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Submission to inform the report of the

United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

to be presented at

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concerning Current issues and good practices

in prison management

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# Introduction

This submission is based on first-hand experience from independent monitoring of prisons undertaken by DIGNITY and some of its partner organizations in their capacity as National Preventive Mechanisms or civil society organizations with a mandate to monitor prisons in the Global South and in Denmark. Additionally, the submission draws on DIGNITY’s prison research as well as reports of the UN Sub-Committee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT) of which selected DIGNITY staff are members. We wish to thank our partners for their valuable input to this submission, notably Centre pour la Qualité du Droit et la Justice (Burkina Faso); Midrift Hurinet (Kenya); Prison Watch Sierra Leone; Mouvement Burkinabè des Droits de l’Homme et des Peuples (Burkina Faso); Public Committee against Torture in Israel, PCATI (Israel).

# Prison Management and Lived Realities of Prisons

At the outset, DIGNITY wishes to congratulate the Special Rapporteur for taking up the issue of challenges and good practices in prison management—and in doing so demonstrating the fact that countering penal harms, the worst forms of which constitute torture and other ill-treatment, is more than a box-ticking exercise relating to conditions of, and treatment in, detention.

The Special Rapporteur’s approach recognizes that torture and other ill-treatment, in addition to being abhorrent rule violations, are relational phenomena—occurring between people and institutions. Thus, in taking up the issue of prison management, the Special Rapporteur has identified that understanding how prison management and governance play out in practice is crucial to understanding the dynamics and relations through which torture and ill-treatment manifest.

Indeed, to address occurrences of torture or ill-treatment in detention, one must first understand the management, organization, and regulation of everyday prison life. For DIGNITY, this begins with taking stock of the distribution of authority in prison settings. As much as possible, this submission attempts to reflect the fact that to understand prison management one must both understand the regulation of everyday life as well as the ways in which power is embedded, embodied, and diffused through relationships in prisons—specifically, who is in charge of which things and how is their authority exerted. Our point of departure is to look at how penal power comes to bear in everyday situations in prisons in order to work on ways of countering the tendency to ‘other’ or demonize prisoners or situate them at the bottom of hierarchies of worth.[[1]](#endnote-2)

# Major Challenges and Good Practices in Prison Management

## 1. Penal Policy

1. Issue in Brief

Penal policy, understood as the policies adopted to address and control criminal behavior, is inextricably linked with prisons. Penal policies, traditions, and legacies impact the way prisons are viewed, used, and experienced by policy makers, prison managers, persons and communities affected by crime, as well as society at large.

Importantly, penal policies vary in their emphasis on rehabilitation versus punishment. If a society prioritizes rehabilitation, prisons may offer paid work, education, vocational training, and counselling programs to help persons in prison reintegrate into society upon release. On the other hand, a primary focus on punishment may lead to a more punitive and restrictive prison environment.

The length and type of sentences imposed by the legal system also influences the population of prisons. Harsher penalties or mandatory minimum sentences can lead to overcrowded prisons, while more lenient sentences may result in lower prison populations. Some penal policies promote alternatives to traditional incarceration, such as probation, parole, or community service. The prevalence of these non-custodial alternatives can impact prison populations and influence the nature of the population of person in prisons in terms of risk levels and rehabilitation needs.

In sum, penal policy plays a crucial role in shaping the nature and functioning of prisons. The goals of the penal system, whether they are focused on punishment, deterrence, rehabilitation, or a combination of these, influence the structure of prisons, the treatment of inmates, and the overall effectiveness of the criminal justice system.

To support the effective management of prisons, it is essential to question and address the underlying penal policies that sustain, facilitate, and create impediments to prison management based on human rights. Although the oft-stated purpose of imprisonment is rehabilitation and re-integration, prisons, as they are in fact, rarely live up to this aim. Instead, overcriminalization, excessive use of pre-trial detention, and longer prison sentences have given shape to contemporary global approaches to criminal justice, in turn creating and aggravating the many human rights challenges to administering penal institutions.

### *Overcriminalization*

The criminalization of petty offences (such as loitering and vagrancy) and the adoption of extremely punitive approaches towards drug-related offences have led to many persons being imprisoned for prolonged periods.[[2]](#endnote-3) For example, in the Philippines, around 68% of the prison population[[3]](#endnote-4) and 53% of women in prisons are incarcerated due to drug-related offences, many for minor offences related to possession of small quantities of drugs.[[4]](#endnote-5)[[5]](#endnote-6) Such penal laws, which essential criminalize poverty and other statuses, places a serious burden on the prison system, leading to high levels of prison overcrowding and poor conditions inside prisons for occupants and employees alike.

In many countries, overcriminalization has led to increasing pressure on the criminal justice system to process a rising number of cases. More specifically, many states are implementing ‘tough on crime’ policies through criminalizing minor offences and increasing the length of prison sentences, but those same states are not at the same time equally investing in their criminal justice system to ensure adequate numbers of investigators, prosecutors and judges, prompt investigative, prosecutorial, or judicial procedures and workable alternatives to detention. As a result, accused persons, for instance in Sierra Leone and the Philippines—which rank at the bottom with respect to prompt and effective criminal justice systems,[[6]](#endnote-7)—in many cases spend years imprisoned on remand while their case crawls through the system.

