “Prisons and Terrorism – Radicalization and Deradicalization in 15 Countries”, *op. cit.*, note 60, p. 32.

158 “Is of Muslim faith – Yes/No”; “Looks to impose his view of Islam on others – Yes/No”; “Refuses the assignment of a non-Muslim fellow detainee in his cell, or of any detainee in his cell – Yes/No”: see Ministry of Justice, Director of Prisons Administration (Directeur de l’administration pénitentiaire, DAP), “Guide d’utilisation des outils d’aide au repérage pluridisciplinaire d’un risque de radicalization violente en établissement pénitentiaire” (*in French only*), 5 December 2016, Appendix 1, “Grid for Collection of Information from Surveillance Personnel”, original source: “Statement of Opinion on the Prevention of Radicalization”, Commission Nationale Consultative des Droits de l’Homme”, 18 May 2017, p. 13.

159 On the role of religion in prisons see, for example, Shadd Maruna, Louise Wilson, Kathryn Curran, “Why God Is Often Found Behind Bars: Prison Conversions and the Crisis of Self-Narrative”, in *Research in Human Development*, 3(2&3), 2006; Pew Research Center, *Religion in Prisons – A 50-State Survey of Prison Chaplains*, 22 March 2012; Dr Ruth Armstrong, “Transforming Rehabilitation: Can Faith-Communities Help to Reduce Reoffending?”, *Prison Service Journal*, Issue 216, 2014; and the ongoing project by the Institute for Crime and Justice Policy Research at Birkbeck. See also section 2.3 on rehabilitation and reintegration programmes, below.

160 OSCE commitments and international standards, *op. cit.*, note 117.

161 UN CCPR, General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, 30 July 1993, para. 8.

162 UN Nelson Mandela Rules, *op. cit.*, note 13, Rules 65-66. On foreign prisoners, see: UN General Assembly Resolution 45/158, *International Convention on the Rights of Migrants and Their Families*, 18 December 1990, Article 17.7. On juveniles, see UN Havana Rules, *op. cit.*, note 86, Rule 48.

163 For reports of such concern see, for example, “Report of the Special Rapporteur on Freedom of Religion or Belief on His Mission to Uzbekistan”, 22 February 2018, A/HRC/37/49/Add.2, para. 67; Forum18, “TAJIKISTAN: ‘I Do Not Know What the Mandela Rules Are’”, 10 March 2021.

164 UN Special Rapporteur on Counter-Terrorism, “Preventing and Countering Violent Extremism”, *op. cit.*, note 23, para. 46.

“vulnerable” to VERLT or violently radicalized in prison may also face restrictions to their right to seek and impart information, which is part of the freedom of expression.¹⁶⁵ The expression of “radical” or “extreme” views without also supporting, inciting or committing violence should not, on its own, be considered as an indicator of VERLT and used to justify restrictions on prisoners’ rights. Freedom of opinion and expression protects all forms of ideas, information and opinions, including those that “offend, shock or disturb the state or any part of the population”.¹⁶⁶ While it may be legitimate for the detaining authorities to challenge ideas they disagree with, they should not seek to prevent such ideas from being expressed and discussed.¹⁶⁷ Prison authorities would have to demonstrate the specific, individual and precise nature of the threat to good order or national security, as well as the necessity and proportionality of the action taken, in particular by establishing a direct and immediate connection between the expression and the threat.¹⁶⁸ Moreover, restrictions to freedom of expression must not jeopardize the essence of the right.¹⁶⁹

Risk and needs assessments tools

As set out in the previous section, the classification of prisoners and subsequent decisions regarding the placement and detention regime must not be based on the sole observation of a limited set of indicators. This is where regular targeted, individualized and gender-sensitive risk and needs assessments play a key role.¹⁷⁰ While risk and needs assessments should be based on indicators, in order to ensure systematized and structured observation, tools that use the aforementioned indicators have inherent limitations. Crucially, these tools should be based, both on dynamic factors, i.e., those that are currently present and can be influenced, and on static factors, i.e., those based on the individual’s history and that are fixed and cannot be changed.¹⁷¹

Individual assessments should be carried out by trained professionals “to avoid classifications being influenced by stereotyping, profiling and personal assumptions about a prisoner.”¹⁷² Assessing risk requires collecting and validating information from various

165 ICCPR, *op. cit.*, note 85, Article 19.

166 European Court of Human Rights (ECtHR), *Handyside v. UK*, Application No. 5493/72, 7 December 1976.

167 UN Special Rapporteur on Counter-Terrorism, “Preventing and Countering Violent Extremism”, *op. cit.*, note 23, para. 38. See also, Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach, *op. cit.*, note 22, pp. 42-43.

168 UN CCPR, “General Comment No. 34 – Article 19: Freedoms of opinion and expression”, CCPR/C/GC/34, 12 September 2011, para. 35.

169 UN Special Rapporteur on Counter-Terrorism, “Preventing and Countering Violent Extremism”, *op. cit.*, note 23, para. 38.

170 For an overview of classification, risk and needs assessment in accordance with the UN Nelson Mandela Rules, see: ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, paras. 64-87.

171 UNODC, Handbook on the Classification of Prisoners, *op. cit.*, note 141: This resulted in the development of tools that, while retaining static criminal and personal history items linked to risk, also incorporated dynamic or changeable predictors that were not only sensitive to alterations in an offender’s circumstances (to assist in monitoring change), but also provided prison staff with information regarding the needs of the prisoner that should be targeted through interventions. These are referred to as “risk-need” or “third-generation” instruments in research literature. For more information on risk and needs assessments and the influence of the risk-need-responsivity model of prisoner assessment and rehabilitation, see p. 38.

172 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para. 81.

sources, including that gathered through interviews with the person under assessment and information from court cases and law enforcement agencies, social workers, family and friends. It is good practice to involve psychologists and other relevant experts.¹⁷³ The purpose is to learn as much as possible about an individual's personal background, any criminal history, social contacts, education and employment.¹⁷⁴ This will assist with understanding behaviours and enable the prison authorities to use a dynamic security approach more effectively. Also, after the initial classification and allocation, risk and needs assessments should be regularly reviewed so that detainees are housed in an appropriately secure environment at all times.

In the context of VERLT, risk and needs assessments tend to evaluate the risks posed not only by prisoners convicted of terrorism- and violent extremism-related offences, but also by "potential violent extremists and those radicalizing to violence".¹⁷⁵ When assessing the risks posed by prisoners convicted of terrorism and violent extremism-related offences, assessors need to consider the role they played within their organization or group, and their potential to radicalize or recruit other prisoners (degree of charismatic leadership or appeal), to maintain or create operational command structures within the prison, and to plan violent actions from prison, as well as the likelihood of recidivism.¹⁷⁶ They need to take into consideration the personal background, motivations and contextual circumstances that have drawn or may draw a prisoner into VERLT and that may contribute to such re-offending in the future. Some may have followed this path for conventional criminal motives, such as financial gain or to fulfil existential needs, including the need of belonging and meaning; others may have been convicted of other offences, but their motivations were related to violent extremism.¹⁷⁷

The relevance of general risk and needs assessments for the prevention of VERLT has been questioned, as the risk factors may overlook the dynamic nature of VERLT and do not relate to the background and motivations of (suspected) violent extremist prisoners.¹⁷⁸ Some specialized tools have, therefore, been developed focusing on violent extremism ideologies (including political, social, religious or other ideologies). There are, however, limitations inherent in these tools, and they may not be easily transposable to other jurisdictions and contexts.¹⁷⁹ Furthermore, research on risk and needs assessments for VERLT is still limited. Past violent behaviour does not, for example, indicate a higher

173 Hedayah and ICTT, "Additional Guidance on the Role of Psychologists/Psychology in Rehabilitation and Reintegration Programs".

174 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 43, 54-55; Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, paras. 61, 63; GCTF, "Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders", Good Practice 3.

175 *Ibid.*, Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, para. 48.

176 Liesbeth van der Heide, Marieke van der Zwan and Maarten van Leyenhorst, "The Practitioner's Guide to the Galaxy - A Comparison of Risk Assessment Tools for Violent Extremism", p. 22.

177 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 41, 42, 55; Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, paras. 44-45

178 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 55; Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, paras. 53-54.

179 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 56; Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, paras. 47-48.

risk of violent extremism, although it may indicate a higher likelihood of further violent behaviour.¹⁸⁰

The Extremism Risk Guidelines (ERG22+), developed and used in England and Wales, assess 22 factors in three main domains (engagement, capacity and capability), including potential changes and the impact of interventions in these three areas.¹⁸¹ “The Violent Extremist Risk Assessment (VERA-2)” and its revised version (VERA-2R) used in some countries in Europe,¹⁸² as well as in Australia, Canada, the United States the South Asian region, looks into 34 risk factors in five domains: “attitudes, beliefs and ideology”; “social context and intention”, “history, action and capacity”; “commitment and motivation”; “protective/risk-mitigating indicators”.¹⁸³ Some jurisdictions have decided to use assessment tools about general violence, rather than ones specific to VERLT or, instead, to rely on individual assessments using a variety of different screening tools and/or multidisciplinary direct observations.¹⁸⁴

It is important to understand that while risk and needs assessments are useful tools, they are not infallible. They cannot predict who will reoffend or identify who will turn to VERLT in prison with statistical accuracy.¹⁸⁵ A dynamic security approach, staff observations, professional judgement and experience should complement information obtained through risk and needs assessments.¹⁸⁶

Risk and needs assessments for specific categories of prisoners

Specific risk and needs assessment tools for children and women involved in or deemed “at risk” of VERLT are lacking, and the need has been highlighted to carefully review the relevance of VERA-2R and ERG+22 to these categories of detainees.¹⁸⁷ The different drivers of radicalization leading to terrorism or violence for women and children, together

180 Van der Heide, van der Zwan & van Leyenhorst, “The Practitioner’s Guide to the Galaxy - A Comparison of Risk Assessment Tools for Violent Extremism”, *op. cit.*, note 176, p. 5.

181 For more details on these specialized risk assessment tools, see: UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 56.

182 For example: Austria, Belgium, Finland, France, Germany, the Netherlands, Sweden, see: EuroPris Knowledge Management System, 220719: Radicalisation Risk Assessment; EU-RAN, “Approaches to Countering Radicalization and Dealing with Violent Extremist and Terrorist Offenders in Prisons and Probation”, *op. cit.*, note 80, p. 19.

183 European Commission, “Violent Extremism Risk Assessment, Version 2-revised Pressman, Rinne, Duits, Flockton”, 2016.

184 Latvia, Lithuania, Switzerland; see: <https://www.europris.org/epis/kms/?detail=348>.

185 For a discussion on the low rates of terrorist recidivism, see: Renard, “Overblown: Exploring the Gap Between the Fear of Terrorist Recidivism and the Evidence”, *op. cit.*, note 52.

186 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 57; Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, paras. 62-63.

187 Global Center on Cooperative Security and ICCT, “Correcting the Course: Advancing Juvenile Justice Principles for Children Convicted of Violent Extremism Offenses”, September 2017, p. 11; Global Center on Cooperative Security & ICCT, “Rehabilitating Juvenile Violent Extremist Offenders in Detention”, *op. cit.*, note 47, p. 3; PRI, “Children and Violent Extremism:”, *op. cit.*, note 84, p. 11.

with the various roles women and children may have played in violent extremist groups and their potential dual status as perpetrators and victims, call for gender- and age-sensitive risk and needs assessments. As of today, most assessment tools used in prison have been designed for populations of men and do not, therefore, account for women-specific factors associated with the risk of re-offending.¹⁸⁸ Similarly, these assessment tools have been designed based on the male experience of radicalization to terrorism, which means they are less able to determine women violent extremists' risk of re-offending and deradicalization.¹⁸⁹

The UN Bangkok Rules, adopted in 2010, require the adoption and implementation of gender-sensitive classification methods.¹⁹⁰ They also prescribe individualized, gender-sensitive, trauma-informed and comprehensive treatment, including mental-health care, the failure of which may lead to increased radicalization leading to terrorism or violence.¹⁹¹ Gender-sensitive risk and needs assessments should take into account the generally lower risk posed by women prisoners to others, the particularly harmful effects that high-security measures and increased levels of isolation can have on them, and information about women's backgrounds, such as violence they may have experienced.¹⁹²

As for children, risk and needs assessments should take into consideration the level of their mental, intellectual and emotional maturity, and be responsive to the various factors that may have led them to VERLT (indoctrination, criminal opportunism, coercion, travel with their parents as "foreign terrorist fighters"). This is essential in order to elaborate, preferably with the participation of the children themselves and as conducted by child specialists, appropriate responses and support, including mental health and trauma support.¹⁹³

The various profiles and motives of returning "foreign terrorist fighters" need to be explored in their risk and needs assessments, together with the knowledge, skills and training they may have gained. While many may have sought to join violent extremist groups, others may have been motivated by adventure or monetary gain, or may have travelled with a genuine intention to help provide humanitarian assistance but then became involved with these groups. Some may be ready to withdraw from VERLT, but this readiness may be undermined if they are arbitrarily placed in overly restrictive conditions. Others may need psychological support, as they may suffer post-traumatic stress disorder, trauma, behavioural unpredictability and emotional instability.¹⁹⁴

188 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para. 80

189 Katherine Brown, "The Importance of Gender", in *SPOTLIGHT, Prisons Rehabilitation and Reintegration*, December 2020, pp 26-35.

190 UN Bangkok Rules, *op. cit.*, note 79, Rule 40 and 41.

191 *Ibid.*, note 79, Rule 12; PRI, "Preventing Radicalization in Prisons", *op. cit.*, note 64, p. 8.

192 UN Bangkok Rules, *ibid.*, note 79, Rule 41. Individualized risk and needs assessments should take into account all possible ways in which a (female) prisoner may be a risk. There is currently limited research on whether female prisoners pose less of a risk when it comes to the radicalization to terrorism/violence of other prisoners.

193 Global Center on Cooperative Security & ICCT, "Rehabilitating Juvenile Violent Extremist Offenders in Detention", *op. cit.*, note 47, p. 3. The Havana Rules further develop the elements of the classification and placement procedures to be applied to juveniles, UN Havana Rules, *op. cit.*, note 86, Rules 27-30.

194 UNODC Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 66.

Individualized and evidence-based risk and needs assessments are of particular importance in the case of pre-trial detainees. Pre-trial detainees have particular needs, and the risks they may present are different. Studies on pre-trial detention show, for example, a higher risk of suicide and self-harm.¹⁹⁵ Pre-trial detainees should not be classified on the sole basis of the charges against them. If this happens for individuals accused of terrorist offences, it may lead to their automatic placement in the highest security settings and, as a result, in practice, to their placement in facilities for sentenced detainees. This raises profound concerns as to its compliance with international human rights law and OSCE commitments in relation to the right to a fair trial. The presumption of innocence is a fundamental and non-derogable right. Classification and placement during pre-trial detention (in high security settings and/or with sentenced detainees) may influence the rendering of a judgement by presupposing a level of guilt.¹⁹⁶ Furthermore, the more restrictive regimes often found in high-security settings may inhibit full access to legal representation.

Arbitrary assessments and over-classification

As for the general classification of prisoners, in the VERLT context allocation and classification of prisoners should be based on individual risk and needs assessments and must not be arbitrary or discriminatory. Such arbitrary or discriminatory practices include the use of blanket rules that assign prisoners security categories and prisons/units on the sole basis of the nature of their offences or charges, the length of their sentence, their nationality, ethnicity, religion or travel history (e.g., having travelled or planned to travel to a conflict zone).¹⁹⁷

Weak and arbitrary risk and needs assessments and classification are problematic, as they fail to identify the most suitable accommodation and those prisoners for whom placement in high-security facilities is truly justified, and they also compromise the implementation of sentencing plans, reintegration and post-sentencing measures.¹⁹⁸ This, in turn, may undermine efforts to prevent VERLT and heighten the risk of ill-treatment and torture. Classification and categorization should, instead, be based on the principle that all prisoners are held in the least restrictive settings necessary to address the risks they pose and their needs.¹⁹⁹

As for any other group of prisoners, (suspected) violent extremist prisoners or prisoners deemed “at risk” of VERLT should be able to evolve towards less restrictive security regimes, based on the dynamic and regular review of risk and needs assessments that evaluate the changes and progress made. They should not be continuously kept in high-

195 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para. 87

196 OSCE commitments and international standards on the presumption of innocence, *op. cit.*, note 115. UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 111.2.

197 ICRC, “Radicalization in Detention – the ICRC’s Perspective”, *op. cit.*, note 134, p. 3.

198 For more on sentence planning, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para. 78.

199 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 3. This is a principle of good prison management: “The essence of imprisonment is deprivation of liberty and the task of the prison authorities is to ensure that this is implemented in a manner which is no more restrictive than is necessary. It is not the function of the prison authority to impose additional deprivations on those in its care”, Andrew Coyle, *A Human Rights Approach to Prison Management*, (London: International Centre for Prison Studies, 2009), p. 11.

security settings and permanently categorized as high-risk prisoners on the sole basis of their offences or charges or on the outcome of the initial assessment. This approach is counterproductive, as it removes the incentive for such detainees to disengage from VERLT. The Council of Europe Guidelines clearly require states to conduct periodic individualized risk and needs assessments for prisoners who have been sentenced for terrorism-related offences and are being kept in the highest security regimes.²⁰⁰



200 Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, *op. cit.*, note 56, Guideline 21; Andrew Coyle, *ibid.*, p. 74.

Risk and needs assessments

Examples of related issues, which detention monitors observed in practice and human rights institutions highlighted, include the following:

Automatic placement in stricter prison regimes without individualized risk and needs assessment

Practice example 1: In one country, prisoners suspected and convicted of terrorism offences are automatically placed in “extensively secured” “terrorist wings” due to concerns that they may radicalize or recruit other prisoners for terrorist activities. There are reportedly neither individualized risk and needs assessments *before* the initial placement in the terrorist wing, nor regular reviews to decide whether such placement was or remained necessary and proportionate to the risks posed by individual detainees.²⁰¹ Reportedly, exceptions to this automatic placement are very limited, and the right to appeal against the initial placement is not effective in practice.²⁰²

The Council of Europe’s Committee for the Prevention of Torture (CPT) and the UN Committee against Torture (CAT) have expressed concerns regarding the absence of individual risk and needs assessments and the automatic placement of detainees in those wings. The CPT reiterated its recommendation, adding that there should be “a regular review of the placement in which the person concerned is involved (notification, right to be heard)”.²⁰³ The CAT also issued recommendations regarding the nature of the individual assessment, including that it be “...based on specific and objective criteria, including a person’s actual behaviour, and supported by credible, concrete, complete and up-to-date information, and determine whether placement in a high security facility is necessary and proportionate.”²⁰⁴

Practice example 2: In another country, the Sub-Committee on the Prevention of Torture (SPT) observed that prisoners could be allocated to particular facilities based on the gravity of the crime they were convicted of and previous criminal offences and sentences, with no individualized risk and needs assessment.²⁰⁵ The UN Special Rapporteur on Counter-Terrorism highlighted concerns that individuals accused or convicted of terrorism were subject to prison regimes with exceptional rules and faced reduced privileges. Concerns were also raised about the apparent use of religious beliefs and practices as

201 After the initial placement in the terrorist wing (*Terroristenafdeling*), however, there is an assessment, including for the determination of security measures (referred to as differentiation). While a recent report of the Inspectorate under the Ministry of Justice and Security maintained that the probability of unnecessarily applying stringent security measures had been reduced as a result of differentiation, it also found a number of practical challenges with regards to risk assessments, based on the VERA-2R assessment tool, during the admission procedure in the first six weeks of detention. See: Inspectorate of Justice and Security, “The Terrorist Detention Units in the Netherlands”, 2019. P. 31 and 26-29.

202 Amnesty International and Open Society Justice Initiative, “Inhuman and Unnecessary Human Rights Violations in Dutch High-Security Prisons in the Context of Counter Terrorism”, *op. cit.*, note 106, p. 7; and UN Committee against Torture, “Concluding Observations on the Seventh Periodic Report of the Netherlands”, CAT/C/NLD/CO/7, 18 December 2018, para. 28.

203 Council of Europe, CPT report on the 2016 visit to the Netherlands, (CPT/Inf (2017) 1, para. 50).

204 UN Committee against Torture, “Concluding Observations on the Seventh Periodic Report of the Netherlands” *op. cit.*, note 202, para. 29b.

205 SPT, Visit to Kazakhstan undertaken from 20 to 29 September 2016: observations and recommendations addressed to the State party, CAT/OP/KAZ/1, 7 February 2019, para. 94.

indicators in the classification of radicalization, and that prisoners could not challenge their classifications.²⁰⁶

Lack of transparency and application of indicators without sufficient procedural safeguards

Practice example 3: In one country, those believed to have been radicalized to terrorism or violence (and, therefore, presumed security threats) are registered on a specific list and subject to various measures, from keeping a diary of their observed activities to contact limitation, solitary confinement and, sometimes, placement in so-called “D-Rad:Ex wings” (special units in prisons for detainees considered to present the greatest risk of violent radicalization). The UN Special Rapporteur on Counter-Terrorism expressed concern that the procedure for placing an individual in one of these wings was opaque and there was no review process.²⁰⁷ Prison staff did continually assess “signs of radicalization” and categorize the prisoners accordingly.²⁰⁸ The prisoners, however, were not informed of these assessments or their implications, nor was there a process for them to challenge the assessment. The Special Rapporteur emphasized the complexity of identifying radicalization to violence or terrorism, the need for specialized trained professionals, transparency and consistency, and the risks of associating genuine religious practice with radicalization.²⁰⁹

Practice example 4: In another country, the UN Special Rapporteur on Counter-Terrorism has noted that in the so-called “radicalization evaluation units”, where prisoners convicted of terrorist acts spend four months and where, through multi-disciplinary approaches, their level of radicalization to violence or terrorism and risk potential is assessed,²¹⁰ prison staff seemed knowledgeable and aware of the challenges of risk and needs assessment practices. However, at the same time, the Rapporteur’s report raised concerns about the transparency and consistency of the risk assessment procedure involving different professionals, as well as about the lack of the possibility to appeal placement decisions and the way in which the four-month assessment period in the unit was used as a justification for the low level of activities available for detainees.²¹¹

206 Report of the UN Special Rapporteur on Counter-Terrorism, Visit to Kazakhstan, *op. cit.*, note 108, para. 35.

207 Report of the UN Special Rapporteur on Counter-Terrorism, Visit to Belgium, A/HRC/40/52/Add.5, 8 May 2019, para. 38. See also: Comité T, “Assessment of Measures to Combat Terrorism in the Light of Human Rights,” 2020.

208 *Ibid.*, para. 39: Prison authorities continually assess signs of radicalization exhibited by inmates. Those considered radicalized or at risk of radicalization (so-called “CelEx” detainees) will fall into one of the following categories: category A (convicted of or charged with terrorism); category B (so-called “assimilated persons” whose files indicate a connection with terrorism); category C (foreign terrorist fighters); and category D (detainees who evidence signs of radicalization). Three further categories are to be added to this classification system, including “home-grown terrorists” and “hate preachers”.

209 *Ibid.*, para. 40.

210 Report of the UN Special Rapporteur on Counter-Terrorism, Visit to France, A/HRC/40/52/Add.4, 8 May 2019, para. 43 on the radicalization evaluation units (“Quartier d’évaluation de la radicalization” or QER).

211 CGLPL, «Prise en charge pénitentiaire des personnes ‘radicalisées’ et respect des droits fondamentaux», January 2020, p. 32; Report of the UN Special Rapporteur on Counter-Terrorism, Visit to France, *ibid.*, para. 42.

Bias and discrimination

Prison staff carrying out risk and needs assessments in the context of VERLT tend to be exposed to heightened pressure, as any shortcomings may have far-reaching consequences for prisoners, prison staff and the general public. Such situations may compound already existing implicit biases and stereotypes, leading to discriminatory over-classification. Transparent, individualized, evidence-based and structured assessment tools that apply to a spectrum of violent extremist ideologies, along with a support structure for verification, can help to ensure a just and fair assessment.²¹² There should also be clear guidelines, policies and procedures to minimize any risk of bias. Staff should be specifically trained (or certified, wherever possible) to conduct these assessments.²¹³ It is recommended that the professional carrying out the risk and needs assessments should not be the same person responsible for decision-making regarding a prisoner's classification.

The right to be heard and to challenge outcomes of risk and needs assessments

Initial assessment and classification reports should be entered in the prisoner file-management system and be accessible to prisoners, as required by the UN Nelson Mandela Rules.²¹⁴ Prisoners must be able to challenge outcomes of their assessments and classifications through agreed transparent and communicated procedures. The Council of Europe Guidelines clearly state that “offenders’ views should be recorded in relation to [the risk and needs assessment] and [they] should be given the opportunity to challenge such assessments”, in line with national procedures.²¹⁵ This opportunity has to be communicated to them in written form, in the most commonly used languages and promptly upon admission.²¹⁶ Risk and needs assessments and classification decisions based on mere suspicion or secret information prevent prisoners from challenging them. Such assessments and decisions may also prevent adequate oversight, as well as delay or impede the regular review of the proportionality of security measures and the timely lifting of restrictions that are no longer necessary.²¹⁷ The opportunity for prisoners to challenge their classification is particularly important in cases where a particular security classification bars individuals from applying for early release or reduction of sentences.²¹⁸

212 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 57;

213 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *ibid.*, p. 55; Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, paras. 51-52.

214 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 7. See also rules 6, 8-10 on prisoner file management.

215 Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, *op. cit.*, note 56, Guideline 17; ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, para. 84.

216 UN Nelson Mandela Rules, *op. cit.*, note 13, Rules 53-54, 55.1; UN Bangkok Rules, *op. cit.*, note 79, Rule 2; UN Havana Rules, *op. cit.*, note 86, Rules 24-25; EPR, *op. cit.*, note 123, Rule 30.1.

217 ICRC, “Radicalization in Detention – the ICRC’s Perspective”, *op. cit.*, note 134.

218 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para. 84.

In all cases, there should be remedies available in the event a prisoner has been wrongly identified as violently radicalized to terrorism or violence.²¹⁹

The sharing of information and the right to privacy

The sharing of information between various law enforcement, intelligence, prison, probation and other agencies or external partners requires that clear, strict and transparent procedures are established to respect prisoners' right to privacy and to protect their personal data.²²⁰ The UN Nelson Mandela Rules require that prisoner files must be kept confidential and made available only to those whose professional responsibilities require access to such records, i.e., access to such information must be on a strict "need to know" basis.²²¹ In relation to child offenders more specifically, the UN Beijing Rules also state that 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."²²² Infringements of data sharing restrictions may also include obliging medical staff to disclose information about a prisoner, in breach of doctor-patient confidentiality.²²³

219 Report of the UN Special Rapporteur on Counter-Terrorism, Visit to France, *op. cit.*, note 210, para. 42.

220 Council of Europe, "Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism", *op. cit.*, note 56, Guideline 4. For more information on prisoner file management and security and confidentiality of information, see also ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, paras. 34-52

221 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 9; and ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, para. 34, 37 and 43.

222 UN Beijing Rules, *op. cit.*, note 126, Rule 21.1. See also UN Havana Rules, *op. cit.*, note 86, Rules 19 and 21 (d).

223 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 32; UN Bangkok Rules, *op. cit.*, note 79, Rule 8; For more information on medical confidentiality and the provision of medical information on a "need to know" basis, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 6, paras. 106-132.



**Summary of human rights risk area 1:
Classification, risk and needs assessments**

- “Indicators” of VERLT are problematic from a human rights perspective and difficult to apply in practice, since they are hard to define – there is no single profile or clear-cut pathway leading an individual to terrorism. Indicators must not be considered in isolation and discriminate (in their definition or application) against particular groups of prisoners.
- Risk and needs assessments should be individualized, evidence-based and regularly reviewed by trained professionals. Automatic classification and categorization based on criminal charges or offences, nationality, ethnicity, religion, political affiliation or travel history are arbitrary, discriminatory and ineffective. These assessments not only determine risks, placement and security regimes, but also guide the best course for rehabilitation.

Questions for monitors: Classification, risk and needs assessments

Monitoring bodies should address the possibility of discriminatory, arbitrary risk and needs assessments and over-classification, which can be particularly strong in the case of detainees accused or convicted of terrorism- and violent extremism-related offences or deemed “at risk” of VERLT. Monitors could inquire about the following:

- What indicators are used to identify potential violent radicalization, and do these indicators, in policy and practice, discriminate against particular (groups of) prisoners or otherwise infringe on prisoners’ rights?
- Are there clear guidelines/policies and regulations, as well as training, on how to conduct risk and needs assessments? What kind of risk and needs assessment tools are used? Are they specific to VERLT? When and how frequently are they conducted for (suspected) violent extremist prisoners?
- Are risk and needs assessments gender- and age-sensitive? How are risk and needs assessments of pre-trial detainees conducted to ensure the protection of their presumption of innocence? How are mental health issues and needs, in particular of women, children and/or “foreign terrorist fighters”, taken into account in the assessments?
- On what kind of criteria are risk and needs assessments conducted? To what extent do they take into consideration the detainees’ charges and offences, nationality, ethnicity, religion, political stance and travel history (are there blanket rules)?
- Are detainees able to evolve to less restrictive prison regimes during their detention, on the basis of subsequent, regular risk and needs assessments or through procedures in law and practice to challenge their classification and allocation? Is there a control or accountability mechanism in place to avoid arbitrary risk and needs assessments and classification?
- Is information related to risk and needs assessments properly recorded in prisoners’ files? Is the security and confidentiality of such information ensured? Who can register, access and use the information in prisoner files?
- Do prisoners have the right to be heard as part of the risk and needs assessments? Are they notified of decisions taken on the basis of such assessments? Are there processes to challenge such decisions? Do they have access to information related to their risk and needs assessments?
- Are there clear regulations and protocols on the sharing of information between the prison administration and other agencies, including intelligence agencies, to protect privacy and personal data? How is the confidentiality of medical files protected in line with medical ethics?
- How are prison staff trained in using these tools? How are the risks of personal bias and discrimination mitigated? Do prison staff feel more pressure when conducting risk and needs assessments of (suspected) violent extremist prisoners, considering the potential risks and sensitivity around them? Does this negatively impact the realization of the human rights of these detainees?

Tips for monitors 1: Planning and preparing visits

The planning and preparation prior to undertaking a visit to a place of detention is as important as the visit itself. This groundwork will not only set the overall goals of the visit, but it will also determine its scope (both in terms of time and content) and who in the team will undertake the different visit-related tasks.²²⁴

Depending on the mandate of the monitoring body and the scope of the VERLT-focused visit, detention monitors will act on this topic in different ways, including:

- Investigating individual detainees' complaints, with the aim of examining allegations of potential rights violations arising from measures to prevent and counter VERLT in prisons;
- Investigating individual detainees' complaints, with the aim of documenting and providing recommendations to address related structural problems. In 2015, the French NPM, for instance, published a report on how "Islamist radicalization" was addressed in prisons, following up on complaints it had received;²²⁵
- Conducting preventive visits to identify risk areas and systemic issues that lead or could lead to torture or other ill-treatment, to publicly report on risk factors for violations, and to make recommendations to the authorities accordingly. Under its preventive mandate, the Norwegian NPM, for example, examined and reported on the detention regime in the highest security level section of the Telemark prison, Skien branch, where one person is held on terrorism-related offences;²²⁶
- Publishing thematic reports or opinion pieces focusing on the impact of VERLT-related measures on the conditions of detention and treatment of prisoners more generally based on visits to multiple institutions. The French NPM followed up on its 2015 report by focusing on "dedicated units" for prisoners convicted of terrorism-related offences and individuals considered as radicalizing to violence and advocating for violent actions, which was published a few months after the establishment of those units, in 2016;²²⁷

224 There is a relatively sizeable corpus of written materials to aid NPMs and other monitors in conducting visits to places of detention and monitoring methodology. These materials cover all aspects of detention monitoring, including the issue of adequate pre-visit planning and preparation. In a 2013 publication on the monitoring of police detention, for example, the APT identifies four key stages in preparing for visits as follows: research and information gathering, operational preparation, material preparation and mental preparation. Monitors focusing on VERLT as a topic may wish to keep these four specific stages in mind when preparing a visit to any place of detention. See list of available monitoring tools at the end of the Guidance Doc.

225 "La prise en charge de la radicalization islamiste en milieu carcéral", CGLPL, 2015, *op. cit.*, note 54.

226 The Parliamentary Ombudsman Norway – NPM, "Visit report: Telemark Prison, Skien Branch, 2-4 June 2015".

227 "Avis du 11 juin 2015 relatif à la prise en charge de la radicalization islamiste en milieu carcéral" (*in French only*), Contrôleur Général des Lieux de Privation de Liberté, published in the French "Official Journal" on 30 Juin 2015; "Radicalisation islamiste en milieu carcéral: les unités dédiées ouvertes en 2016", *op. cit.*, note 108.

- Including findings and recommendations on detention conditions and treatment in connection with measures to counter or prevent VERLT in regular monitoring visits or annual reports. When relevant, monitoring bodies could consider monitoring such issues in a systematic manner during their visits and dedicating part of their reports to VERLT-related issues; and
- Including in thematic reports on *wider* detention-related issues an analysis of how they apply in the context of VERLT in prisons. For instance, the prison inspectorate for England and Wales has published a report on Muslim prisoners' experience, which includes how the prevention of violent extremism negatively impacted them.²²⁸

In addition to more general preparatory research, detention monitors would need to gather relevant information to familiarize themselves with the threat that VERLT may pose in their country, to understand local-specific push and pull factors in prisons, and to get fully acquainted with the national legal framework and policies related to VERLT in prisons, including past or planned measures.²²⁹

- Information on the phenomenon of VERLT and the international legal framework provided in this guide should be complemented by relevant research and analysis, including the following:
- Information collected by other monitoring bodies that may have already covered VERLT-related issues inside and outside prisons, both at the national and international level, for example, by NHRIs, CSOs and reports of the CPT and the SPT;
- The national legal framework regulating the prison system and laws criminalizing terrorism-related offences, including legislation regarding foreign terrorist fighters;
- The national policy framework (for example, any action plan on preventing VERLT that may include a component on prisons);
- Past and current policies to prevent and counter VERLT in prisons (e.g., separation or integration approach²³⁰) and corresponding detention regimes (capacity of dedicated units or facilities, if applicable, number of detainees concerned, their status, nationality, gender and age);
- Information on governmental bodies and agencies involved in the prevention of VERLT in prisons; and
- Data on the nature and extent of VERLT in prisons in the country and any known or alleged problems, including through the receipt of individual complaints and other reports that may be available, including in the media.

228 Her Majesty's Chief Inspector of Prisons, "Muslim prisoners' experiences: A Thematic Review", June 2010.

229 See section 1.1, Drivers of VERLT

230 See section 2.2.

2.2 Human rights risk area 2: The prison regime

Classification and categorization will inform the allocation and security regimes and, in some cases, the security measures within such regimes applied to (suspected) violent extremist prisoners. Security measures and related restrictions must be imposed on prisoners only on the basis of the results of objective assessments and in accordance with the principles of necessity and proportionality, in particular to ensure their safe custody. As already highlighted, inadequate detention conditions and (disproportionately) harsh security measures can increase the risk of radicalization to terrorism or violence.²³¹ Assigning prisoners an unnecessarily high security level can also compromise rehabilitation prospects, as this usually has an impact on prisoners' contacts with their families, their participation in rehabilitation programmes, the amount of time they spend outside their cells, and so on.²³²

There is an ongoing debate about the most appropriate way to house (suspected) violent extremist prisoners, and different options have been considered across the OSCE region.²³³ One approach is to separate these prisoners from the general prison population (separation), whether this means they are held in isolation from each other (isolation), together in one place (concentration) or dispersed across a small number of facilities that are most often high-security wings within regular prisons (dispersal). Another approach is to integrate them with the general prison population (integration). Some OSCE participating States have also adopted a mix of these approaches.