### *Excessive use of pretrial detention and limited use of non-custodial alternatives at the pretrial phase*

Approximately one third of the global prison population is detained on remand.[[7]](#endnote-8) The causes of the excessive use of pre-trial detention are many and often interrelated. Jurisdictions burdened by high levels of pre-trial detention frequently use detention in an arbitrary manner – detaining persons on whimsical grounds, and who are rarely convicted or convicted of relatively minor offences. In Bolivia or Liberia, for example, where between 80 and 90 per cent of all prisoners are pre-trial detainees, few end up in prison as convicted prisoners.[[8]](#endnote-9) In Kenya, around 40% of detained persons are being held in pre-trial detention, a large number of whom have been arrested for petty offences attracting sentences of less than six months.[[9]](#endnote-10) What is more, these persons remain in detention despite Constitutional provisions prohibiting custodial remand when the alleged offence is punishable only by a fine or short-term imprisonment.[[10]](#endnote-11) The experience in Kenya is illustrative of a broader trend in which legislation providing for non-custodial alternatives to detention are underused because, *inter alia*: the judiciary are reluctant to grant them without sufficient grounds; there are no procedures and mechanisms in place for their effective implementation; and some offences are excluded from certain alternatives.[[11]](#endnote-12)

### *Longer sentences and delayed release*

In some countries, legislation provides for a mandatory minimum sentence for specific offences—sentences which are also often disproportionately severe as compared to the gravity of the crime.

Likewise, sentencing legislation also often provides for serving longer periods of a sentence before a person is eligible for early release or probation. For example, a South African law prescribes that those who have received a minimum sentence need to serve 80% of their sentence or 25 years, whichever is shorter, in order to be eligible for release on parole, although a shorter period of two thirds of the sentence may be stipulated by the sentencing court.[[12]](#endnote-13) Longer sentences for a broad range of offenses increase the prison population which, in turn, leads to higher levels of occupancy, including prison overcrowding.

1. Good Practices: Alternatives to prolonged detention in Jordan and Sierra Leone

Deemphasizing punitive approaches, non-custodial and less restrictive alternatives have shown to be effective in reducing crime and re-integration into society upon release. Reducing the number of persons who are placed in prison through de-criminalization, community support and non-custodial alternatives must therefore be the starting place in addressing the obstacles and challenges to a human rights-based approach to prison management.

In Jordan in 2005, pre-trial detainees comprised 47.9% on the total prison population. In 2019, this figure had dropped to 36.9%.[[13]](#endnote-14) This decrease can be attributed to, among other things, two key adjustments to pre-trial detention practices and policies.[[14]](#endnote-15) First, detention for misdemeanors punishable by less than 2 years of imprisonment is, as a general rule, no longer permissible.[[15]](#endnote-16) Secondly, after the adoption of the Juvenile Law in 2014,[[16]](#endnote-17) based on the principle of the best interest of the child, the governing rule is that juveniles shall be released on bail in case of misdemeanors, and, in case of felonies, if bail is not suitable to the circumstances of the case, the Public Prosecutor may detain a juvenile for a maximum of 10 days, provided that the best interest of the child is considered.[[17]](#endnote-18)

Addressing the issue from the other direction, in Sierra Leone, the Chief Justice assigns judges to review cases of incarcerated persons for one week every year. Deemed ‘Access to Justice through Judicial Week’, this program is aimed at increasing access to justice, reducing the backlog of cases that have not been processed and decongesting Sierra Leone’s correctional centers.[[18]](#endnote-19) In 2023, the Chief Justice assigned 23 Judges to review 802 cases during the week of 28th August to 8th September. Offences underlying each case ranged widely and included, among others, assault and battery, aggravated robbery, burglary, larceny, manslaughter, murder, sexual offences, kidnapping, and embezzlement. Review of such cases includes reviewing decisions of magistrates with respect to bail and bail conditions.

1. Recommendations

* Overhauling a state’s penal policy is a complex and context-specific enterprise that will vary depending on a variety of factors, but as a starting place, states should amend relevant policies and legislation to (a) decriminalize and de-penalize petty offences, in particular relating to drug offences; (b) ensure that imprisonment of children is a measure of last resort; (c) remove mandatory minimum sentencing provisions and restrict the use of life sentences; (d) prioritize non-custodial measures at pre-trial stage and early release schemes; (e) adopt and implement supportive/rehabilitative measures that promote diversion from the criminal justice system for targeted crimes (for example, drug use) and groups in situations of increased vulnerability (for example, juveniles, women, older persons); (f) reduce the imprisonment of people with mental health needs; and (g) facilitate the compassionate release of seriously or terminally ill persons.