Separation may prevent the violent radicalization and recruitment of other prisoners, facilitate the implementation of targeted interventions, and reduce the number of staff requiring specialized training. On the other hand, **concentration** may enable the maintenance or re-creation of the operational command structure of certain violent extremist or terrorist groups, facilitate the sharing of information and operational skills between prisoners, and increase the risk of prison violence and illegal activities. It may cause feelings of stigmatization and mistrust or be perceived by other prisoners and the separated group as a sign of raised status or authority. While **dispersal** may reduce such feelings, it may be less effective in preventing the violent radicalization and recruitment of other prisoners. **Isolation** is highly problematic if it results in prisoners being kept in solitary confinement, which, in many cases, will amount to torture and other ill-treatment. Separation may also prevent prisoners from exposure to alternative viewpoints and affect their participation in rehabilitation programmes.

Integration may, on the other hand, expose prisoners to alternative perspectives, which can support disengagement efforts. Integration does not, however, address the risks of

231 Report to the Government of the Netherlands on the Visit to the Netherlands Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 May 2016, CPT/Inf (2017) 1, para. 50.

232 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para.71.

233 See section 2.1 on classification, risk and needs assessments. Different organizations use different terms to distinguish between placement regimes. RAN refers to concentration and dispersal regimes: EU-RAN, "Approaches to Countering Radicalization and Dealing with Violent Extremist and Terrorist Offenders in Prisons and Probation", *op. cit.*, note 80, p. 21.

radicalization leading to terrorism or violence and recruitment of other prisoners.²³⁴

Placement policies will depend on factors related to the particular prison system, such as the existing infrastructure, staff capacities, financial resources and problems of overcrowding, as well as the nature and extent of risks of radicalization leading to terrorism or violence in prisons, including the size of the prison population concerned and the organization and *modus operandi* of violent extremist groups in prisons.²³⁵ Since there are insufficient data to date, it remains to be seen which policy is most effective.²³⁶ While not judging the relative merits of such policies, the CPT has noted that, based on its interviews in prisons, the separation option may allow “more radicalized” prisoners to influence “less radicalized” prisoners.²³⁷

Rather than automatically applying one option to all prisoners concerned, placement should be based on an individual assessment, frequently reviewed, and open to being challenged/appealed. For instance, it would seem more appropriate to integrate a disillusioned returnee from a terrorist group abroad with the general prison population, so they can benefit from interaction with other prisoners on the path to disengaging from VERLT. There is also no evidence to suggest that children accused or convicted of terrorism and violent extremism-related offences or considered to be “at risk” of VERLT should be automatically separated within facilities for children.²³⁸ The principal criterion for their placement should remain “[...] the provision of the type of care best suited to [their] particular needs [...] and the protection of their physical, mental and moral integrity and well-being”.²³⁹ Importantly, “in all actions concerning children (...) the best interests of the child shall be a primary consideration”²⁴⁰ and the detention of a child “shall be used only as a measure of last resort and for the shortest appropriate period of time.”²⁴¹ Subject to those principles, alternatives to imprisonment, pre-trial²⁴² or alternative sanctions should also be available for children – boys and girls alike – accused or convicted of terrorism - and violent extremism-related offences.²⁴³

234 On the advantages and disadvantages of the different placement options, please see Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, Chapter V, para. 125-126 and UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 46-54; EU-RAN, “Approaches to Countering Radicalization and Dealing with Violent Extremist and Terrorist Offenders in Prisons and Probation”, *op. cit.*, note 80, p. 21-22.

235 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *ibid.*, pp. 46-47.

236 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, Chapter V, para. 125.

237 See, for example, CPT, “Report to the Authorities of the Kingdom of the Netherlands on the Visits Carried Out to the Kingdom in Europe, Aruba, and the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”, 5 February 2008, para. 40.

238 Global Center on Cooperative Security and ICCT, “Correcting the Course: Advancing Juvenile Justice Principles for Children Convicted of Violent Extremism Offenses”, *op. cit.*, note 187, p. 14.

239 UN Havana Rules, *op. cit.*, note 86.

240 *Ibid.*, UN CRC, *op. cit.*, note 14, Article 3(1).

241 *Ibid.*, Article 37b.

242 *Ibid.*, note 14, Article 40, para. 3 (b) and (4). GC 24, para. 15-18, includes detail on “diversion”: Measures referring children away from the judicial system, any time prior to or during the relevant proceedings.

243 UN Committee on the Rights of the Child, “General Comment No. 24”, *op. cit.*, note 14, para. 100: “The Council also urged Member States to consider nonjudicial measures as alternatives to prosecution and detention that were focused on reintegration, and called on them to apply due process for all children detained for association with armed forces and armed groups”; GCTF, “Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism context”.

When separated from the general prison population, (suspected) violent extremist prisoners as well as, in some countries, those considered “at risk” of VERLT, are most often held in individual cells in the highest security or dedicated units/prisons. This often results in regimes where there is continuous monitoring, limited outdoor time, no or limited access to work and other activities, and limited meaningful human contact. Others who are kept among the general prison population are often subjected to restrictions not applied to the rest of the prison population. All face real risks of stigmatization, humiliation, discrimination and disproportionate or otherwise arbitrary restrictions concerning their detention conditions and treatment based on their “status”. As highlighted in section 2.1, they too often have limited or ineffective opportunities to challenge such restrictions. Their detention regime represents a high-risk situation for abuse, ill-treatment or even torture.

Solitary confinement

The UN Nelson Mandela Rules define solitary confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact”,²⁴⁴ and require it to be authorized by law, regardless of it being imposed as a disciplinary measure or to maintain order and security, and be subjected to independent review.²⁴⁵ The European Prison Rules (EPR) go even further, stating that, in all cases where a prisoner is separated from other prisoners (except separation for disciplinary purposes), they “shall be offered at least two hours of meaningful human contact a day”.²⁴⁶ Solitary confinement shall be used only in very exceptional cases as a last resort and for as short a time as possible, and it shall not be imposed by virtue of a prisoner’s sentence.²⁴⁷ In cases when isolation amounts to solitary confinement, the practice of automatically isolating individuals on the basis of their charges and offences is contrary to this prohibition, as set out in the UN Nelson Mandela Rules.²⁴⁸

There is well documented evidence that solitary confinement can have serious psychological and physiological effects on prisoners.²⁴⁹ Healthcare staff must not have any role in the

244 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 44. For more information on what constitutes “meaningful human contact”, see: ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 4, paras. 50-51.

245 UN Nelson Mandela Rules, *op. cit.*, note 13, Rules 37.d, 45.1. In fact, according to Rule 37(d), The following shall always be subject to authorization by law or by the regulation of the competent administrative authority: “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.”

246 “It follows from this provision that all prisoners who do not have access to such contact are being held in solitary confinement as defined in the UN Nelson Mandela Rules, and in breach of Rule 53A of the EPR. In this sense, the EPR actually *prohibit* solitary confinement (at least as defined by the UN Nelson Mandela Rules) for all purposes except disciplinary ones. For this reason, “separation” is used as a distinct term in Rule 53A.” <https://theartofcrime.gr/whats-new-in-the-2020-european-prison-rules-innovative-provisions-on-separation-solitary-confinement-and-other-prison-practices/>.

247 *Ibid.*, Rule 45; Basic Principles for the Treatment of Prisoners, *op. cit.*, note 125, Principle 7; EPR, *op. cit.*, note 123, Rule 60(6); IACHR, “Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas”, *op. cit.*, note 123, Principle XXII(3).

248 *Ibid.*, Rule 45.

249 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 4, para. 43-44.

imposition of disciplinary sanctions or other restrictive measures. However, they have to visit those held in involuntary separation daily 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.²⁵⁰

Solitary confinement is absolutely prohibited if indefinite or prolonged, defined as 15 days or more, as this amounts to ill-treatment or even torture.²⁵¹ It is also prohibited for prisoners with mental or physical disabilities when their condition would be exacerbated, for children,²⁵² for pregnant women, for women with infants and for breastfeeding women in detention.²⁵³ Disciplinary sanctions or restrictive measures, including solitary confinement, should not include the prohibition of family contact.²⁵⁴

Solitary confinement represents a high-risk situation for human rights abuses, where torture and other ill-treatment may go unnoticed and undetected, and has been found to have significant adverse effects on the mental and physical health and well-being of prisoners.²⁵⁵ According to the UN Special Rapporteur on Torture, solitary confinement amounts to torture or other ill-treatment "where the physical conditions of solitary confinement are so poor and the regime so strict that they lead to severe mental and physical pain or suffering of individuals who are subjected to [it]".²⁵⁶

The confinement conditions for detainees held separately in high-security or special units/prisons will in many cases constitute solitary confinement, or even indefinite and prolonged solitary confinement. In some OSCE participating States, (suspected) violent extremist prisoners are held in solitary confinement for an indefinite period of time, without regular reviews or reasons given for its prolongation.²⁵⁷ This constitutes indefinite solitary confinement, as the prisoner does not know when it will end.²⁵⁸

250 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 46; EPR, *op. cit.*, note 123, Rule 43.2-43.3.; ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *ibid.*, Chapter 4, para. 75.

251 According to Mandela Rule 44, "Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days." This prohibition extends to repetitive periods of isolation imposed in close succession.

252 UN Havana Rules, *op. cit.*, note 86, Rule 67; UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 45.2.

253 UN Bangkok Rules, *op. cit.*, note 79, Rule 22; UN Nelson Mandela Rules, *ibid.*, Rule 45.2. See also, UN Special Rapporteur on Torture, "Interim Report", A/66/268, 5 August 2011, para. 86; International Psychological Trauma Symposium, Istanbul, "Istanbul Statement on the Use and Effects of Solitary Confinement", 9 December 2007.

254 UN Nelson Mandela Rules, *ibid.*, Rule 43.3; UN Bangkok Rules, *ibid.*, Rule 23.

255 PRI and the APT, "Balancing Security and Dignity in Prisons: A Framework for Preventive Monitoring", *op. cit.*, note 135, p. 14.

256 UN Special Rapporteur on Torture, *op. cit.*, note 253, para. 74; Report of the UN Special Rapporteur on Torture, A/68/295, 9 August 2013, para. 60, "Prison regimes of solitary confinement often cause mental and physical suffering or humiliation that amounts to cruel, inhuman or degrading treatment or punishment. If 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 even amounts to torture."

257 Failure of a state to periodically review a prisoner's solitary confinement and give reasons for any decision to continue it could result in a violation of Article 3 ECHR: "Keeping detainees in isolation, without sufficient mental and physical stimulation, and without examining if there were concrete reasons for the prolonged application of that regime, was not necessary in order to ensure safety in prison." Violations have also been found for conditions of detention in solitary confinement and the regime for prolonged periods. See: *Öcalan vs Turkey*, or *Karwowski vs. Poland*.

258 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 4, paras. 54-55. See also: ECtHR jurisprudence on solitary confinement and violations of Article 3, prohibition of inhuman or degrading treatment.

In countries where there are few female detainees charged with or convicted of violent extremism or terrorism-related offences, women are sometimes placed in isolation to separate them from the other detainees. Equally concerning, in some countries with limited facilities for women, women are placed in the same special units as men and, as a result, submitted to even more severe confinement conditions to keep them physically separated from male prisoners.²⁵⁹ Such practices result in women being held in solitary confinement, usually prolonged, in contravention of the UN Nelson Mandela Rules and the absolute prohibition of torture or other ill-treatment.

At any one time there are likely to be a very small number of children in a facility charged with or convicted of violent extremism or terrorism-related offences. This makes separation from the general population more challenging, since they may be held in *de facto* solitary confinement and lack opportunities to mix with others. There is likely to be a strong rehabilitative effect of maintaining contact with other children, which suggests that segregation and separation may not be beneficial.

In a number of OSCE participating States, pre-trial detainees with terrorism- or violent extremism-related charges are kept together with sentenced prisoners and subjected to the same conditions of detention, including solitary confinement. This is contrary to the obligation to separate prisoners according to their legal status, age and gender.²⁶⁰ Solitary confinement in pre-trial detention may raise serious concerns over the presumption of innocence and the prohibition of torture, when the practice is intentionally used to obtain information or a confession, or if it is prolonged or indefinite. The UN Special Rapporteur on Torture has called for the end of its use in pre-trial detention as a control measure to segregate individuals, protect ongoing investigations and avoid detainee collusion.²⁶¹ Furthermore, regardless of the criminal charge, it must not be the general rule that those awaiting trial are detained in custody, but release may be subject to guarantees to appear at trial, for example.²⁶²

Even below the threshold of solitary confinement, detention conditions may be of such severity that they raise concerns in relation to the dignified treatment of prisoners. In any event, prison administrations should take the necessary measures to alleviate the potential detrimental effects to prisoners who are or have been separated by providing alternative social contacts and enabling these prisoners to participate in work, educational and

259 Amnesty International and Open Society Justice Initiative, “Inhuman and Unnecessary Human Rights Violations in Dutch High-Security Prisons in the Context of Counter Terrorism”, *op. cit.*, note 106, p. 11.

260 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 11. See also, ICCPR, *op. cit.*, note 85, Article 10(2).

261 Report of the UN Special Rapporteur on Torture), A/66/268, *op. cit.*, note 256, para. 73 and 85. See also Amnesty International and Open Society Justice Initiative, “Inhuman and Unnecessary Human Rights Violations in Dutch High-Security Prisons in the Context of Counter Terrorism”, *op. cit.*, note 106, p. 36.

262 ICCPR, *op. cit.*, note 85, Article 9(3).

recreational activities.²⁶³ The longer a prisoner is separated from other prisoners, the more steps need to be taken to mitigate the negative effects of their separation by maximizing their contact with others.²⁶⁴

The UN Special Rapporteur on Torture found solitary confinement to be contrary to one of the essential aims of prison systems, which is to rehabilitate people in prison and facilitate their reintegration into society.²⁶⁵ In the case of prisoners convicted of terrorism- and violent extremism-related offences, solitary confinement undermines efforts to disengage from VERLT, due to the severe effect of solitary confinement on mental health and the fact that prisoners in solitary confinement will have limited access to diverse activities. (See 2.3 on risks of limited access to activities).²⁶⁶



263 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 38.2. See also the recommendations made by the Norwegian NPM regarding compensatory measures to counteract the harmful effects of isolation: Based on its observations and international standards, the Norwegian NPM concluded that “the prison should consider introducing further measures to compensate for the strict security measures, not least to prevent harmful effects of isolation”. It mentioned the option to extend the possibility of receiving visits and the periods of planned social contact between the detainee and staff, as the current system, while allowing some conversations, remains fragile. The NPM encouraged the prison authorities to explore other options “whereby it can be ensured that such contact stimulates both social and physical activity together with staff”. It further recommended to “consider alternatives to the concrete exercise yard for spending time outdoors”, as the current setting “does not give a satisfactory feeling of being out in the open”.

264 Council of Europe, “Revised Rules and Commentary to Recommendation CM/REC(2006)2 of the Committee of Ministers to Member States on the European Prison Rules”, 8 October 2018, Rule 53A, p. 45.

265 Report of the UN Special Rapporteur on Torture, A/66/268, *op. cit.*, note 258, para. 79.

266 For more information on the regulation of solitary confinement, further limitations, additional safeguards and the role of healthcare personnel in the imposition of disciplinary sanctions, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 4, paras. 42-88.

The harmful effects of isolation in the context of COVID-19 and other infectious diseases

Isolation experienced by (suspected) violent extremist prisoners has been exacerbated by state responses to the COVID-19 pandemic. States have introduced many new measures in places of deprivation of liberty to prevent or respond to COVID-19 outbreaks, which has resulted in different types of “lockdowns”, “quarantines” or “isolation” for people in detention. This may lead to solitary confinement or even prolonged solitary confinement.²⁶⁷ Temporary quarantine or medical isolation for those (suspected to be) infected may, indeed, be a necessary precaution to stop the spread of COVID-19 in prisons.²⁶⁸ But the conditions, even if the person is placed in cells or areas that are used for solitary confinement, should not resemble solitary confinement, and detainees must have access to meaningful human contact every day.²⁶⁹

Even if people in prison are not placed in isolation or quarantine, prisons across the region have suspended visits from family, friends and lawyers, as well as social, professional and religious activities, and this has greatly reduced detainees’ interaction with the outside world and time spent out of the cell. This leads to experiences of isolation that can have a harmful effect on the psychological health and well-being of prisoners, including (suspected) violent extremist prisoners.²⁷⁰ Isolation can have particularly serious consequences for people in situations of vulnerability, such as people with mental health conditions, children, women or those with psychosocial disabilities.²⁷¹ Contact with the outside world is a key safeguard against torture and provides opportunities for reporting ill-treatment²⁷² and, therefore, any limitations on contact with the outside world must be compensated for using alternative methods of communication.²⁷³

Where possible and in line with the “do no harm” principle, detention monitors are advised

267 PRI, “Preventing Harm and Human Rights Violations in Criminal Justice Systems”, PRI Briefing Note, 2020, pp. 14-19.

268 Consider UN Nelson Mandela Rule, 24.2: “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.” See also section 2.2, “Healthcare provisions.”

269 For a detailed analysis of the difference between medical isolation and solitary confinement, see: AMEND, “The Ethical Use of Medical Isolation – Not Solitary Confinement – to Reduce COVID-19 Transmission in Correctional Settings,” 9 April 2020; ODIHR and APT, *Guidance on Monitoring Places of Detention through the COVID-19 Pandemic*, (Warsaw: ODIHR & APT, 2020), p. 26-27; CPT, “Statement of Principles relating to the treatment of persons deprived of their liberty”, 20 March 2020, Principle 8; SPT, “Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic”, 25 March 2020, para. 14.

270 UN Special Rapporteur on the Right of Everyone to the Highest Attainable Standard of Physical and Mental Health, A/HRC/38/36, 2018, para. 91; ODIHR, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, (Warsaw: ODIHR, 2020), pp. 102-103.

271 See: Global Initiative on Justice with Children and others (PRI), “Operational Guidelines for Professionals on Children in Conflict with the Law During COVID-19”; Olivia Rope (PRI), “Coronavirus and Women in Detention: A Gender-Specific Approach Missing”.

272 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 5, para. 13-15.

273 CPT, “Statement of Principles Relating to the Treatment of Persons Deprived of Their Liberty”, *op. cit.*, note 269, Principle 7; SPT, “Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic”, *op. cit.*, note 269, para. 11.

to continue to carry out independent monitoring of places of detention through the COVID-19 pandemic, considering the importance of external oversight in the prevention of torture and other ill-treatment.²⁷⁴ Interviewing particularly those detainees who have been in isolation or quarantine areas in prison is an effective way of gathering information from those with first-hand experience.²⁷⁵ This can allow monitors to identify how isolation or quarantine was implemented and the procedures and safeguards in place. Further advice on monitoring during the COVID-19 pandemic can be found in the ODIHR and APT guidance.²⁷⁶



274 CPT, “Statement of Principles Relating to the Treatment of Persons Deprived of Their Liberty”, *ibid.*, Principle 10; SPT, “Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic”, *ibid.*, section IV, para. 11. See also: “ODIHR and APT, *Guidance on Monitoring Places of Detention through the COVID-19 Pandemic*”, *op. cit.*, note 269.

275 ODIHR and APT, *Guidance on Monitoring Places of Detention through the COVID-19 Pandemic*, *ibid.*, p. 13.

276 *Ibid.*

Instruments of restraint, use of force and transfers

Levels of violence in prisons are increasing globally, often due to overcrowding, to the excessive use of solitary confinement, leading to mental and physical damage, and to other institutional problems.²⁷⁷ As is the case with other groups of detainees, some detainees engaged in VERLT may present high security risks for other prisoners and for prison staff. This is demonstrated by reported cases of violent clashes between staff members and prisoners convicted of terrorism-related offences.²⁷⁸ In order to maintain order and security, prison staff may have to resort to force or physical means of restraint.²⁷⁹ Force must only be used as a measure of last resort, however, in accordance with the principles of legality, necessity and proportionality.²⁸⁰

The UN Nelson Mandela Rules stipulate that the use of instruments of restraint must be authorized by law and applied in exceptional circumstances only, as a measure of last resort when other methods have failed to either prevent an escape during transfer or to prevent a prisoner from injuring themselves or others or to prevent them from damaging property. The least intrusive method of restraint should be used, only for the time period required, and should be removed as soon as the risk ceases. Restraints should never be used as a disciplinary measure.²⁸¹ On children, restraints can only be used in strictly exceptional, specified cases only,²⁸² and their use is forbidden on women during labour, during birth and immediately after birth.²⁸³ Instruments of restraint that are “inherently degrading or painful”, such as chains and irons, are explicitly prohibited under international

277 PRI & Thailand Institute of Justice, *Global Prison Trends 2020*, (London: PRI, 2020), p. 35: The UN reported in 2019 that violent, excessive and illegal use of force by officials is one of the main causes of serious injury and death in situations of deprivation of liberty. Across the OSCE region since the start of the COVID-19 pandemic, there have been hunger strikes and prison protests or riots as expressions of anger against the suspension of visits (and conditions of detention). In some contexts, the suppression of riots has resulted in alleged excessive use of force by law enforcement officials, the use of solitary confinement as a punishment and accusations of torture or ill-treatment. See: ODIHR, OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic, *op. cit.*, note 270, pp. 102-103.

278 For example, three attacks against prison guards by prisoners convicted for terrorism-related offences took place in different French prisons in January 2018, see: Aurelien Breeden, “Striking French Prison Guards, Sand Firm, Citing Safety and Pay”, *Nytimes.com*, 22 January 2018; Basra and Neumann, *Prisons and Terrorism: Extremist Offender Management in 10 European Countries*, *op. cit.*, note 51, pp. 15-22. Jean-Baptiste Jacquin and Elise Vincent, “Prison de Condé-sur-Sarthe : le détenu qui a blessé deux surveillants maîtrisé par le RAID, sa femme tuée”, *Le Monde*, 5 May 2019; “Dozens killed in riot at Tajikistan prison holding Isis militants”, *The Guardian*, 20 May 2019 ; “At Least 50 Inmates Were Killed In Tajik Prison Riot, Sources Say”, *RFERL*, 13 November 2018.

279 For a comprehensive analysis of relevant standards, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 3, paras. 02-40. See also, PRI and APT, “Detention Monitoring Tool –Addressing Risk Factors to Prevent Torture and Ill-Treatment”, 2013.

280 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.” UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 15, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 3, para. 41-67.

281 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 43.2.

282 UN Havana Rules, *op. cit.*, note 86, Rule 64.

283 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 48.2; UN Bangkok Rules, *op. cit.*, note 79, Rule 24.

law.²⁸⁴ This prohibition derives from the general prohibition of torture and other forms of ill-treatment. Less invasive means of restraint may, nevertheless, be humiliating and painful. When used to deliberately inflict pain or suffering, their application constitutes torture.²⁸⁵

Importantly, any decision to resort to instruments of restraint should be based on an individual assessment of the risk, and not applied in a routine manner.²⁸⁶ The nature of the offence an individual is accused or convicted of, does not, in itself, justify resorting to such means. The use of chains and padlocks, rather than handcuffs, to restrain individuals has been observed in some high-security units in the OSCE region, despite the prohibition of this practice.²⁸⁷ Similarly, detainees considered “vulnerable” to VERLT should not be subjected to more severe means of restraint than others on the sole basis of presumptions about their dangerousness due to this perceived vulnerability. Disproportionate and unjustified humiliation and pain caused by these instruments of restraint may also be exploited by leaders and recruiters of violent extremist groups in prisons. Any time a restraint is used, the process must be properly supervised and recorded in the prisoners file-management system. 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.²⁸⁸

Individual risk assessment should similarly guide any decision to use instruments of restraint during a transfer. The necessity of transferring a detainee should be carefully evaluated against the individual risk that they may pose in terms, for example, of recruitment and group forming.²⁸⁹ Transfers may disrupt efforts of reintegration and disengagement from VERLT or, in some cases, of establishing trust with prison staff.²⁹⁰ In a number of countries, prisoners convicted of violent extremism-related offences are frequently transferred on security grounds, or to accommodate them in new facilities that are established for “high-risk” prisoners or dedicated for prisoners accused or convicted of terrorism or violent extremism-related offences, or for those deemed “at risk of VERLT” (including within the same prison).²⁹¹

While transfers are sometimes necessary and beneficial for the prisoner, there are cases where transfers are problematic, for instance, when resulting in detainees’ limited access to family²⁹² or contacts they have established in a specific facility. UN Nelson Mandela Rule 59 explicitly stipulates that prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation. The SPT has noted

284 UN Nelson Mandela Rules, *op. cit.*, note 13, Rules 47-49.

285 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 3, para. 5.

286 PRI and the APT, “Balancing Security and Dignity in Prisons: A Framework for Preventive Monitoring”, *op. cit.*, note 135, p. 11.

287 CPT, “Report to the Czech Government on the Visit to the Czech Republic Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 11 October 2018”, *CPT/Inf (2019) 23*, para. 72.

288 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 8 (c&d).

289 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, para. 129.

290 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 53.

291 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, p. 36. UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 53.

292 See for example, Amnesty International, “Russian Federation: Prison transportation in Russia – Travelling into the Unknown”, A25 October 2017, pp. 13-14.

the worrying occurrence that those prisoners accused or convicted of acts of terrorism “are systematically transferred to detention centres far from their families.”²⁹³ The CPT has continuously warned against the very harmful effects of transfers on access to family and to lawyers, as well as on the mental and physical well-being of detainees, and stated that “the overall effect on the prisoner of successive transfers could under certain circumstances amount to inhuman and degrading treatment”.²⁹⁴

Body and cell searches

Body and cell searches can be necessary to ensure the security of the prison and are a tool employed to protect the safety of all those within the facility, including staff members.²⁹⁵ Searches must be well regulated and monitored, however, as they can sometimes be used as tools to harass, intimidate or punish particular prisoners. All searches must be based on the principle of legality, strict necessity and proportionality, and must be conducted in a way that respects human dignity and privacy. Strict necessity and proportionality mean that the frequency of searches must be limited, and that the method used should be the least intrusive necessary to attain the security objectives.²⁹⁶ In particular, the decision to use intrusive search methods 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.

Cell searches include inspecting a detainee’s cell or other area, for example, when looking for contraband items. Cell searches invade the personal space and privacy of prisoners and also bear a risk of ill-treatment if proper safeguards are not in place. When conducting searches of a prisoner’s cell or belongings, staff should bear in mind that the cell is the only “private” space of someone detained, and that their belongings may hold particular importance to them. In women’s facilities, male staff need to be accompanied by female staff for cell searches.²⁹⁷ As part of the decision-making process, 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.²⁹⁸ A suspicion that someone may be in the process of adopting radical or extreme views, as such, does not justify cell searches as long as there is no real risk to the safety and security of the facility or another compelling reason.

Body searches, in particular, can be humiliating, distressing and traumatic, especially for women and if the prisoners have previously experienced sexual or gender-based violence.

293 SPT, Visit to Spain, undertaken from 15 to 26 October 2017: Observations and Recommendations Addressed to the State Party, CAT/OP/ESP/1, 2 October 2019, para. 40.

294 Council of Europe: Committee for the Prevention of Torture, “The CPT standards”, 8 March 2011, CPT/Inf/E (2002) 1 - Rev. 2010, p. 18, para. 57.

295 In addition to cell searches, there are generally three main types of body searches: pat down or frisk searches (performed over clothing), and strip searches and body cavity searches, both of which are considered as intrusive searches. For a detailed overview of the different types of searches, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 2, para. 9.

296 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 50 and 52.1.

297 *Ibid.*, Rule 81 (2).

298 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 2, para. 23.

Body searches can also be particularly distressing for prisoners of particular religious or cultural backgrounds.²⁹⁹ In some countries, there have been reports of body searches, including strip searches, in separated units or high-security settings being conducted routinely and in a systematic way “for security purposes” upon admission, and also prior to and after each visit from outsiders, meeting with lawyers, court hearing, participation in activities, religious practice or transfers, including for medical treatment.³⁰⁰ In these cases, there is no individualized assessment of risks to ensure that a body search is necessary and proportionate, as required by the UN Nelson Mandela Rules. Body searches (and also cell searches) that are conducted on a routine basis, too frequently, or in a systematic or collective way on all detainees are arbitrary measures, and may in themselves constitute humiliating or degrading treatment.³⁰¹ Effective means for prisoners to challenge such routine measures are often limited.³⁰²

The systematic nature and frequency of body searches may also impede prisoners’ contact with their family and lawyers or their participation in meaningful activities, as some prisoners renounce such visits and activities in order to avoid being subjected to body searches. This practice can, therefore, also lead to infringements upon their right to private and family life and a fair trial. It may also increase the risk of harmful effects from isolation for these detainees that are detained under security regimes where the activity level and possibility of human contact are already very restricted.³⁰³

Contact with the outside world

For a number of reasons, contact with the outside world is important for all detainees. First, contact with the outside world is a key safeguard against human rights abuses,

299 *Ibid.*, Chapter 2, paras. 6 and 7. To ensure respect of human dignity and privacy intrusive body searches, such as strip searches, must be conducted, for example, by a prison staff member of the same sex and in two stages, so that not all clothes are removed at the same time. See for instance, the CPT’s report on the 2016 visit to the Netherlands (CPT/Inf (2017) 1, para. 76.

300 UN Committee against Torture, “Concluding Observations on the Seventh Periodic Report of the Netherlands” *op. cit.*, note 202, para. 28: It is particularly concerned about reports of prolonged solitary confinement in the TA units. It is also concerned about reports of the frequent and routine use of full-nudity body searches which occur after, and sometimes also prior to, a detainee meeting in person with outside visitors, including close family members and children, as well as when detainees leave the prison for court or police hearings.

301 For information on different scenarios where body searches can constitute torture or other ill-treatment see: ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 2.

302 Based on NGO, NPM and CPT reports on practices in the Dutch TA, French “dedicated units” and the highest security settings in the Czech Republic, Norway and Poland. See Amnesty International and Open Society Justice Initiative, “Inhuman and Unnecessary Human Rights Violations in Dutch High-Security Prisons in the Context of Counter Terrorism”, *op. cit.*, note 106, pp. 39-46, “Radicalisation islamiste en milieu carcéral: les unités dédiées ouvertes en 2016”, CGLPL, *op. cit.*, note 108; Public Defender of Rights-Ombudsm, Czech Republic, “Report on Systematic Visits Carried Out by the Public Defender of Rights”, an, 2016, pp. 43-44; The Parliamentary Ombudsman Norway – NPM “Visit report: Telemark Prison, Skien branch, 2-4 June 2015”, *op. cit.*, note 226, pp. 16-17; “Report of the Polish Commissioner for Human Rights on the Activities of the National Mechanism for the Prevention of Torture in 2016”, Polish Commissioner for Human Rights, Warsaw, 2017, pp. 26-27; Rapport au Gouvernement de la République française, CPT/Inf (2017) 7, *op. cit.*, note XXX.

303 “The Parliamentary Ombudsman Norway – NPM , “Visit report: Telemark Prison, Skien Branch, 2-4 June 2015”, *ibid.*, p. 17.

in particular enforced disappearance, torture and other ill-treatment.³⁰⁴ Second, such contacts may support efforts to disengage from VERLT, as alternative voices can be beneficial in challenging perceptions.³⁰⁵ Furthermore, for reintegration purposes, those detained need support networks. For those detainees who are parents, their mental well-being may be severely impacted by the separation from their children. Similarly for children, maintaining contacts with their parents is crucial, should that be in their best interests.³⁰⁶ As a general rule, prisoners should be allowed, “under necessary supervision”, to communicate (through visits, phone calls and correspondence) with their families and friends at regular intervals.³⁰⁷ Visits are a right, not a privilege that can be removed as a disciplinary measure.³⁰⁸

Decisions on the extent and nature of contact with family and friends may be complex in the VERLT context. They revolve around the questions of whether prisoners may use such contacts to continue their active involvement in violent extremist and terrorist groups, and also whether such contact may be detrimental to prisoners on the path to disengagement when families and friends are themselves supporting or are involved in VERLT. Nevertheless, major concerns arise when contacts are restricted due to concerns over an individual’s radicalization to violence. Restrictions that are automatically applied as a matter of routine without proper individual assessment of their necessity and proportionality are impermissible.³⁰⁹ Crucially, regardless of the security classification of a prisoner, visit entitlements should be carried out according to risks associated with the specific visits (on a case-by-case basis).³¹⁰

The number of high-security or dedicated facilities that can house (suspected) violent extremist prisoners is often limited and/or geographically concentrated in a given country, which may further impede prisoners’ contacts with families. This could have a particularly isolating effect on people in situations of vulnerability and those with specific needs, such as children, foreign nationals and women.³¹¹ Importantly, language restrictions should not lead to restrictions on communication with the outside world.³¹²

Access to and contact with detainees concentrated in specific units for (suspected) violent extremist prisoners differ greatly across the OSCE region. Some are allowed to receive visitors in the same conditions as the general prison population and may benefit from longer visits to compensate for their lack of frequency due to the location of the facilities. They are allowed access to a phone and, in most cases, have phone conversations in

304 APT, *Yes, Torture Prevention Works: Insights from a Global Research Study on 30 Years of Torture Prevention*, (Geneva: APT, 2016), p. 17.

305 For more information on the different types of prison visits, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 5, Context Box 5.2.

306 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, paras. 148-150.

307 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 58.

308 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 43(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.

309 Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, *op. cit.*, note 56, Guideline 3.

310 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 5, para. 32-35.

311 *Ibid.*, Chapter 1, para. 103-115.

312 This is particularly important in the case of foreign nationals. 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. ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 5, para. 84.

full confidentiality, although some may be prevented by the magistrate in charge of their case to call family members.³¹³ In other countries, the frequency and duration of visits and phone calls with families and friends are restricted, monitored in sight and hearing, or even recorded.³¹⁴

Where (suspected) violent extremist prisoners are subjected to constant surveillance and not permitted to have un-monitored visits, which, for example, also makes conjugal visits impossible, this can have profound detrimental impact on their family relations.³¹⁵ The review and censoring of incoming and outgoing written correspondence also appear to be a common feature of stricter detention regimes.³¹⁶ These various restrictions are also compounded in certain cases by lengthy and strict approval procedures that impede or delay prisoners' contacts with the outside world, particularly in the early weeks of detention. Even when such contacts are allowed, there are reports that some prisoners refrain from communicating and meeting with families to avoid having to subject them to screening, monitoring and other security procedures,³¹⁷ in particular if these include invasive body searches. Restrictions on physical contact can also result in parents not being able to touch or hold their children³¹⁸ – of particular concern when such restrictions are not based on individualized risk assessments.

Privileged lawyer-client relationship

International human rights standards protect the right of all detainees, including pre-trial detainees, to be provided with adequate opportunities, time and facilities to receive visits from and communicate and consult with a legal adviser of their own choice, without delay,

313 This is, for instance, the case in most of the five “dedicated units” put in place in France to house prisoners accused or convicted of terrorism- and violent extremism-related offences. See “Radicalisation islamiste en milieu carcéral: les unités dédiées ouvertes en 2016”, *op. cit.*, note 108.

314 Report of the UN Special Rapporteur on Counter-Terrorism, Visit to Kazakhstan, *op. cit.*, note 108: “36. In Taldykorgan prison, the Special Rapporteur visited parts of the prison and met with a number of prisoners charged with a variety of offences related to terrorism and extremism. The prisoners visited were held in a specific prison wing.(...) Only some of the prisoners had family visits during the period of their stay, the length of which in some cases was extensive. All were equally distressed at the absence of consistent, regular and sufficiently long visits, which affected their familial and parental relationships”; Report to the Italian Government on the Visit to Italy Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 22 March 2019: “48 (...) The special regime consists of the segregation in small groups of up to a maximum of four persons, who can associate together for two hours per day (generally one hour of outdoor exercise and one hour in a community room). Serious limitations are imposed on prisoners' contact with the outside world: one one-hour visit per month with a family member, under closed conditions and with audio surveillance and video-recording or, alternatively, a ten-minute telephone call per month if a visit cannot take place during the same period.”