## 2. Prison overcrowding

1. Issue in Brief

Prison overcrowding is a global challenge, plaguing every region of the globe. More than 120 countries harbor prison systems that exceed their self-designated maximum occupancy capacity, and an estimated 13 countries have prison systems that exceed 250% of their occupancy capacity.[[19]](#endnote-20) Of these 13, ten are in Africa, three in Asia. As of 2021, ten countries in the Council of Europe region reported overcrowding.[[20]](#endnote-21)

Collectively this amounts to uncounted thousands that are forced to live in choked accommodations, without sufficient space to sit, sleep, or move, and without reliable access to medical care, family visits, or a moment’s privacy. Unsurprisingly, being packed into severely overcrowded, unhygienic, and dehumanizing conditions has impacts on detained persons’ health and well-being.[[21]](#endnote-22)

Importantly, overcrowding heightens the risk of the spread of infectious diseases. Several studies have shown associations between overcrowding and the spread of pneumococcal disease,[[22]](#endnote-23) various skin conditions,[[23]](#endnote-24) the spread of infectious respiratory illness such as tuberculosis.[[24]](#endnote-25) This risk was especially pronounced during the COVID-19 pandemic where overcrowding complicated quarantine procedures and rendered social distancing between detainees nearly impossible. In Texas state prisons, the higher the prison occupancy rate, the larger the COVID-19 outbreak. Prisons with occupancy at 94% and 102% experienced high rates of death and illness, while prisons at 85% occupancy experienced low-death and low-outbreak profiles.[[25]](#endnote-26) From a mental health perspective, overcrowding has been associated with both depression and hostility among detainees.[[26]](#endnote-27) Likewise, overcrowding is also associated with increased violence in prisons.[[27]](#endnote-28) Notably, the health-related consequences of overcrowded are not only experienced by detainees, but on prison staff as well. In a survey of 66 correctional officers in three overcrowded Alabama prisons in the US, all respondents reported high levels of stress, “impaired job performance” and increased violence.[[28]](#endnote-29)

Despite there being no consensus definition of overcrowding,[[29]](#endnote-30) such multifarious and serious consequences have led the UN Committee against Torture,[[30]](#endnote-31) UN Subcommittee on the Prevention of Torture,[[31]](#endnote-32) UN Human Rights Committee,[[32]](#endnote-33) and European Court of Human Rights[[33]](#endnote-34) to conclude that conditions of overcrowding violate respective treaty obligations and can amount to torture or other forms of ill-treatment.

Causes of overcrowding are complex and interwoven, and not always same from region to region or even from one country to another.[[34]](#endnote-35) Perhaps the most obvious cause is the fact that many prisons are simply not built to house the numbers of occupants with which they are presented. For example, a prison that is designed and constructed to accommodate 400 people will have water, septic, sleeping, food, and recreational infrastructures that are not able to meet the needs of 600 people.[[35]](#endnote-36)

Prison overcrowding further stresses a detention facility’s physical space. In Sierra Leone, many buildings and facilities have been repurposed to serve as detention centers to accommodate the country’s growing prison population. For example, the prisons Kenema and Pujehun were originally constructed in the 1800s as colonial forts and the juvenile detention center in Bo was initially constructed as a military warehouse—all three of which now are used as penal detention centers. Likewise in Kenya, several counties lack adequate facilities to hold juveniles and women apart from men in courts and police stations. According to Independent Policing Oversight Authority, 73% of police facilities had separate cells for women, 18% had separate cells for female juveniles, and 41% had separate cells for male juveniles.[[36]](#endnote-37) The Authority reported some police facilities used offices and corridors as holding places for juveniles and that some facilities had converted cells into storage and office space due to space constraints.[[37]](#endnote-38)

In many countries, in particular those of the former Soviet Union, multiple-occupancy dormitories[[38]](#endnote-39) often facilitate conditions giving rise to violence among incarcerated persons, informal hierarchies of incarcerated persons, and proliferation of dangerous prison sub-cultures. For example, in Ukraine there is no capacity limit for the dormitories in pre-trial detention centers and prisons. Instead, Ukraine’s applicable living space standards set the mandatory space per person, but these standards do not limit the number of persons accommodated in cells. Theoretically, one cell can be designed to hold hundreds of people at a time, as long as the living space standards are met. The European Committee on the Prevention of Torture (CPT) has criticized the very principle of accommodation in large-capacity dormitories, noting that:

frequently such dormitories hold prisoners in extremely cramped and insalubrious conditions. In addition to a lack of privacy, the Committee has found that the risk of intimidation and violence in such dormitories is high, and that proper staff control is extremely difficult. Further, an appropriate allocation of individual prisoners, based on a case-by-case risk and needs assessment, becomes an almost impossible task. The CPT has consequently long advocated a move away from large-capacity dormitories towards smaller living units.[[39]](#endnote-40)

1. Good practices: Non-custodial measures in the pre-trial phase, trial phase and post-trial phase

Amidst alarming “tough-on-crime" policies causing increases in prison populations all over the world, the immediate onset of the COVID-19 pandemic saw unprecedented efforts to reduce the risk of transmission of the virus within and among prison populations. Albeit nominal in comparison to global trends favoring criminalization and harsh sentencing, the many and diverse global efforts to reduce prison populations is a testament to the relative practical ease, rapidity, and sustainability of taking proactive measures to reduce prison overcrowding. The following is a small sampling of policies and initiatives undertaken in this regard:

* Pre-Trial: In Jordan 1,500 detainees awaiting trial for national security offences were released by the State Security Court.[[40]](#endnote-41) In the Netherlands, pretrial detention was suspended for individuals who successfully argued for release on an individual basis for health reasons.[[41]](#endnote-42)
* Trial and sentencing: In Malaysia, the authorities stopped pronouncing custodial sentences as punishment for violations of the Movement Control Order.[[42]](#endnote-43) In the USA, the Attorney General directed the federal Bureau of Prisons to expand its use of home confinement in appropriate cases.[[43]](#endnote-44) In Thailand, the Department of Corrections suspended the serving of jail sentences.[[44]](#endnote-45) In Norway, intake of convicted persons to prisons was suspended.[[45]](#endnote-46)
* Post-trial: In Indonesia, 36,500 persons in prison were released early, notably drug convicts who have served 5-10 years of their sentence, persons over 60 years or with chronic illness, those who had served two-thirds of their sentence, and juveniles who have served half their sentence.[[46]](#endnote-47) In Colombia 10,850 pregnant women and mothers with children under the age of 3 were released from prison temporarily and placed under house arrest. In Burkina Faso, 1,207 people were pardoned based on advanced age, state of health and completion of half sentence, excluding those convicted of organized crime or terrorism.[[47]](#endnote-48)

Crucially, the COVID-19 pandemic’s wave of non-custodial measures not only shows that there are pragmatic and achievable approaches to reducing overcrowding, but also that the construction of new prisons is *not* a suitable response. Given the scale of the problem, states should focus on systemic changes focusing on institutional reforms that reduce the scope of imprisonment and pre-trial detention, and that promote alternatives to imprisonment.[[48]](#endnote-49) Such reforms will be quicker, cheaper, and more effective pathways to reducing overcrowding compared to constructing new prison complexes.

1. Recommendations

* States should adopt coherent strategies, covering both admission to and release from prison, to ensure that imprisonment – including pre-trial detention – really is the measure of last resort, including by promoting the use of non-custodial measures wherever possible and setting strict limits on the use of remand in custody and alternative measures should be used wherever possible.[[49]](#endnote-50)
* Remand detention should be imposed for the shortest time possible and should be based on a case-by-case evaluation of the risks of committing a new crime, of absconding, or of tampering with evidence or witnesses or otherwise interfering with the course of justice. Moreover, the nature and gravity of the offence the person is suspected of having committed should be duly considered when assessing the proportionality of the measure.[[50]](#endnote-51)
* At the pre-trial stage, alternatives to detention (such as reporting obligation, restriction on leaving or entering a specific space, retention of travel documents, and electronic monitoring) should be considered, (a) unless there is specific reason to believe that the criminal suspect/defendant will interfere with the investigation; re-offend; or abscond and (b) unless they pose a serious and concrete threat to others.[[51]](#endnote-52)
* At the trial and sentencing stage, non-custodial measures (such as suspended or deferred sentences, probation or judicial supervision, community service, diversion to treatment, restrictions on movement and electronic monitoring) should be considered in relation to persons convicted of minor offences and non-violent offences. Further, sentencing should be individualized, considering the background of the offender and circumstances of the offence.[[52]](#endnote-53)
* At the post-trial stage, non-custodial measures (such as parole or early conditional release, temporary release, compassionate release, and electronic monitoring) should be considered vis-à-vis incarcerated persons convicted of minor, drug, or non-violent offences, those considered low risk who are nearing the end of their sentence, persons jailed for technical violations of their probation or parole, persons with severe mental disabilities or very serious health conditions).[[53]](#endnote-54)
* States should avoid addressing overcrowding by constructing new prisons as it is not likely, in itself, to provide a lasting solution to the problem of overcrowding.[[54]](#endnote-55)

## 3. Identification and initial documentation of torture and ill-treatment

1. Issue in Brief

Prisons are institutions in and by which torture and other ill-treatment occur, as well as repositories receiving persons tortured during arrest and the initial phases of police custody. Research shows the risk of torture is highest during arrest and the first few hours of detention.[[55]](#endnote-56) In light of this risk, Rule 30 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) states that an initial medical assessment must take place as soon as possible following a person’s admission to prison to identify any ill-treatment to which they may have been subjected.[[56]](#endnote-57) The initial medical assessment also serves to identify a person’s other physical and psychological healthcare needs such as presence of contagious disease, risk of suicide or self-harm, and determining fitness to work. Thus, the initial medical assessment is an invaluable tool for prison authorities to detect and redress torture and ill-treatment.

However, in many contexts conducting a properly thorough assessment is a significant challenge. One prison nurse interviewed for a DIGNITY study on the initial medical statement shared, *“The day is a constant struggle against time”*.[[57]](#endnote-58) Prison overcrowding and limited staff time and resources often mean that assessments rarely include physical examination and tend to rely on self-reporting by the patient who often lack basic health literacy and is unlikely to recall many facts, including as to the details of their detainment as well as vaccination dates or previous medical treatment. Assessments under such conditions are more complex when a detained person suffers from significant mental health challenges, a common dynamic in many parts of the world.[[58]](#endnote-59) A further complication emerges from the dynamic between competing priorities of patient well-being and managerial/institutional prerogatives. Put more plainly, prison medical staffs’ direct supervision by prison directors may influence their medical decisions. A prison doctor interviewed by DIGNITY shared that, “*We do not work at a hospital, security measures are an obligation and they have priority”*.[[59]](#endnote-60) Accordingly, staff are often reluctant to record their patient’s ill-treatment claims when they cannot otherwise verify the person’s story.[[60]](#endnote-61) It is not only medical and/or prison staff at risk for reporting ill-treatment, in Ukraine those reporting torture often face reprisals and frequently need witness protection and transfers to alternative institutions.[[61]](#endnote-62)