315 These are limitations observed in the TA in the Netherlands, see: Amnesty International and Open Society Justice Initiative, “Inhuman and Unnecessary Human Rights Violations in Dutch High-Security Prisons in the Context of Counter Terrorism”, *op. cit.*, note 106, pp. 47-48, 51.

316 Such observations were made both in relation to the French “dedicated units” and the Dutch TA. See “Radicalisation islamiste en milieu carcéral: les unités dédiées ouvertes en 2016”, *op. cit.*, note 108; Amnesty International and Open Society Justice Initiative, “Inhuman and Unnecessary Human Rights Violations in Dutch High-Security Prisons in the Context of Counter Terrorism”, *op. cit.*, note 106, p. 47.

317 Amnesty International and Open Society Justice Initiative, “Inhuman and Unnecessary Human Rights Violations in Dutch High-Security Prisons in the Context of Counter Terrorism”, *ibid.*, p. 48.

318 *Ibid.*, p. 42-43.

interception or censorship, and in full confidentiality, from the outset and during the whole detention.³¹⁹ All individuals detained should also have access to effective legal aid without payment if they do not have sufficient means to pay.³²⁰ Effective legal representation is a key safeguard to the right to fair trial, as well as against human rights abuses, in particular in pre-trial detention, and has a strong deterrent effect on the use of torture and other forms of ill-treatment.³²¹ Additional standards foresee the right of children to benefit from age-appropriate legal aid³²² and the right of foreigners to consular assistance and interpretation services, if needed.³²³

Confidentiality of the lawyer-client relationship includes that meetings should be out of hearing of prison staff (though they may be within sight), phone calls should not be monitored, correspondence should not be opened or censored, and detainees should be allowed to have access to and keep with them materials related to their legal proceedings.³²⁴ Any restrictions of the right to consult, meet and communicate with a lawyer in full confidentiality should remain exceptional, be ordered by a judicial authority and be decided on a case-by-case basis.³²⁵ Whenever, in exceptional cases, access to a specific lawyer is denied on the grounds that they are allegedly being used as a means of transmitting instructions linked to terrorist or other criminal activities, access to another independent lawyer must be guaranteed.³²⁶

Even the suspicion on the part of detainees held in dedicated units for (suspected) violent extremist prisoners that they are subject to surveillance and the mere risk of prison staff hearing communications between detainees and their lawyers is of concern.³²⁷ This inhibits the maintenance of a lawyer-client relationship and may result in detainees censoring themselves, at the expense of their defence. In some cases, those held in separate dedicated units or in high-security settings have had to meet their lawyers through a glass partition.³²⁸ This situation inevitably leads to the involvement of prison staff in the exchange of documents and may result in these officers over-hearing conversations or glancing at documents, contrary to the principle of confidentiality.

319 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 61.

320 *Ibid.*, Rules 61 and 119 (2).

321 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 5, para. 96; APT, *Yes, Torture Prevention Works*, *op. cit.*, note 304, p. 17.

322 UN CRC, *op. cit.*, note 14, Article 37; UN Havana Rules, *op. cit.*, note 86, Rule 18; UN Beijing Rules, *op. cit.*, note 126, Rule 15.

323 UN Nelson Mandela Rules, *op. cit.*, note 13, Rules 61.2, 62.

324 *Ibid.*, Rules 52 and 61 and 120.

325 For further information on confidentiality of lawyer-client communication and violations of Article 8 ECHR, see ECtHR, “[Factsheet - Legal professional privilege](#)”, November 2019; regarding data collection through surveillance, see ECtHR, “[Factsheet – Personal Data Protection](#)”, March 2021, specifically *R.E. v. the United Kingdom* (no. 62498/11).

326 “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) from 28 to 29 April 2016”, *CPT/Inf (2018) 11*, para. 15; 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) from 6 to 17 May 2019, *CPT/Inf (2020) 24*, para. 50.

327 Amnesty International and Open Society Justice Initiative, “Inhuman and Unnecessary Human Rights Violations in Dutch High-Security Prisons in the Context of Counter Terrorism”, *op. cit.*, note 106, p. 50.

328 See, for example: “2016 Annual Report of the Office of the Ombudsman as National Preventive Mechanism”, Bulgaria, 2016, p. 33; *ibid.*, p. 50.

Healthcare provisions

All those in detention are entitled to the highest attainable standard of health, and the healthcare they receive in detention should be of the same standard as that in the outside community.³²⁹ The UN Nelson Mandela Rules state explicitly that all medical ethics are applicable in prison healthcare provision. The Rules also reiterate the absolute prohibition of torture or other ill-treatment by healthcare staff and their obligation to document and report cases they become aware of.³³⁰ There are concerns that (suspected) violent extremist prisoners are not always afforded the same quality of medical care as others, on discriminatory grounds or because of the (presumed) security risks posed. Due to their specific health-care needs, such policies may affect women disproportionately. The same may affect others who have specific (and in many cases greater) medical needs.³³¹

The UN Nelson Mandela Rules provide for full confidentiality of medical examinations, files³³² and medical information, unless this would result in a real and imminent threat to the patient or to others.³³³ Failure to observe this rule may undermine trust between healthcare professionals and prisoners.³³⁴

Reported practices regarding (suspected) violent extremist prisoners or high-security prisoners have included the presence of prison staff (including of the opposite sex) in the room where medical examinations took place³³⁵ or the visual monitoring (without hearing) of

329 UN Nelson Mandela Rules, *op. cit.*, note 13, Rules 24-25, 27; 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; UN General Assembly, Resolution 37/194, “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,” 18 December 1982, Principle 1.

330 For detailed information on healthcare in prisons, advisory duties of healthcare personnel, documenting and reporting signs of torture, ethical and professional standards and medical files, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 6.

331 One example was given by the French NPM, who reported that a woman in a temporary detention facility at Fleury-Mérogis, admitted on terrorist offences, gave birth in an extremely strained atmosphere, including between the medical and prison teams, particularly because of the security conditions that were deemed necessary to apply around her: « Le Contrôleur general des lieux de privation de liberté: Annual report 2017 », p. 89.

332 UN Nelson Mandela Rules, *op. cit.*, note 13, Rules 31 and 26.

333 *Ibid.*, Rule 32.1.c. 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. Detailed and accurate medical files are essential for ensuring continuity of treatment, including in cases where prisoners are transferred and released, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 6, paras. 123-125.

334 See also 2.3 on the misuse of rehabilitation and reintegration programmes for intelligence gathering.

335 Report to the Italian Government on the visit to Italy Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 to 22 March 2019, para. 56 and: “75. Once again, the CPT’s delegation found that there was a total lack of confidentiality of medical consultations of prisoners in all the establishments visited. As mentioned in paragraph 14, several inmates who had been victims of alleged ill-treatment told the delegation that the presence of prison officers during their medical examinations discouraged them from recounting what had actually happened. At the same time, several prison officers told the delegation that they believed that it was an integral part of their work to protect health-care staff from potential aggression by inmates.”

examinations by prison staff in a separate room.³³⁶ Such situations may result in prisoners feeling uncomfortable with sharing medical and private information with medical staff and stop them from doing so. It is, therefore, contrary to the principle of confidentiality and may also undermine the right of prisoners to the highest attainable standard of physical and mental health.³³⁷ While some security measures may be necessary and justifiable, the CPT has stressed that all medical examinations should take place out of the hearing and, unless requested otherwise by the medical personnel concerned, out of sight of prison staff.³³⁸ Certain (suspected) violent extremist prisoners may also have specific healthcare needs that may hamper their rehabilitation and should be given appropriate attention. It is important, for example, to ensure that psychologists are available with trauma-informed training for children or that prison health services are responsive to women exposed to different forms of sexual and gender-based violence.³³⁹

In some contexts, individuals with underlying medical conditions convicted of terrorism offences have been excluded from early release measures brought in due to the COVID-19 pandemic, despite the high risk they face from contracting infectious diseases in overcrowded detention conditions.³⁴⁰ It has also been reported that there is a lack of adequate medical care in other contexts, in violation of international human rights standards.³⁴¹ Failing to protect those deprived of liberty from a serious disease as a result of a lack of precaution or due diligence may amount to ill-treatment, or even torture.³⁴²

Requests and complaint mechanisms

All detainees must be able to make requests and complaints.³⁴³ There must be an adequate complaint mechanism in place so that prisoners can 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.”³⁴⁴ The SPT, for example, has expressed concern that requests and complaints from prisoners convicted on terrorism charges must be put in unsealed envelopes.³⁴⁵ The CAT has also noted concerns about a lack of effective complaint mechanisms or,

336 Based on NGO and NPM reports on the Netherlands and Norway. See Amnesty International and Open Society Justice Initiative, “Inhuman and Unnecessary Human Rights Violations in Dutch High-Security Prisons in the Context of Counter Terrorism”, *op. cit.*, note 106, p. 49; “The Parliamentary Ombudsman Norway – NPM “Visit report: Telemark Prison, Skien branch, 2-4 June 2015”, *op. cit.*, note 226, pp. 21-22.

337 UN ICESCR, *op. cit.*, note 120, Article 12(1).

338 CPT 3rd General Report (CPT/Inf [93] 12, para. 51).

339 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 25.1. Report of the UN Special Rapporteur on Torture, A/HRC/28/68, 5 March 2015, para. 85(d); Report of the UN Special Rapporteur on Torture, A/HRC/31/57, 5 January 2016, para. 25. See also: ODIHR, Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework, *op. cit.*, note 23, pp. 64-67 and 68-72.

340 Human Rights Watch, “Turkey: COVID-19 Puts Sick Prisoners at Grave Risk”, 3 April 2020.

341 Forum18, “TAJIKISTAN”, *op. cit.*, note 163; UN Committee against Torture, “Concluding Observations on the Third Periodic Report of Tajikistan”, CAT/C/TJK/CO/3, 18 June 2018, para. 34.

342 ODIHR and APT, Guidance on Monitoring Places of Detention through the COVID-19 Pandemic”, *op. cit.*, note 269, p. 4.

343 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 56 & 57.

344 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para. 139.

345 SPT, “Visit to Spain Undertaken from 15 to 26 October 2017: Observations and Recommendations Addressed to the State Party”, *op. cit.*, note 293, para. 33.

indeed, of data on complaints received in special detention units for people suspected or convicted of terrorist offenses.³⁴⁶ Effective complaints mechanisms are a crucial way to prevent torture and other ill-treatment and other misconduct, as perpetrators will more likely be deterred if they know that victims can report safely.³⁴⁷ Furthermore, if prisoners believe their concerns are being dealt with quickly and satisfactorily, they will be less likely to perceive conditions of detention as unfair or discriminatory. This will, in turn, lower tensions in the prison and improve staff-prisoner relations.³⁴⁸

Special procedures must be applied to deal with allegations of torture or other ill-treatment of prisoners. They must be dealt with immediately and result in a prompt and impartial investigation, conducted by an independent national authority, 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.³⁴⁹



346 UN Committee against Torture, “Concluding Observations on the Seventh Periodic Report of the Netherlands” *op. cit.*, note 202, para. 28.

347 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para. 134.

348 *Ibid.*, Chapter 1, para. 131.

349 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 57 (3); see also ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, paras. 161-162 and Chapter 3, paras. 68-101.

Summary of human rights risk area 2: The prison regime

- (Suspected) violent extremist prisoners must be provided with general living conditions – including in relation to nutrition, water, access to open air, physical exercise and adequate personal space – that all prisoners are entitled to, without exception.³⁵⁰
- (Suspected) violent extremist prisoners often face more stringent control measures than other prisoners. These must not result in human rights violations, including torture or other ill-treatment (including prolonged or indefinite solitary confinement) or inadequate healthcare provision.
- Security regimes that lead to the separation of prisoners from the general prison population generally constitute a higher risk situation of ill-treatment and torture.
- All restrictions must be based in law, strictly necessary, proportionate and non-discriminatory. This also applies to use of force and instruments of restraint, disciplinary measures, transfers, body and cell searches, limitations on prisoners' right to family life, limitations to consult, meet and communicate with a lawyer in full confidentiality and on medical confidentiality, as well as surveillance or other interferences on the right to privacy.
- The arbitrary, discriminatory or systematic imposition of strict security regimes in the absence of individual risk and needs assessments is contrary to international human rights standards.

350 See also section 1.2, Factors conducive to VERLT.

Questions for monitors: The prison regime

While it is for the national prison administration to determine the most suitable placement approach, detention monitors have a key role to play by shedding light on the human rights concerns that different placement options may pose. Questions that help monitoring bodies explore the issue may include the following:

- Do the conditions of detention amount to ill-treatment or even torture? Consider the conditions in solitary confinement (including indefinite and prolonged solitary confinement), overcrowding, denial of contact with the outside world, etc. Consider also the daily out-of-cell time allowed, as well as the nature/quality and frequency of human contact, paying attention to the cumulative impact of security measures that, taken together, could represent human rights violations.
- Is the use of solitary confinement monitored, documented and regularly reviewed by prison administrations and internal and external monitoring bodies, and in line with established international standards? Do those affected have an effective right to challenge decisions to impose or extend solitary confinement before an independent mechanism?
- Does the use of solitary confinement appear discriminatory towards certain individuals and groups? How is its use documented in individual prisoner files?³⁵¹
- Do those in solitary confinement receive a daily visit from health-care personnel? Are such visits' purpose clear, and fulfilled (i.e., the visits must not be used to “condon[e] or legitimiz[e] a decision to put or to keep a prisoner in solitary confinement”)?³⁵²
- Is any decision around isolation, quarantine or confinement on the grounds of medical reasons (for instance in the context of COVID-19) made and reviewed regularly by healthcare staff, based on the most recent scientific advice?
- Are measures in place to mitigate the impact of any isolation?
- Are the conditions and modalities of security related practices necessary, proportionate and non-discriminatory, and based on an individual assessment of risks (use of force and instruments of restraint,³⁵³ cell and body searches, surveillance, restrictions of detainees' contacts with the outside world, lawyer and medical personnel)? Do they raise concern at a systemic level by way of their frequent or arbitrary imposition, or the cumulative impact of multiple measures? Is the legal framework for regulating the imposition of security measures adequate?
- Is an effective complaints or appeal mechanism available? Are prisoners able to make complaints and requests confidentially, without risk of reprisals?

351 Report of the UN Special Rapporteur on Torture, *op. cit.*, note 256, para. 93.

352 Sharon Shalev, *A Sourcebook on Solitary Confinement*, (London: Manheim Centre for Criminology, London School of Economics, 2008), pp. 60-61.

353 For further guidance on monitoring these (and other) issues see: Omega Research Foundation and the University of Exeter “Monitoring Weapons and Restraints in Places of Detention: A Practical Guide”, 2021; PRI and APT, “Detention Monitoring Tool: Addressing Risk Factors to Prevent Torture and Ill-treatment”, 2015.

Tips for monitors 2: Conducting interviews

As with any visit to a place of detention, the monitoring team should have a firm idea beforehand of whom it would like to interview. In addition to prisoners and prison officials and staff, monitors may also consider interviews outside of the detention facility, with representatives of relevant ministries and other agencies, prosecutors, judges, defence lawyers and legal aid providers involved in terrorism- and violent extremism-related cases. Oversight bodies, CSOs working on counter-terrorism issues and/or prisoners' rights and support groups, as well as families of detainees, may also be able to provide relevant information. Monitors might also consider seeking information from or interviewing external stakeholders involved in disengagement programmes (including social workers, faith-based representatives, CSOs, and associations of victims of terrorism), experts on counter-terrorism issues and individuals previously held in the detention facility that is being monitored or in similar conditions. Given the sensitive nature of VERLT and specific vulnerabilities and risks some interviewees may face, particular thought should be given to the environment in which interviews with different stakeholders might best take place, and under what conditions.

As for any other prison visit, the importance of ensuring the confidentiality of interviews and obtaining informed consent of the interviewees is of utmost importance.³⁵⁴ This is especially true in high-security settings, where surveillance is ever-present. Monitors should seek to interview people of their choice in private in a suitable choice of location. They should avoid talking only to those who seek interviews with them or are proposed by staff. Detention monitoring bodies should also be attentive to the potential risks of reprisals their interviewees might face from other detainees and prison staff for talking to monitors, a risk that may be exacerbated in the context of the topic under consideration.³⁵⁵

OPCAT Article 21(2) explicitly states that no authority or official "... shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false...". Moreover, the SPT has developed its own detailed guidance on reprisals in a 2016 document. In this publication, the Subcommittee stated: "The national preventive mechanism should develop a strategy for preventing reprisals and threats by detention centre staff, as well as by fellow detainees, against those interviewed during visits and others who may provide sensitive or critical information before or after a visit. Such a strategy should also address threats of reprisal against members and staff of the mechanism."³⁵⁶ The document highlights a set of eight measures that NPMs should take to counter the threat of reprisals against NPM staff and third parties. These measures can be employed by NPM and non-NPM monitors alike, and especially by monitors engaged in VERLT issues.³⁵⁷

354 See, for example, APT, *Monitoring Places of Detention*, *op. cit.*, note 10, pp. 78-82; and APT, *Monitoring Police Custody: A Practical Guide* (APT, Geneva, Switzerland 2013) 58-59.

355 APT, "Detention Monitoring Briefing No.4 – Mitigating the Risks of Sanctions related to Detention Monitoring", January 2012.

356 SPT, "Analytical Assessment Tool for National Preventive Mechanisms", CAT/OP/1/Rev.1, 25 January 2016 para. 37.

357 *Ibid.*, para. 37 (a)-(h).

At the very least, monitors should have a defined strategy in place that takes into account the possibility of reprisals, along with steps to reduce their likelihood.

Monitors should also take a gender- and age-sensitive approach. Different methodological approaches to interviewing and protecting women³⁵⁸ and children in the course of monitoring visits have been developed by others and should be consulted in detail by monitors.³⁵⁹ Monitors should remain open to the possibility that they may need to conduct interviews through interpreters if no common language of communication is available. While the need to do so should not prove too challenging in most cases, issues relating to the confidentiality of such exchanges should be taken into consideration, and the interpreter should be briefed accordingly. Written guidance is available on this key issue.³⁶⁰

The privacy and personal data of all interviewees, and particularly those of children, must be protected by monitors. This is particularly important in the context of VERLT where the disclosure of a person's identity can have severe consequences, such as stigmatization and the risk of reprisals. This means that access to printed and electronic personal information should be restricted to the smallest number of people who need to know, and that no information or personal data may be made available or published without informed consent. Particularly with regard to children and the media, steps must be taken to ensure that nothing reveals or indirectly enables the disclosure of the child's identity, including images, detailed descriptions of the child or the child's family, names or addresses, audio and video records, etc. With regards to the use of photographs of children in detention, their identity should not be revealed in any circumstances. Accordingly, for example, faces should be obscured.