1. Good Practices: adoption and implementation of the Initial Medical Assessment and the identification of ill-treatment

Beginning in 2020 Morocco’s prison authority (*Délégation Générale à l’Administration Pénitentiaire et à le Réinsertion, DGAPR*) worked to strengthen the implementation and quality of initial medical examination in general, and the identification of ill-treatment in particular.[[62]](#endnote-63) A study was conducted to elicit medical staff experience and evaluate completed assessments. The results of the study informed the DGAPR’s revision of the standard form that had been used to conduct the assessment and the creation of a standard one-day training program on identifying torture and ill-treatment through the initial medical assessment. All of Morocco’s prison medical staff (>700) have now been trained--with annual refresher trainings--on the importance of the initial medical assessment and the identification of torture and ill-treatment.[[63]](#endnote-64)

1. Recommendations

* All newly arrived prisoners should be systematically subjected as soon as possible, and no later than 24 hours after their admission, to a comprehensive medical examination by a health-care professional in a medical unit of the prison, under conditions guaranteeing medical confidentiality, and that the results are recorded in full.[[64]](#endnote-65)
* Any signs of injuries observed on admission should be duly recorded, together with any relevant statements of the prisoner and the doctor's conclusions. The same approach should be followed whenever a prisoner is medically examined after a violent episode in prison. Furthermore, if a prisoner so requests, the doctor should supply him with a certificate describing his injuries.[[65]](#endnote-66)
* Procedures should be in place to ensure that whenever injuries are recorded, which are consistent with allegations of ill-treatment made by the prisoner concerned, (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecuting authorities, regardless of the wishes of the person concerned. The results of the examination should also be made available to the prisoner concerned and his or her lawyer. Health-care professionals (and the inmates concerned) should not be exposed to any form of undue pressure or reprisals from management staff when they fulfil that duty.[[66]](#endnote-67)

## 4. Violence between persons in prison, informal hierarchies, and prison sub-culture

1. Issue in Brief

Violence between persons in prison (often referred to as “inter-prisoner violence”), in particular in the context of establishing and reifying informal hierarchies among those in prison, is an endemic challenge to maintaining safe and regulated prisons and detention centers all over the world.

In many contexts, prison staff delegate authority or otherwise facilitate or allow the emergence of informal hierarchies in efforts impose order and carry out discipline among the persons in prison. This, in turn, creates a conducive environment for violence among persons in prison where individual “leaders” establish and maintain their authority, often through violence, and members of prison staff are permissive in furtherance of their efforts to preserve the appearance of order in the prison or detention center.

Intrinsically linked to these informal hierarchies is the phenomenon of ‘criminal sub-culture’, which is a uniquely Soviet and post-Soviet phenomenon that originates from the time of the Stalinist Gulag. This manifests itself as a caste system of status positions and labels that can be nearly impossible to remove once attached. Within the criminal sub-culture there is a system of leadership acting within and outside of prison with different sub-leaders in different prisons. The caste system consists of a strict hierarchy with ‘thieves-in-law’ at the very top of the hierarchy, and then skiers, fellas, made men, goats and, at the very bottom of the hierarchy, the “untouchables” or “humiliated”.[[67]](#endnote-68) Those deemed “untouchable” or “humiliated” typically include persons accused or convicted of sex offences, LGBTQI persons or persons having been sexually abused. Within such hierarchies, a centralized leader often monopolizes the enforcement of norms – the criminal sub-culture. These leaders often control the illicit markets in prison (drugs, mobile phones and other prohibited objects). The oppressive and violent power structure of the hierarchy leads to the humiliation, extortion, and physical abuse of vulnerable persons by others occupying the prison.

There are at least two reinforcing factors that contribute to violence among persons in prison and the persistence of informal hierarchies (both of which have overlaps with the challenges emerging from overcrowding, see above): large-capacity cells or dormitories and insufficient staffing and training. Concerning large-capacity cells, it is complicated to ensure safe conditions in cells holding 5-10 people, let alone those present in many areas of the world that hold 10-30, or more. Such conditions are aggravated by an insufficient number, and inadequate training of, correctional and other employees working directly with persons in prison. In detention institutions with group occupancy arrangements, it is often the case that a large number of institution staff and personnel do not have direct contact with persons in prison. This applies to those who are directly responsible for internal order (security officers) as well as those that implement and maintain health and socio-psychological services.

For example, in Ukraine, leaders among persons in prison are often delegated authority by prison authorities to take responsibility for maintaining a system of order among the prison occupants. To this end, those leaders and others directly subordinated to them are permitted move freely around the institution for the purposes of imposing security measures, arranging of cleaning responsibilities, and establishing and enforcing cohabitation rules. This arrangement frequently leads to prison authorities being ignorant of, ignoring or endorsing oppression and violence against some people in prison by others. Consequently, those in prison who experiencing violence and discrimination are often afraid to seek protection from the administration or other government representatives.[[68]](#endnote-69)

In Moldova, management-sanctioned informal power structures between persons in prison likewise give way to violence, intimidation, and exploitation. The CPT has expressed particular concern about the situation of those prison occupants considered “humiliated” or “untouchable”. Assigned to the lowest caste, these individuals are often subjected to physical and verbal abuse by other persons in prison and are compelled to clean all accommodation areas, including communal sanitary facilities. The informal “code of conduct” requires them to avoid contact with others in prison (and even their belongings) and to take their meals only at designated tables in the canteen. In the CPT’s view, such treatment may constitute a continuing violation of Article 3 of the European Convention on Human Rights, which prohibits *inter alia* all forms of degrading treatment.[[69]](#endnote-70)

A similar but distinct dynamic is present in Myanmar, where leaders among those in prison are called *Tanzi* and are appointed by prison staff to take on roles ranging from discipline (including assignments of hard labor) to distributing sleeping places and food.[[70]](#endnote-71) In performance of these duties, *Tanzi* frequently extort, intimidate, harass others in prison, and in some cases directly perpetrate torture and other ill-treatment. For example, it is typical that *Tanzi* will subject new arrivals to a prison complex to “*Pon Zan*” (positional torture) to assert authority and compel obedience.[[71]](#endnote-72) If persons in prison are unable to adhere to *Tanzi* commands or pay *Tanzi* demanded brides--which are, in turn, given to prison authorities for *Tanzi* to retain their privileged positions--they are punished with violence or other modes of disciple. A mother who was interviewed by the Assistance Association for Political Prisoners stated, “My son had to sleep curled up in the prison. He said in the letters that it was problematic to sleep because it was crowded. To live like a human being, you have to pay money in prison.”[[72]](#endnote-73)

Rather than relinquishing responsibility for safety and security in detention facilities, authorities should instead invest in developing constructive relations between staff and all incarcerated persons, based on the notion of dynamic security. In doing so, authorities must act in a proactive manner to prevent violence by inmates against other inmates. Addressing the phenomenon of violence among incarcerated persons and intimidation requires that prison staff be sufficient in numbers and training, alert to signs of trouble, and resolved and able to intervene when necessary.

1. Good Practices: criminalization of informal hierarches in Armenia

In February 2020, Armenia criminalized the establishment of, leadership and membership in criminal prison sub-culture groups.[[73]](#endnote-74) Passed in an effort to curb deeply rooted practices supporting criminal prison sub-cultures, the law has, according to unofficial reports, led to a decrease in levels of violence exerted by or with the consent or acquiescence of ‘thieves-in-law’ (at the top of the informal prisoner hierarchy) vis-à-vis ‘the untouchables’ (at the bottom of the informal prisoner hierarchy).

1. Recommendations

* Prison authorities should put an end to the practice of delegating authority to informal prison leaders and using them to maintain order among the inmate population and of employing persons in prison to carry out key administrative tasks for the prison management (such as keeping individual records of incarcerated persons),[[74]](#endnote-75) including by criminalizing the creation, leadership, and membership of criminal prison sub-culture.[[75]](#endnote-76)
* Prison authorities should deprive all informal leaders among incarcerated persons and their close circle of privileges which other incarcerated persons do not enjoy, including as regards living conditions; consideration might be given in this context to segregating the informal leaders and their close circle from the rest of the prison population, based on a proper individual risk and needs assessment.
* Prison authorities should replace the dormitory-based Soviet two-story barracks with a cell-system.
* Prison authorities should increase custodial staffing levels and presence in incarcerated person accommodation areas and, where applicable, abolish the 24-hour shift pattern for custodial staff.
* Prison authorities should put in place a system of appropriate risk and needs assessment, classification and allocation of incarcerated persons to ensure that: (1) incarcerated persons are not exposed to other inmates who may cause them harm (duly taking into account the risk certain incarcerated persons may pose to other inmates by promoting or imposing the informal prison hierarchy); (2) incarcerated person are provided accommodation based on smaller living units; (3) setting up an effective recruitment and training system for prison staff; and (4) ensuring continuous staff supervision (including at night) in detention areas.
* Prison authorities should segregate the informal leaders and their close circle from the rest of the prison population, on the basis of a proper individual risk and needs assessment.
* Prison authorities should deprive informal prison leaders of the possibility of accessing newly arrived incarcerated persons or otherwise performing a placement or caste designation process. In this context, it should be reiterated to prison staff that any staff member facilitating such contacts will be sanctioned accordingly.
* Prison authorities should ensure that incarcerated persons who are exposed to the risk of abuse by fellow inmates (including LGBTQI+ persons, persons accused or convicted of sex offences, LGBTIQ persons or persons having been sexually abused and incarcerated persons suffering from learning disabilities) and those who do not (or no longer) wish to be involved in the prison subculture receive the management’s full support, including, if they so request, by being accommodated in separate units, offering adequate conditions and regime.

## 5. Prison regime, including work, education, and recreation

1. Issue in Brief

If prisons are to serve their stated purpose (rehabilitation, reintegration), prison life needs to be geared towards supporting those in prison to lead law-abiding lives after release. To this end, the Mandela Rules (Rule 4) call for educational programs, vocational training, work, as well as other forms of assistance (including those of a remedial, moral, spiritual, social and health and sports-based nature) to be delivered in line with the individual treatment needs of persons in prison. In many prisons around the world, such programs and activities are rarely offered for reasons of, *inter alia*,scarcity of financial and human resources, overcrowding, and over-securitization of prisons. Without such programs in place, it is unforeseeable how prisons will serve their rehabilitation purposes and how prisons contribute, as they claim, to safer societies.