358 PRI & APT, *Women in Detention: A Guide to Gender-Sensitive Monitoring*, (London: PRI, 2015).

359 See for example: APT, *Addressing Children's Vulnerabilities In Detention – Jean-Jacques Gautier NPM Symposium 2014 Outcome Report* (APT: Geneva, 2014) 7-8 and 21-21; Defence for Children International (DCI), "Monitoring Places where Children are Deprived of Liberty", 2016; PRI, "Safeguarding Children in Detention: Independent Monitoring Mechanisms for Children in Detention in MENA", 2011.

360 APT, *Using Interpreters in Detention Monitoring: Briefing paper No. 3*, (APT: Geneva, 2009).

2.3 Human Rights Risk Area 3: Rehabilitation And Reintegration Programmes

The primary purposes of imprisonment are to protect society against crime and to reduce recidivism, which can be achieved only if the period of imprisonment is used to ensure, as far as possible, the reintegration of those detained, by offering various forms of assistance and activities.³⁶¹ The OSCE participating States have stated that prison conditions should offer “meaningful occupational activities and appropriate treatment programmes” to prepare for the reintegration of prisoners.³⁶² With regard to VERLT, the UN Plan of Action recommends the introduction of gender-sensitive disengagement, rehabilitation and counselling programmes that take into consideration the needs of children and fully comply with international human rights standards and norms.³⁶³ In the context of non-custodial rehabilitation and reintegration in preventing and countering VERLT, it has been emphasized that such programmes should not be focused on a single form of VERLT, such as violent extremism based on religion, but address all forms, including those related to extreme right or ethno-nationalist movements.³⁶⁴

Prison authorities should support prisoners in their efforts to withdraw from VERLT and reintegrate into society upon their release. This requires sufficient out-of-cell activity, as well as general and targeted interventions.³⁶⁵ Interventions have been described as “the planned and structured processes designed to assist violent extremist prisoners to abandon engagement in violent extremist acts or, for those considered to be at serious risk of becoming radicalized to violence, to avoid committing such offences in future.”³⁶⁶ They may range from general activities, similar to those offered to other prisoners,³⁶⁷ such as education, employment and occupational activities, to specific, targeted interventions. It is, however, important not to overestimate the necessity for specific rehabilitation programmes for (suspected) violent extremist prisoners because of general presumptions

361 ICCPR, *op. cit.*, note 85, Article 10.3; UN CCPR, “General Comment No. 21: Article 10 (Humane treatment of persons deprived of their liberty)”, 1992, para. 10; UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 4; UN Havana Rules, *op. cit.*, note 86, Rule 12.

362 OSCE, “Brussels Declaration on Criminal Justice Systems”, 5 December 2006, The OSCE Ministerial “Declaration on Strengthening OSCE Efforts to Prevent and Counter Terrorism”, of 9 December 2016, para. 8, specifically called on participating States “to co-operate in efforts to address the threat posed by terrorists, including foreign terrorist fighters and returnees, by inter alia developing and implementing, after prosecution, rehabilitation and re-integration strategies.”

363 UN, “Plan of Action to Prevent Violent Extremism”, *op. cit.*, note 7, para. 50(g).

364 OSCE, *Non-custodial Rehabilitation and Reintegration in Preventing and Countering Violent Extremism and Radicalization That Lead to Terrorism*, (Vienna: OSCE, 2020), pp. 40 and 109.

365 For detailed analysis of possible interventions related to VERLT in prisons, see UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, *op. cit.*, note 2, Chapters 5, 6 and 8; Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, Chapters 4 and 6.

366 UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, *op. cit.*, note 2, p. 74.

367 *Ibid.*, p. 74.

that they are high risk individuals who are likely to re-offend.³⁶⁸ In fact, recent studies suggest the rate of re-offending for terrorist prisoners is lower than that for others convicted of violent offences.³⁶⁹ Furthermore, over-intervention can cause stigmatization and be detrimental to rehabilitation efforts, since it is not proportionate to the level of risk and need.³⁷⁰

Deradicalization and disengagement programmes

While terminology is not always applied consistently in practice, targeted interventions can generally be divided into deradicalization or disengagement programmes.³⁷¹ There is ongoing debate over whether interventions should focus on one or the other or, instead, should comprise elements of both,³⁷² and the question raises profound human rights questions.

Deradicalization programmes typically counter specific interpretations, positions or arguments (based on political, religious or other ideologies) that inform beliefs and attitudes used to justify the use of extremist violence.³⁷³ If such programmes focus on changing ways of thinking, they can, however, be perceived “as an attempt at brainwashing in the interests of the State.”³⁷⁴

To the extent that interventions include such features, they conflict with the right to hold opinions without interference, and the prohibition of “any form of effort to coerce the holding or not holding of any opinion”, as stated by the UN Human Rights Committee.³⁷⁵ In the same vein, there is a clear prohibition under international human rights law of coercion to change or maintain a person’s religion, stemming from the absolute nature of the right to have or adopt a religion.³⁷⁶ As set out in section 2.1, only the right to manifest one’s religion may be subject to restrictions in limited circumstances – but the right to have or adopt a religion or belief is an absolute right that cannot be restricted. Thus, deradicalization programmes raise serious human rights concerns. It would, therefore, be

368 Renard, “Overblown: Exploring the Gap Between the Fear of Terrorist Recidivism and the Evidence”, *op. cit.*, note 52, p. 27.

369 Andrew Silke and John Morrison, “Re-Offending by Released Terrorist Prisoners: Separating Hype from Reality”, ICCT Policy Brief, September 2020, p. 5.

370 OSCE, *Non-custodial Rehabilitation and Reintegration in Preventing and Countering Violent Extremism and Radicalization That Lead to Terrorism*, *op. cit.*, note 364, p. 110.

371 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, paras. 73-74.

372 For a brief overview of the discussion see: OSCE, *Non-custodial Rehabilitation and Reintegration in Preventing and Countering Violent Extremism and Radicalization That Lead to Terrorism*, *op. cit.*, note 364, pp. 30-32.

373 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, para. 73.

374 ICRC, “Radicalization in Detention – the ICRC’s Perspective”, *op. cit.*, note 134, p. 4.

375 UN CCPR, General Comment No. 34, *op. cit.*, note 168, paras. 9-10.

376 ICCPR, *op. cit.*, note 85, Article 18.2; UN CCPR, “General Comment No. 22”, *op. cit.*, note 161, para. 3 and 5; Report of the Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief, Asma Jahangir, “Elimination of All Forms of Religious Intolerance”, A/60/399, 30 September 2005, paras. 50-51.

advisable rather to focus on changing violent or otherwise unlawful behaviour, which may be best achieved through disengagement programmes.³⁷⁷

The focus of disengagement programmes is to prevent or change an individual's relationship with a particular group, cause or ideology that views violence as justified to achieve its objectives.³⁷⁸ The focus is thus on changing behaviours, as opposed to beliefs.³⁷⁹ Such programmes for prisoners seek to:

- support them in finding alternative ways and opportunities to fulfil their needs;
- empower them to pursue their goals through legitimate means and to question the relevance of the use of violence;
- strengthen personal agency over their own decisions and behaviour;
- expose inconsistencies and inaccuracies in their current beliefs that support violence, and reduce their identification with a violent group or cause;
- increase their emotional tolerance and acceptance;
- encourage them to think about the (personal) costs associated with their participation in violent acts; and
- encourage them to aspire to a law-abiding life without violence, and help them acquire the necessary skills, for instance, to be employed after release.³⁸⁰

Some countries do not have specific disengagement programmes for VERLT but offer the same disengagement programmes to all prisoners, the focus of which is on violence, rather than on the extremist views justifying violence.³⁸¹ There is a concern that treating a category of prisoners differently than the rest of the prison population could elevate their status and, paradoxically, may even serve recruitment efforts by violent extremist groups.

Key principles of disengagement programmes

There is no “one size fits all” model for interventions. Policies should be gender- and age-sensitive and highly tailored to the local context, culture and legal traditions, as well as to the nature of VERLT in a given country, the individual prisoners participating in such

377 Accordingly, and since this also appears to be more consistent with the OSCE concept of VERLT as set out earlier, ODIHR stressed that reintegration and rehabilitation efforts should focus explicitly on disengagement from terrorism or violence rather than the more amorphous notion of deradicalization. See: *Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework*, *op. cit.*, note 23, p. 61.

378 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, para. 72.

379 OSCE, *Non-custodial Rehabilitation and Reintegration in Preventing and Countering Violent Extremism and Radicalization That Lead to Terrorism*, *op. cit.*, note 364, p. 13.

380 UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, *op. cit.*, note 2, p. 76; Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, para. 70.

381 Sweden and Greece, for example, were listed as having no specific deradicalization/disengagement programmes. See: Basra and Neumann, *Prisons and Terrorism: Extremist Offender Management in 10 European Countries*, *op. cit.*, note 51, pp. 7-8.

programmes and the environment in which they will be released.³⁸² The risk and needs assessment should form the basis of whether and what kind of disengagement from VERLT programmes should be offered to prisoners. In any event, interventions should be guided by the “do no harm” principle, to ensure they do not have a negative effect on the rights of those targeted.³⁸³

Efforts to support prisoners in withdrawing from VERLT require a holistic approach across a variety of disciplines and must be delivered by multidisciplinary teams who are adequately recruited, vetted and trained.³⁸⁴ These teams may include religious representatives, psychologists, social workers, healthcare professionals, sports instructors and art therapists. It is beneficial if they reflect the gender, linguistic and ethnic background of individuals they will work with.³⁸⁵ Community members, family members, CSOs, former violent extremists and, sometimes, victims of terrorist acts may be involved on a case-by-case basis. They may be perceived by prisoners as more independent, legitimate, credible and/or competent in their area. Support from community members and family may be essential to ensuring a smooth reintegration of prisoners upon release.³⁸⁶ One-to-one mentoring programmes are also offered in some countries.³⁸⁷

Attention to rehabilitation and reintegration programmes for (suspected) violent extremist prisoners may require investment. At the same time, the ICRC has warned against a situation where such attention “results in other groups of detainees receiving neither the humane and dignified minimum, nor the necessary management and staff attention”. This may lead to increased risks of human rights violations, including ill-treatment and torture, as well as to potential new threats to security and safety.³⁸⁸

Record-keeping assists with assessing the effectiveness of interventions and progress made, with ensuring the continuity of activities and treatment, and with adapting them as necessary, based on the needs and circumstances of prisoners, including their mental health needs.³⁸⁹ Information regarding prisoners’ participation in work, various activities and in disengagement from VERLT programmes should, therefore, be entered in their

382 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 70 and 75.

383 *Ibid.*, pp. 102-103.

384 UN Security Council, Resolution 2396 (2017), S/RES/2396 (2017), para. 32: “Underscores the importance of a whole of government approach and recognizes the role civil society organizations can play, including in the health, social welfare and education sectors in contributing to the rehabilitation and reintegration of returning and relocating foreign terrorist fighters and their families”

385 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 100-101.

386 In Austria, NEUSTART runs a programme called social net conferencing that “offers offenders in prison the chance to develop a mandatory plan for their future after their release. Offenders work together with their social network (or net) to create this plan, which is then sent to the judge, who issues orders according to the plan, at the trial. The probation officer supervises compliance with the orders and, therefore, also implementation of the plan.”

387 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 77-78.

388 ICRC, “Radicalization in Detention – the ICRC’s Perspective”, *op. cit.*, note 134, p. 5.

389 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 101-103; Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, para. 101.

personal file, be regularly reviewed and updated, and be part of the overall file management policy of a prison.³⁹⁰

A supportive, healthy and constructive prison environment that provides security and safety is a fundamental basis for disengagement efforts. As discussed in Part 1.2, it is crucial to address factors conducive to VERLT in prisons in order to foster disengagement in the long term.³⁹¹ Positive relations built on trust between prisoners and staff using a dynamic security approach are vital to the humane treatment of prisoners and can facilitate rehabilitation efforts.³⁹² Everyone working in the prison has a role to play in this regard, by interacting in a respectful and fair manner with all prisoners, taking time to listen and demonstrating professionalism.³⁹³

Limited access to activities

Some prison systems have not (yet) set up programmes for disengagement from VERLT. Others consider the participation of (suspected) violent extremist prisoners in these programmes or in any other general activities, including work, as incompatible with their detention regimes and the requirement that they should not mix with the general population. When prisoners can participate in rehabilitation or other activities, it is most often under specific conditions, such as a limited timeframe and in small group settings. In some OSCE participating States, high-security regimes, where (suspected) violent extremist prisoners may also be held, fail to provide them with tailored, purposeful and varied programmes of activities that would compensate for their severe custodial conditions and aid them on their path to reintegration.³⁹⁴

The CPT has stressed that the “existence of a satisfactory programme of activities is just as important – if not more so – in a high security unit than on normal location”, considering that such activities should be “as diverse as possible (education, sport, work of vocational value)” and that while work activities may be limited for security consideration, “this should not mean that only a work of a tedious nature is provided for prisoners”.³⁹⁵ These activities can help (suspected) violent extremist prisoners broaden their perspective, develop new skills (such as critical thinking), build self-esteem and give them a sense of purpose, along with a daily routine.³⁹⁶ They can all provide positive means of understanding and addressing grievances. As such, these activities support prisoners’ disengagement from VERLT and are an important part of the rehabilitation process.

390 For a detailed analysis on prisoner file management requirements pursuant to the UN Nelson Mandela Rules, see: ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1.1.

391 Speech by Thomas Renard, *op. cit.*, note 53, p. 3.

392 Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, *op. cit.*, note 56, Guideline 12.

393 UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, *op. cit.*, note 2, p. 99.

394 “Report to the Czech Government on the visit to the Czech Republic Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 11 October 2018”, para. 51; *Le Contrôleur général des lieux de privation de liberté Annual report 2017*, p. 92.

395 CPT 11th General Report (CPT/Inf CPT/Inf [2001] 16, para. 32).

396 Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, *op. cit.*, note 56, Guideline 15.

Any limitations to the access of (suspected) violent extremist prisoners, including pre-trial detainees, to education,³⁹⁷ vocational training,³⁹⁸ and creative and recreational activities³⁹⁹ should be based on individual risk and needs assessments. They should follow the same set of principles that apply to all other prisoners. Women may have specific needs to benefit from such activities and should have equal access to them as that of adult male prisoners.⁴⁰⁰ Unfortunately, female prisoners often have limited access to rehabilitation opportunities that cater to their particular backgrounds or rehabilitation needs, or that involve women practitioners.⁴⁰¹ The range of opportunities available to female prisoners should be as broad and flexible as possible and counter gender stereotyping. Efforts should also be undertaken to facilitate foreign nationals' access to and participation in these activities.

Children recruited by terrorist and violent extremist groups or perceived to be at risk of radicalization to terrorism or violence in prison are particularly capable of rehabilitation, so the importance of educational, vocational and recreational activities for juvenile offenders cannot be overemphasized.⁴⁰² Irrespective of the detention regime children are placed in, the right to education for personal development is a fundamental human right under international law.⁴⁰³ Specific disengagement programmes focused on children may be able to better address their specific needs than programmes for adults. In some OSCE participating States, there are programmes that are aimed at children arrested for committing ideologically motivated acts of violence (including on political, social, religious or other grounds), and these use a variety of methods, for example, deradicalization and disengagement assistance, civic education, long-term group training and post-release stabilization coaching.⁴⁰⁴

The participation of pre-trial detainees charged with terrorism or violent extremism-related offences in targeted programmes for disengagement from VERLT could be seen as contrary

397 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 104-105; EPR, *op. cit.*, note 123, Rules 28.1-28.7, 35; IACHR, "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas", *op. cit.*, note 123, Principles XIII.

398 UN Nelson Mandela Rules, *ibid.*, Rules 96-103; UN Havana Rules, *op. cit.*, note 86, Rules 18, 42-46; EPR, *op. cit.*, note 123, Rules 25.1, 27.3-27.7; IACHR, "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas", *ibid.*, Principles XIII.

399 UN Nelson Mandela Rules, *ibid.*, Rules 4 and 105; UN Havana Rules, *ibid.*, note 86, Rule 47; EPR, *ibid.*, note 123, Rules 28.1-28.7, 35; IACHR, "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas", *ibid.*, Principles XIII.

400 UN Bangkok Rules, *op. cit.*, note 79, Rule 37.

401 See 10 key principles for gender-sensitive rehabilitation programmes: PRI, *The rehabilitation and social reintegration of women prisoners*, 2019, p. 2 and p. 48. See also Brown, "The Importance of Gender", *op. cit.*, note 189: "Evidence suggests that women face a double burden on release — both for being a terrorist offender and for being a woman offender — and therefore have additional gender specific barriers to reintegration."

402 PRI, "Children and Violent Extremism: ", *op. cit.*, note 84, p. 12. See UN Committee on the Rights of the Child, "General Comment No. 24 (2019) on Children's Rights in the Child Justice System", *op. cit.*, note 15, para. 95 and paras. 97-101.

403 See: UN Havana Rules, *op. cit.*, note 86, no. 38.; UN Convention on the Rights of the Child, Article 28, ICESR Article 13; Global Center on Cooperative Security and ICCT, "Correcting the Course: Advancing Juvenile Justice Principles for Children Convicted of Violent Extremism Offenses", *op. cit.*, note 187, p. 29.