1. Good Practices: empowering programs in Norway, Sierra Leone, and the Philippines

Persons in prison should be placed in the least restrictive environments required and identify the interventions that will focus on the need areas that are linked to their offending, as well as broader rehabilitative needs, such as those related to mental and physical health. It has been consistently demonstrated that such an approach promotes rehabilitation and social reintegration prospects and reduces reoffending upon release.[[76]](#endnote-77)

In Norway, prisons offer a diversified regime to persons in prison.[[77]](#endnote-78) Up to 80-90% of the population of persons in prison, whether sentenced or on remand, are enrolled in a daily program of either training, work, or education, based on an individual sentence plan. The vast majority of incarcerated persons spend around 12 hours outside of their cell on weekdays, and 7-9 hours during the weekends. Work options include classic maintenance jobs (cleaning, maintenance, laundry, kitchen) as well workshop activities for woodwork (furniture making) and mechanics. Educational programs are run by the local municipality and provide opportunities for detainees to pursue formal education, self-study, and computer courses.

In Sierra Leone, some prisons hold ‘Female Icon Sessions’ during which influential women are invited to and act as peace agents between women in prison and prison staff. These activities are only possible because of close collaboration between civil society organizations (Prison Watch Sierra Leone), prison administration, and persons in prison. Female Icon sessions include recreational and trust-building elements, while also ensuring that influential personalities experience first-hand the harsh realities women face in prisons and can speak publicly about such experiences to raise awareness.

Across prisons in the Philippines, the Therapeutic Community (TC) Program[[78]](#endnote-79) aims to re-shape an individual’s behavior and attitudes through the community of persons in prison. The TC process is supervised and highly structured with defined boundaries, both moral and ethical, designed to facilitate genuine introspection, cultivation of self-worth and positive rationalization that move the individual towards assuming a greater sense of personal and moral responsibility. In the program, individuals work together to help themselves and others restore self-confidence and prepare themselves for re-integration into their families and friends as productive members of the community. As TC participants go on with their daily activities, a strong sense of responsibility and concern for each other’s welfare are developed.

1. Recommendations

* Prison authorities should ensure that all prisoners (including those on remand) spend a reasonable part of the day (8 hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/ association, tailored to the needs of each category of prisoner (adult remand or sentenced prisoners, inmates serving life sentences, sentenced prisoners held in special conditions of high security or control, female prisoners, juveniles, etc.).[[79]](#endnote-80)
* In order to implement necessary programs, states should mobilize resources to be invested in creating opportunities for education, vocational training, and work in prisons.
* States should promote research and awareness about the positive impact of such opportunities on reducing recidivism and supporting re-integration.
* Education within prisons should be linked to the education system in the community and offer opportunities for basic and higher education programs that are officially accredited, as well as for vocational training.
* Prison authorities should strengthen inter-sectoral collaboration and open prisons to other state and non-state actors that can contribute to such activities (ministries of education, social welfare, religious leaders, cultural and other public figures).

## 6. Health care in prisons

1. Issue in Brief

Persons in prison have the same human right to health as the broader population. Accordingly, prison authorities have a responsibility to ensure the right to health is respected, protected, and fulfilled by the implementation of a well-functioning prison health service and decent conditions and treatments. Unfortunately, this is rarely the case. Rights to health of people in prisons are all-to-frequently being violated by, among other things, squalid conditions that are detrimental to their health, treatment that deteriorates their health, and no (or poor access) to health care services.

In most countries, a vast majority of people in prisons come from poor communities and vulnerable social groups. Often members of these groups have had very little access to health care before their imprisonment. People in prison also have a higher prevalence of communicable diseases like HIV, tuberculosis, and hepatitis C/B, as well as higher risks of non-communicable diseases, oral health issues, as well as a broad range of mental health problems. Self-harming and suicide are more common in places of detention and a higher proportion of persons in prison suffer from drug and/or alcohol dependencies. In short, the health condition of many persons in prison calls for quality and sustained medical care.

Nevertheless, conditions and (lack of) treatment in places of detention can further deteriorate a person in prison’s health. The following sub-sections provide a brief overview of the key considerations and good practices relating to the intersection between prison management and health.

### *Initial Medical Assessment*

An initial medical assessment (IMA) is an evaluation by a doctor or other qualified health-care professional of all detainees as soon as possible after their arrival in a place of detention. In addition to being an important means for the early identification of cases of ill-treatment (see above), the IMA also helps to ensure the protection and appropriate medical and psychological treatment of victims of torture or other ill-treatment and provides an opportunity for the referral of any such potential cases to the relevant authorities for investigation and, if grounds exist, for prosecution.