404 Violence Prevention Network, "Deradicalization in Prison"; also featured here: EU RAN, "Preventing Radicalization to Terrorism and Violent Extremism: Approaches and Practices", 2019, p. 196.

to the presumption of innocence⁴⁰⁵ and may affect their court cases. Nevertheless, pre-trial detainees should have the opportunity to work if they wish to do so⁴⁰⁶ and, where feasible and appropriate, to participate in activities, rather than languishing in their cells; this is crucial for their well-being and humane treatment.⁴⁰⁷

Coerced participation and the imperative of informed consent

In order to encourage prisoners to participate in interventions, prison authorities use incentives, such as increased out-of-cell activities and additional items allowed in their possession. These incentives should be similar to those offered to the general prison population. Otherwise, it could be discriminatory or create a privileged status for these prisoners and be perceived negatively by the rest of the prison population. Furthermore, it could unwillingly incentivize prisoners to declare themselves to be violent extremists, or even to join violent extremist groups in prison.

Participation in activities or disengagement from VERLT interventions should be voluntary and based on the principle of informed consent.⁴⁰⁸ Detainees should be able to give and withdraw their consent to participate at any time. Prisoners should also be fully informed of the objectives, who will be involved, their role, the modalities of the interventions and rules of confidentiality with regard to the sharing of information provided by participants within and outside the interventions team.

Reluctance or resistance to participate in disengagement programmes should not result in disciplinary measures and must not lead to the deprivation of basic needs, as this may constitute ill-treatment.⁴⁰⁹ Forcible measures would be counterproductive and may reinforce, rather than reduce or end, engagement in VERLT.

Infringements on freedom of opinion and freedom of thought, conscience and religion

Early efforts to prevent and counter violent extremism began with so-called “exit programmes” to tackle right-wing extremism, but efforts to prevent and counter VERLT now often focus largely on religiously motivated violent extremism, therefore targeting groups on religious grounds in a discriminatory manner.⁴¹⁰ Against this background, careful consideration should be given to the content of faith-based interventions in prisons and

405 The presumption of innocence is guaranteed under ICCPR, *op. cit.*, note 85, Article 14; see also: UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 111.3;

406 UN Nelson Mandela Rules, *ibid.*, Rule 116.

407 UN Special Rapporteur on Torture, “Interim report”, A/68/295, 9 August 2013, para. 38; “2nd General Report on the CPT’s Activities”, CPT, CPT/Inf(92) 3, Strasbourg, 13 April 1992, para. 46.

408 Certain programmes may be mandatory as part of a mitigated sentence or a precondition for early release, for instance.

409 UN Nelson Mandela Rules, *op. cit.*, note 13, Rules 6-10 and 42; UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 104-105; ICRC, “Radicalization in Detention – the ICRC’s Perspective”, *op. cit.*, note 134, p. 3.

410 Report of the UN Special Rapporteur on Counter-Terrorism, *op. cit.*, note 108, para. 6 and para. 28.

the way they are conducted. Their purpose should not be to forcibly change a prisoners' religion or belief but, rather, to offer alternative arguments to the views of violent extremist groups using religious faith to justify violence. The UN Special Rapporteur on Freedom of Religion or Belief has recognized the important role religious communities and scholars may play in rehabilitation and reintegration programmes, including for violent extremist offenders and "foreign terrorist fighters".⁴¹¹ In his view, religious communities and leaders should promote empathy, respect, tolerance and non-discrimination, and should challenge the authenticity claims of those advocating for violence in the name of religion by exposing their views as being ignorant of the charitable core messages contained in religious traditions.⁴¹² These principles could similarly apply to faith-based interventions in prisons.⁴¹³

The involvement of religious representatives in rehabilitation interventions also presents a number of practical challenges. Their organizational status (for example, as employees of the prison service or a relevant ministry) can impact on perceptions of their independence and credibility.⁴¹⁴ In a number of European countries and in the United States, the institutionalization of prison imams has also prompted concerns related to the introduction of a state-sanctioned form of Islam and the failure to reflect the diversity within Islam.⁴¹⁵ As stated by the UN Special Rapporteur on Freedom of Religion or Belief, it is not for the state to define the contents of a religion or belief; this has to be done by worshippers themselves.⁴¹⁶ Where possible, ensuring that religious representatives or scholars involved in rehabilitation programmes come from the same tribal, ethnic and linguistic groups of the prisoners will also be more effective.⁴¹⁷ It is recommended that religious leaders receive specialized (psychological) training on working in a therapeutic role in the prison setting with (suspected) violent extremist prisoners or those deemed "at risk" of VERLT.⁴¹⁸

It is also crucial that an individual's right to hold opinions without interference is respected.⁴¹⁹ The coercive nature of an ideology conversion system that is "applied in discriminatory fashion with a view to alter the political opinion of an inmate by offering

411 UN Special Rapporteur on Freedom of Religion or Belief, "Report on Preventing Violence Committed in the Name of Religion", A/HRC/28/66, 29 December 2014, para. 65.

412 *Ibid.*, para. 105. On the general importance of educational and other measures that foster respect for religious or belief diversity, understanding and mutual respect see also: ODIHR, *Freedom of Religion or Belief and Security: Policy Guidance*, *op. cit.*, note 32, pp 20-27.

413 Due to the potential importance of religion for prisoners, as noted earlier, and the fact that faith-based interventions can aid prisoner rehabilitation and reintegration, it is also important to note that undue interferences of freedom of religion or belief, which result from the imposition of specific security measures/prison regimes or the use of indicators to identify people who are vulnerable to VERLT, are not only contrary to international human rights standards but also counter-productive. See sections 2.1. and 2.2 and *supra* note 163.

414 Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, para. 161.

415 ICSR, "Prisons and Terrorism – Radicalization and Deradicalization in 15 Countries", *op. cit.*, note 60, p. 33.

416 UN Special Rapporteur on Freedom of Religion or Belief, "Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir - Report to the Human Rights Council", A/HRC/7/10/Add.3, 7 February 2008, para. 76.

417 GCTF, "Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders" *op. cit.*, note 174, Good Practice 10; Council of Europe, "Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism", *op. cit.*, note 56, Guidelines 24-25.

418 United Nations Interregional Crime and Justice Research Institute, "Building on the GCTF's Rome Memorandum: Additional Guidance on the Role of Religious Scholars and other Ideological Experts in Rehabilitation and Reintegration Programmes", p. 2.

419 Recalling Article 19, ICCPR, *op. cit.*, note 85. See also section 2.1, "use of indicators."

inducements of preferential treatment within prison and improved possibilities of parole” restricts freedom of expression and of manifestation of belief on the discriminatory basis of political opinion.⁴²⁰ Sanctioning the non-compliance of prisoners with the request to renounce their ideological convictions also goes against the prohibition of discrimination on grounds of political or other opinion.⁴²¹

Misuse of programmes for intelligence-gathering purposes

The collection of personal information represents an interference with the right to privacy that has to be in conformity with the principles of legality, necessity, proportionality and non-discrimination, as is the case for all other rights limitations. Staff involved in the rehabilitation process (social workers, educators, religious representatives, psychologists, etc.) should, therefore, consider very carefully what information may be collected from prisoners and shared to avoid its subsequent use for any other purposes than for rehabilitation. They should also operate with strict autonomy and independence from those engaged in intelligence-gathering on (suspected) violent extremist prisoners or those deemed “at risk” of VERLT. The UN Special Rapporteur on Counter-Terrorism has expressed concern that many different actors are being given responsibility for detecting “signs of radicalization”, and that this could interfere with their professional ethical obligations.⁴²² It has been noted that the involvement of prison staff with limited related training in counter-terrorism-related tasks (or the placement of intelligence staff among prison staff) can be problematic, lead to over-reporting and be detrimental to the establishment of trusted relationships with prisoners.⁴²³ The duties of staff involved in this process and of intelligence-gathering officers should be clearly delineated and separated.⁴²⁴ This is key to establishing genuine relations of trust and credibility, both of which are critical for the effectiveness of any rehabilitation and reintegration programme.

Post-release protective measures for detainees and their families

Upon release from prison, individuals who have disengaged from VERLT may face reprisals from the violent extremist groups to which they used to belong or from their families or communities. States should, therefore, put in place protective measures, including the

420 UN CCPR, *Yong-Joo Kang v. Republic of Korea*, 15 July 2003, CCPR/C/78/D/878/1999, para. 7.2.

421 UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, “Report on the Mission to the Republic of Korea”, E/CN.4/1996/39/Add.1, 21 November 1995, para. 25.

422 Report of the UN Special Rapporteur on Counter-Terrorism, A/HRC/43/46, *op. cit.*, note 108, para. 32.

423 “The Challenges to the Preventive Monitoring under OPCAT in the Context of Counter-Terrorism and Anti-Radicalization Measures”, *op. cit.*, note 102, p. 6.

424 Council of Europe CDPC PC-CP, “Commentary by Francesco Ragazzi, Scientific Expert, to the Guidelines for Prison and Probation Services Regarding Radicalization and Violent Extremism”, *op. cit.*, note 156, p. 6; Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, *op. cit.*, note 56, Guidelines 4-5.

option of relocation, where necessary.⁴²⁵ Whatever the potential threat, it is not justifiable to keep detainees in prison for their own security after the expiry of their sentence.

Women are particularly at risk of facing reprisals and should be provided protection. When non-custodial means of protection, such as shelters or safe houses run by independent bodies, are unavailable, temporary custody may be used to protect women, when strictly necessary and if they expressly request such protection (see the UN Bangkok Rules). In such cases, these protective measures should be supervised by judicial or other competent authorities, and no woman should be held against her will.⁴²⁶

Reintegration and conditions post-release

Together with general and disengagement interventions, preparation for reintegration and post-release support is essential to assisting those detained with their transition back to society and to reducing risks of them turning to violent extremist groups to provide for their needs.⁴²⁷ Reintegration interventions as described in the UN Nelson Mandela Rules⁴²⁸ are of particular relevance to (suspected) violent extremist prisoners, who may have spent a long time in prison. They would need support to maintain or re-establish contact with supportive family, friends and communities prior to release, provided that these are not themselves involved in VERLT.

To facilitate reintegration, detainees convicted of terrorism- and violent extremism-related offences should be progressively moved to less restrictive prison settings, based on periodic risk and needs assessments. Ideally, the last stage of a sentence should be spent in the lowest security prison that would provide the best environment to prepare their release.⁴²⁹ The availability in law and in practice of post-release measures to assist those released from prison are widely recognized as a positive incentive for prisoners to reintegrate into society.⁴³⁰ Should prison authorities consider that (suspected) violent extremist prisoners cannot follow the same reintegration process as the general prison population, this must be transparent and clearly explained. Alternative measures that correspond to their individual risk and needs assessment and classification should be identified.⁴³¹

425 GCTF, “Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders” *op. cit.*, note 174, Good Practice 21.

426 UN Bangkok Rules, *op. cit.*, note 79, Rule 59. See also: PRI and Thailand Institute of Justice, “Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), 2013, pp. 16-18.

427 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 119. For a detailed overview of reintegration interventions, see also Chapter 8 of the UNODC Handbook; Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, Chapter 6.

428 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 108.

429 UN Nelson Mandela Rules, *ibid.*, note 13, Rule 87.

430 UN General Assembly Resolution 45/110, “UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)”, 14 December 1990, Rule 9. These post-sentencing dispositions may include: furlough and half-way houses, work or education release, various forms of parole, remission, pardon. For rules specific to women and juveniles, see UN Bangkok Rules, *op. cit.*, note 79, Rule 63; and UN Beijing Rules, *op. cit.*, note 126, Rule 28.1, respectively.

431 ICRC, “Radicalization in Detention – the ICRC’s Perspective”, *op. cit.*, note 134, p. 2.

Summary of human rights risk area 3: Rehabilitation and reintegration programmes

- If specific VERLT-related reintegration and rehabilitation programmes are provided (in addition to general rehabilitative programmes), these should not be limited to a single form of VERLT, but include rehabilitative programmes addressing all forms of VERLT, including religious as well as extreme right or ethno-nationalist motivations and manifestations.
- Targeted interventions should seek to change an individual's violent or otherwise unlawful behaviour ("disengagement"). They should not be focused on changing an offender's religion, political stance, beliefs, or ideology ("de-radicalization").
- Individuals charged with or convicted of terrorism and (suspected) violent extremist prisoners should not be denied their right to participate in rehabilitative and work programmes while in prison.
- Access to rehabilitation and reintegration programmes must not be discriminatory. There should be gender-sensitive and gender-appropriate programmes for women available that are not based on gender stereotypes.
- Participation in disengagement programmes should not be dependent on the individual's assigned risk profile.
- Participation in disengagement programmes must be strictly voluntary, be provided on the basis of informed consent and not be coerced. Refusal to participate should not result in punitive actions, including harsher conditions of detention, ill-treatment or torture.
- To facilitate reintegration, detainees convicted of terrorism- and violent extremism-related offences should be progressively moved to less restrictive prison settings, based on periodic risk and needs assessments. They should be supported to maintain or re-establish contact with supportive family members, friends and communities prior to release.

Questions for detention monitors: Rehabilitation and reintegration

Depending on their specific mandate, it may not be the role of detention monitors to assess the quality (or success) of VERLT-related rehabilitation and reintegration programmes and their relevance to counter VERLT in prisons. There is, however, a role for monitors in evaluating access to individualized interventions and human rights concerns relating to participation and the substance of such programmes.

The type of targeted programmes on offer:

- Are deradicalization or disengagement programmes implemented in prisons? Who is delivering these programmes and how are they supervised? Is the implementation of such programmes encouraged and what kind of support do they receive?
- Does the placement and security regime have an impact on prisoners' access to targeted programmes? Is participation in these programmes voluntary and based on informed consent? Have participants faced restrictions of their rights for having refused to participate in such programmes?
- Do particular regulations on confidentiality exist, and are these put into practice? How are prisoners informed of these regulations?
- What kind of programmes are proposed? Do they infringe on the freedom of expression, opinion, thought, conscience or religion?
- What kind of psychological counselling is offered, including for prisoners who have suffered from trauma or have mental health conditions?
- What are the main challenges faced by prison staff (and potential external intervenors) in the delivery of these programmes?
- How are these programmes perceived among prisoners – not only those taking part in them, but also the general prison population?

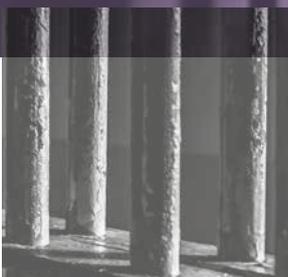
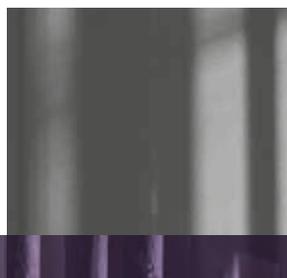
The type of work educational, vocational training and recreational activities on offer:

- Which activities are offered to (suspected) violent extremist prisoners, and how often? Do these differ from activities offered to the general prison population? If yes, how? Are work programmes permitted on an equal basis? Does the placement and security regime impact on prisoners' access to activities such as sport, education and work?
- Are activities gender- and age-appropriate? What arrangements are in place to encourage the participation of foreign nationals? Have men and women, adults and children equal access to these activities? Are long-term sentenced prisoners offered the same type of activities? What are the criteria to have access to these activities?
- Are there limitations on access and participation in these activities (limited number of prisoners at the same time, limited duration ...)? Are there factors that impede access to these activities (such as security considerations of operational

imperatives)? Does the prison have dedicated facilities and, if so, what conditions are they in?

Reintegration programmes:

- What kind of reintegration support is provided to (suspected) violent extremist prisoners? Does it differ from that of other prisoners? Are there clear and transparent regulations/policies in this regard? What are the main obstacles to successful implementation of reintegration programmes?
- Are prisoners satisfied with the support provided?
- Are post-release and transition protective measures put in place in consultation with those affected? Are plans put in place for women, children and other vulnerable individuals to ensure their protection and safety when they are released from detention?



Tips for monitors 3:

The composition of the detention monitoring team

VERLT is undeniably a complex and challenging subject. As such, monitoring teams tackling the issue should ideally possess a diversity of expertise. The SPT has recommended the following in its *Guidelines on National Preventive Mechanisms*: “Recalling the requirements of Articles 18 (1) and (2) of the Optional Protocol, the NPM should ensure that its staff have between them the diversity of background, capabilities and professional knowledge necessary to enable it to properly fulfil its NPM mandate. This should include, *inter alia*, relevant legal and health-care expertise.”⁴³² Detention monitoring in the VERLT-context may require expertise from additional professional backgrounds. When looking into VERLT-related issues, detention monitoring bodies should, therefore, consider establishing a multidisciplinary and gender-balanced team comprised of, as may be required, educators, doctors, mental health professionals, social workers, representatives of different communities and faith groups, civic education experts, experts on different forms and manifestations of VERLT (including extreme right and ethno-nationalist violent extremism) lawyers and experts on other subject matter.

Especially in relation to an issue as complex as VERLT, “healthcare expertise” for NPMs, as well as for other detention monitoring bodies, might in practice include a variety of health professionals, including, among others, doctors, forensic doctors, nurses, child specialists, psychiatrists and psychologists. Where a visit will look into the specific situation of returned “foreign terrorist fighters”, for example, the composition of the monitoring team might appropriately include experts with a specialization on post-traumatic stress disorder, on child care and psychology and, as far as women returnees are concerned, also on sexual and gender-based violence.

Similarly, it would be imperative to include legal professionals in any team focusing on VERLT, and especially lawyers with expertise in counter-terrorism issues. Ideally, there should be a gender balance among all key professionals, including for health professionals, who may be required to physically examine prisoners. Female detainees who have experienced violence may only be willing to speak about this experience with a woman. Should the prisoners affected by VERLT-related measures be foreign nationals or have different language backgrounds, it is recommended that individuals with appropriate language skills or interpreters are included in the team.

⁴³² SPT, *Guidelines on National Preventive Mechanisms*, *op. cit.*, note 105, para. 20.

2.4 Human rights risk area 4: Institutional and staff issues

The recruitment and selection of prison staff and their training and conditions of employment (status, levels of pay, own safety and adequate resources to perform their work) are significant elements of ensuring the respect of prisoners' dignity and rights. The attitude of prison staff and the way they interact with prisoners can have a huge impact on the institutional culture. Establishing and maintaining a constructive, positive culture is an important way to prevent torture and other ill-treatment and to protect the rights of all prisoners.⁴³³ Those who work in prisons perform an important public service, and they often work in difficult, stressful and sometimes dangerous conditions, sometimes encountering violent and abusive prisoners, some of whom have posed major threats to public security in the past. Also, the role and functions of prison staff are often misunderstood or subject to negative stereotyping as security guards. In fact, prison staff 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, in particular in the context of VERLT in prisons.⁴³⁴

Recruitment

The composition of prison staff working on VERLT-related issues should reflect, at all staffing levels, including at top management level, the diverse ethnic, religious, cultural and linguistic background of all prisoners housed in the relevant facility (as far as possible).⁴³⁵ Female staff must be recruited to work with women detainees and girls, and it is crucial that they are involved in the design and delivery of gender-sensitive interventions related to VERLT. A diverse staff will contribute to a better understanding of and help prevent intolerance towards a diversity of cultures, political and religious beliefs and traditions; it will help to establish a non-discriminatory attitude towards prisoners and foster trust between prisoners and staff.⁴³⁶ More practically, diverse staff can ensure that language barriers are overcome, or at least mitigated, and that there is a better understanding of different cultures, which has a positive impact, including on prisoner rehabilitation and reintegration.

433 PRI and APT, *Institutional Culture in Detention: A Framework for Preventive Monitoring*, (London: PRI, 2013), p. 3; ICRC, "Radicalization in Detention – the ICRC's Perspective", *op. cit.*, note 134, p. 2.

434 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para. 187

435 IJ, "Prison Management Recommendations to Counter and Address Prison Radicalization", *op. cit.*, note 60, Recommendation 4; UN Bangkok Rules, *op. cit.*, note 79, Rule 29. UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, *op. cit.*, note 2, pp. 28-29; Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, para. 174. Concerning women, UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 81. With regard to juveniles, UN Beijing Rules, *op. cit.*, note 126, Rules 1.6 and 22.

436 UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, *op. cit.*, note 2, p. 29. For more details on staff recruitment, composition of prison staff and required skills, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, paras. 198-213

These factors are particularly important from the perspective of the prevention of VERLT, as intolerant attitudes and a lack of cultural sensitivity contribute to feelings of isolation and stigmatization, and to a search for identity (especially in the case of children) that may lead to the path of VERLT or undermine disengagement efforts.⁴³⁷ It can also exacerbate other risk factors prisoners are exposed to, including in relation to safety and security, and it can increase prisoners' vulnerability to abuse. The necessary qualities and skills of staff involved in tasks related to preventing and countering VERLT include the ability to challenge problematic thinking in a constructive, rather than confrontational manner, to develop a collaborative relationship with prisoners and to demonstrate resilience, empathy and sensitivity to prisoners' values, beliefs and backgrounds.⁴³⁸ When dealing with children, staff should have the capacity to be positive role models and be skilled in building trust.⁴³⁹

Training

The UN Nelson Mandela Rules clearly state that the minimum requirements for training should include the concept of dynamic security, as well as principles concerning 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.⁴⁴⁰ The dynamic security approach, whereby "staff prioritize the creation and maintenance of everyday communication and interaction with prisoners based on professional ethics"⁴⁴¹ has already been adopted in a number of OSCE participating States and is of particular relevance when dealing with VERLT. It creates an atmosphere encouraging prisoners to speak with staff and may contribute to them re-examining some of their thinking, which is key as part of the disengagement process. Open communication, professionalism and a system to manage productive staff-prisoner relationships will contribute to building trust and creating a safe and secure environment that facilitates rehabilitation.⁴⁴²

Staff should receive specific training if their responsibilities include dealing with children and women,⁴⁴³ including on how to deal with trauma conditions, relevant national legislation, regulations and policies, international and regional instruments, the rights and duties of prison staff, dynamic security and first aid, including the detection of mental health conditions.⁴⁴⁴ In addition to training prior to entering service, continuous, in-service

437 EU RAN, "Dealing with Radicalization in a Prison and Probation Context: Practitioners Working Paper", note 150, p. 3.

438 Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, paras. 172-173.

439 Global Center on Cooperative Security and ICCT, "Correcting the Course: Advancing Juvenile Justice Principles for Children Convicted of Violent Extremism Offenses", *op. cit.*, note 187, pp. 20-21.

440 UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 76. For a detailed analysis of staff recruitment and training requirements under the UN Nelson Mandela Rules, see ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1.7.

441 Council of Europe, "Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism", *op. cit.*, note 56, I. Terminology

442 "Current Challenges of Sentenced Extremists for Prison Regimes", Ex Post Paper RAN Prison and Probation & EuroPris meeting "Prison regimes", 19 December 2019, pp. 4-5.

443 The Beijing Rules require that all personnel working in juvenile prisons receive a minimum training in law, sociology, psychology, criminology and behavioural sciences, UN Beijing Rules, *op. cit.*, note 126, Rule 22 – commentary.

444 PRI, *Mental Health in Prison: A Short Guide for Prison Staff*, (London: PRI, 2018); PRI and Prison Reform Trust UK, *Women in Prison: Mental Health and Well-Being A Guide for Prison Staff*, (London: PRI, 2020).

training is important, not only to maintain and improve the existing knowledge of prison staff, but also to ensure they are made aware of changes to policy and practice, including new developments in good practice.⁴⁴⁵

All staff working within facilities where there are (suspected) violent extremist prisoners should also be adequately trained on VERLT-related issues before entering duty and throughout their service.⁴⁴⁶ This should also include at least a general awareness or, where required, more advanced training on the phenomenon and dynamics of radicalization leading to terrorism or violence, the conditions conducive to it in prisons, the human rights risks arising in preventing and countering VERLT in prisons, and general education measures to promote political, cultural, linguistic and religious diversity and sensitivity, tolerance and non-discrimination.⁴⁴⁷ In all of this training it is important to sensitize staff to the wide spectrum of violent extremist ideologies (including not only religious but also extreme right or ethno-nationalist motivations). The level of specialization of such training will depend on the tasks required and exposure to (suspected) violent extremist prisoners.⁴⁴⁸

It is particularly important that staff involved in the application of VERLT-related indicators or risk assessment tools, for example, are sensitized to the potential impact of implicit biases and wrongful classification, as well as the inherent limitations and risks of any indicator system or assessment tool.

The implementation of reintegration and disengagement programmes requires adequate training of both the staff directly involved in such programmes and other people working in prisons, in order to avoid any actions that may undermine their success.⁴⁴⁹ All courses on radicalization to terrorism or violence have to be carefully designed and based on evidence to clarify any misconceptions on the process of VERLT that may reinforce stereotypes against certain groups of prisoners or lead to undue interference with prisoners' human rights, as previously highlighted.⁴⁵⁰

445 ODIHR & PRI, *Guidance Document on the Nelson Mandela Rules*, *op. cit.*, note 10, Chapter 1, para. 214.

446 The OSCE Presence in Albania, for example, developed a Training Basic Manual and conducted training of prison and probation staff on P/CVERLT-related issues. Overview on the project "Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism in prisons and within probation services (Phase I)," 2017.

447 Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, paras. 175-176; UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 30; EU RAN, "Dealing with Radicalization in a Prison and Probation Context: Practitioners Working Paper", *op. cit.*, note 150, p. 4; GCTF, "Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders" *op. cit.*, note 174, good practice 5.

448 See, e.g., EU RAN, "Approaches to Countering Radicalization and Dealing with Violent Extremist and Terrorist Offenders in Prisons and Probation", *op. cit.*, note 80, pp. 17-19.

449 Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, para. 177; UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, p. 31. For details on the importance of inserting information about laws and policies on rehabilitation programs in prison operation manuals, internal policies and procedures, and correctional training curriculum see: GCTF, "Initiative to Address the Life Cycle of Radicalization to Violence".

450 See human rights risk area 1 for further details. See also, Council of Europe, "Council of Europe Handbook", *op. cit.*, note 2, para. 175.b. Examples of training programmes on radicalization to terrorism or violence include those being implemented in Austria, Belgium, Denmark, Finland, France, Germany, Italy, The Netherlands, Norway, Romania, Spain, Slovakia and the United Kingdom. For information on relevant programmes in these and other countries in the European Union, see: EU RAN, "Preventing Radicalization to Terrorism and Violent Extremism Prison and Probation Interventions", 2019.

In the VERLT context, external actors (psychologists, teachers, healthcare workers, faith professionals, CSOs, former violent extremists or victims) will need adequate support and training to work in a prison environment.⁴⁵¹ Prison staff may, in turn, benefit from training delivered by external actors on how to confront and address manifestations of intolerance, including racial discrimination, supremacist and ethno-nationalist views, and how to promote intercultural and interfaith mediation, as well as language and other relevant training. Training should also enable staff to develop resilience to potential pressure leading to radicalization.⁴⁵²

Working conditions

Working in facilities with (suspected) violent extremist prisoners can be intensive and stressful. The actions and decisions of prison staff may be under particular scrutiny, given the risks associated with VERLT. Difficult working conditions, together with the potential challenges for prison staff to dissociate themselves from the emotional impact generated by violent extremist and terrorist acts may heighten risks of abuse, ill-treatment and torture. Working conditions, including appropriate remuneration and status, should reflect these and other challenges and the important role played by prison staff.⁴⁵³

Risks to the safety of prison staff are real, and appropriate measures need to be put in place, including maintaining adequate staff-prisoner ratios.⁴⁵⁴ It should be noted that there are challenges associated with only a small pool of prison staff working with (suspected) violent extremist prisoners. The lack of a diverse and changing pool of trained staff may jeopardize the sense of privacy of detainees, and could lead to these staff becoming overburdened, whereas rotating staff will lead to more staff with experience working with these prisoners.⁴⁵⁵

Prison administrations should provide support mechanisms for staff well-being, to help them deal with stress, anxiety and potential frustrations they face, including by providing dedicated time for debriefing, stress management, mentoring; “creating a safety net (clear procedures, fall-back options and supportive management)”⁴⁵⁶ and, in certain cases, providing psychological support. Adequate time and facilities should be offered for these mechanisms to be effective. The state should also provide protective measures to prison staff and external stakeholders who have worked with such detainees if their identity becomes public.⁴⁵⁷

Fair and adequate working conditions also contribute to preventing professional misconduct and corruption that may allow VERLT to spread in prisons. Prisoners may

451 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 29 and 35-37.

452 Council of Europe, “Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism”, *op. cit.*, note 56, no. 14.

453 On the level of pay, status and conditions of service, see UN Nelson Mandela Rules, *op. cit.*, note 13, Rule 74.3

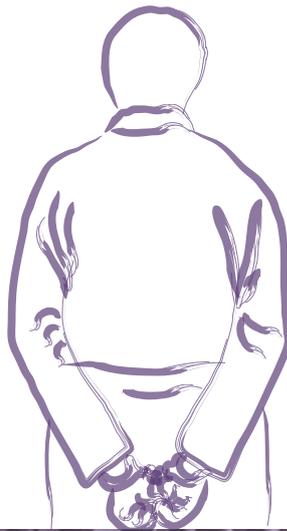
454 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 33.

455 Council of Europe, “Council of Europe Handbook”, *op. cit.*, note 2, para. 129(xii).

456 *Ibid.*, para. 179.

457 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 105-106.

otherwise resort to manipulation, conditioning, intimidation and extortion in attempts to take control over prison staff.⁴⁵⁸ This poses serious safety and security issues and may contribute to fuelling VERLT. Adopting codes of conduct, investigating any reports of corruption, unprofessional and unethical behaviour, and ensuring accountability are all pivotal in this regard.⁴⁵⁹



458 UNODC, Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, *op. cit.*, note 2, pp. 34-35.

459 IJ, "Prison Management Recommendations to Counter and Address Prison Radicalization", *op. cit.*, note 60, Recommendation 10.



Summary of human rights risk area 4: Institutional and staff issues

- Working in facilities with (suspected) violent extremist prisoners requires a specific skill set. Adequate recruitment strategies and training are crucial to ensuring that prison staff are properly equipped to carry out their duties and good prison management is maintained at all times, based on principles of dynamic security.
- All staff working within facilities where there are (suspected) violent extremist prisoners should be adequately trained on VERLT-related issues, including human rights challenges concerning indicators and risk and needs assessments, as well as rehabilitation and reintegration, before entering duty and throughout their service.
- Working conditions should reflect the challenging nature of tasks performed by prison staff in the VERLT context. Prison staff should be supported appropriately.
- Risks to the safety of prison staff are real, and appropriate measures need to be put in place to ensure their safety at all times.

Questions for detention monitors: Institutional and staff issues

The examination of institutional and staff issues in the VERLT context constitutes an important aspect of the work of detention monitors.⁴⁶⁰ This should include gathering background information on staff issues and conducting interviews with prison staff (in private and focus groups), prison management, trade union representatives or training academies, as relevant. Detention monitors should also assess the level of (dis)satisfaction of prison staff with recruitment policies, training offered and their working conditions, in order to ensure a more comprehensive overview.

Recruitment:

- Does the recruitment of prison staff working with (suspected) violent extremist prisoners ensure diversity and gender balance? What are the procedures for selection? Do these include a set of clear criteria? Do prison administrations attract staff with adequate skill sets for these duties?

The nature and frequency of training received by prison staff before their assignment and throughout their service:

- Does this include training on dynamic security?
- Does it include training on how to confront and address manifestations of intolerance, including racial discrimination, extreme right and ethno-nationalist views, and how to promote intercultural, interfaith understanding, tolerance and non-discrimination?
- Does the training include components on the conditions conducive to VERLT in prisons and the human rights risks arising in preventing and countering VERLT in prisons?
- Does it include training on the dynamics and drivers of VERLT, the difficulties inherent in and the potential human rights impact of VERLT-related indicators and risk assessment tools (especially for those who regularly apply such tools)?
- Does the training include other human rights-, gender- and/or children-focused components? Is general human rights training available for prison staff, including on equality and non-discrimination and the impact of implicit biases and stereotypes? How do the prison staff rate the training?
- Is there specific training and ongoing support for upgrading the knowledge and skills of staff working within these specific units or facilities?

Salary, status and working conditions:

- What is the salary and benefits package for staff supervising (suspected) violent extremist prisoners? If there is differentiation, how does the package compare with that of other prison staff working mostly with the rest of the prison population? How is the challenging nature of their work recognized?

460 PRI and APT, Detention Monitoring Tool – Factsheet on “Staff working conditions: Addressing Risk Factors to Prevent Torture and Ill-treatment”, 2015, p. 9.

- Is there a high turnover of prison staff working with (suspected) violent extremist prisoners?
- What do prison staff perceive as the best and, alternatively, most difficult aspects of their work? How are they supported by their management in carrying out their duties, including in coping with the associated stress and duress? What is the feedback from prison staff on such support?
- What is the staff-to-prisoner ratio? What is the rate of incidents (violent and non-violent) involving staff? How are these responded to and addressed? Are there attacks against prison staff involving (suspected) violent extremist prisoners? If so, how many, and how does this number compare to that for assaults perpetrated by the general prison population?
- Are women given the same opportunities to work with these prisoners, the same roles as men, and the same type of support and working conditions (including salaries and career advancement)?
- Are there indications of corruption among staff? What actions are taken by prison administration to address potential corruption and unprofessional behaviour?



Tips for monitors 4:**Communicating with the general public and state authorities**

In a number of countries, the rapid shaping of public perceptions on human rights and counter-terrorism, especially in the case of the aftermath of a terrorist attack, makes additional scrutiny by monitors particularly important. Charged public opinion and debate also potentially exposes monitors to heightened criticism and attack. Monitors need to ask themselves how and when to communicate with the public on issues related to VERLT in prisons, and how to do so most effectively when presenting their findings.

Monitors may have to confront discourse in politics and society that is not human rights friendly and address misconceptions about the protection of prisoners' rights in the context of VERLT. In particular, they may have to emphasize that preventing and countering terrorism and VERLT is no justification for denying the human rights of people in detention, while illustrating how a failure to respect and protect human rights undermines effective action to prevent and counter terrorism and VERLT. In doing so, monitors will have to pay particular attention to tailoring their messaging, including in press releases, on websites and social media or through dedicated media interventions. Given the sensitivity of the topic, detention monitors also need to strictly abide in their communications by their rules of confidentiality and ensure that their interventions do not do any harm to both those detained and to prison administration/staff. While some caution and careful messaging might be necessary, detention monitors should not compromise on their work and findings. They should co-operate and interact with state authorities in accordance with their established practices, mission and mandate, including for the implementation of recommendations to increase the protection of human rights of those in detention.

Detention monitors could harness international and regional networks and platforms to pool their experience, share good practices and collectively examine VERLT as a stand-alone issue. They could use such forums to pool their experiences, share good practices, build their knowledge and capacities on human rights risks in preventing and countering VERLT in prisons, and respond in a concerted manner to measures that may spread or be replicated in various prison systems. For example, NPMs from the OSCE region could make use of the ODIHR and APT regular NPM and CSO meetings, the Council of Europe NPM Forum and Newsletter, the EU NPM Network, the South-Eastern European NPM Network and the Nordic Network. Detention monitors could explore ways to reinforce their co-operation with international human rights bodies, such as UN Treaty Bodies and Special Procedures, including the SPT, the CAT and the Special Rapporteur on Torture and Special Rapporteur on Counter-Terrorism, as well as the CPT, which already has a track record of monitoring VERLT-related issues.

Partnerships with other bodies tasked with promoting the respect of human rights at the national level could support detention monitors in their preparatory and follow-up work. A number of NHRIs throughout the OSCE region have already raised awareness, advised national authorities and handled individual complaints

on human rights and counter-terrorism matters,⁴⁶¹ and their experience could be of benefit to NPMs, where the NHRI do not themselves share the NPM functions, and to CSOs. Through partnerships, these different bodies can identify synergies, share solutions, avoid duplication and importantly, send a concerted human rights message with more weight than if done in isolation.



461 Examples of countries where NHRI have already worked on counter-terrorism and human rights issues include, but are not limited to Austria, Denmark, France, Germany, Greece, Northern Ireland, Serbia and the Netherlands. For more details, see Council of Europe Commissioner for Human Rights, “National Human Rights Structures: Protecting Human Rights while Countering Terrorism”, Human Rights Comment, 6 December 2016.

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