*Good Practices: the IMA in the Philippines and United Kingdom*

In the Philippines, the Bureau for Jail Management and Penology’s Comprehensive Operations Manual of 2015[[80]](#endnote-81) sets out that all incoming detainees shall undergo a thorough (a) physical examination by the jail medical officer or a designated nurse, (b) dental examination by the jail dentist and (c) psychological examination by the jail psychologist-in-charge. The Manual requires that findings be recorded, and that medical and dental issues be treated. A separate handbook specifies how cases of suspected torture shall be dealt with, including documentation, reporting, and rehabilitation, and includes a torture assessment form to be filled out by the medical staff. The form includes an overview of the torture history as well as forensic drawings to illustrate the findings and an overview of contact with other health-care professionals.

Likewise, the United Kingdom’s National Offender Management Service has published an instruction for prisons and community rehabilitation companies on the early days of custody.[[81]](#endnote-82) The instruction states that all incoming persons must be medically examined, in private if possible, by a qualified member of the health-care team, or a competent and trained Health Care Assistant who has been trained in Assessment Care in Custody and Teamwork (ACCT) procedures, to determine whether they have any short- or long-term physical or mental health needs.

### *Communicable Disease*

Persons in prison are at high risk of a range of communicable diseases—both when entering, and once inside, places of detention. In many contexts, persons entering detention are more likely use injecting drugs and/or have poor access to health care prior to imprisonment. Once inside a detention facility, conditions such as overcrowding, poor hygiene, poor ventilation and sanitation, and a lack of preventive and harm reduction measures further increase the likelihood of becoming infected or infested with a disease. The most prevalent communicable diseases and infestations in places of detention are HIV/AIDS, tuberculosis (TB), hepatitis A, B and C, influenza, gastroenteritis, respiratory diseases, scabies, and sexually transmitted infections (STIs). From a human rights perspective, it is urgently important to determine if people have entered the facility with a communicable disease or contracted the disease within the institution.

Prison authorities must ensure that incarcerated persons have the opportunity to live an as healthy a life as possible within the setting they are in. This means that persons in prison should, as a minimum, receive the same standard of prevention, control, and treatment for communicable diseases as people living in the outside community. Exposure to serious infectious diseases that could have been prevented by appropriate action (including preventive measures) by the prison (health) authorities may amount to ill-treatment.

### *Harm reduction and access to mental health services*

In prison populations, as well as within the general population, the most common risk factor for suicide is mental health state. Crucially, the rate of mental illness is higher inside prisons than in the general community—about one in seven incarcerated persons suffers from a “serious mental health condition”.[[82]](#endnote-83) Clinical manifestations of mental health challenges in prisons vary but may include Post-Traumatic Stress Disorder (PTSD), depression, anxiety, psychosis and a range of personality disorders--some of whichmay be the expression of exposure to traumatic events, including torture or ill-treatment or other abuses from staff members and fellow incarcerated persons.

Persons in prison with mental health challenges need appropriate support and treatment. Notably, the Mandela Rules caution against the imprisonment of those with severe mental disability “for whom staying in prison would mean an exacerbation of their condition”.[[83]](#endnote-84) Unfortunately, mental health services in prisons are often limited and the prison setting is a stressful environment--both of which impacts mental health, particularly the mental health of those who have pre-existing mental health challenges before their imprisonment. The mental well-being of any person, let alone those in prison, is likely to deteriorate further when his/her needs are not being met.

In kind with mental health challenges, suicide is generally higher in prison than among the general population--accounting for half of all prison deaths globally.[[84]](#endnote-85) Likewise, self-harm is a significant morbidity factor in prisons with higher rates among incarcerated persons as compared to the general population.[[85]](#endnote-86) Research demonstrates that this is not only due to personal vulnerability, but ecological prison factors and practice. For example, it is well established that solitary confinement significantly increases the risk of both suicide and self-harm among incarcerated persons.[[86]](#endnote-87) Other ecological factors such as overcrowding and high turnover rates have also been associated with self-harm.[[87]](#endnote-88)

*Good Practices: reducing self-harm in Morocco*

Beginning in 2017 the Moroccan prison authority (DGAPR) (in partnership with DIGNITY) undertook harm reduction prevention efforts by seeking to understanding the magnitude, context and drivers of suicide and self-harm in prisons. This involved strengthening its monitoring system ensuring it went beyond health to cover other sectors, such as social services and security. A multi-sectoral committee was established to identify trends in prison suicide and self-harm and make recommendations. In light of these recommendations, a national policy and manual on reducing self-harm targeting all prison sectors was developed with staff, piloted, and officially adopted.[[88]](#endnote-89) Staff from all sectors in all 76 prisons of the Kingdom participated in a one-day training on the policy and manual based on a national curriculum (with refresher courses offered annually). Further, a component on suicide and self-harm was integrated in the mandatory national induction training that all prison staff attend.

### *Prison health professionals and professional independence*

Inside a prison’s walls, it is often challenging for health professionals, or any staff, to work in full independence of the prison authorities, and even more so when prison health professionals are employed by the prison administration. In this case health professionals are especially vulnerable to pressures to serve purposes other than patient care. For example, such tensions arise when a doctor, whose sole responsibility should be caregiving and prioritizing the health and well-being of his/her patient, is also responsible for conducting medical examinations and treatment related to another purpose, such as forensic reports. No matter the conditions of employment of a health professional working in a place of detention, his/her fundamental duty is always to act in the best interest of his/her patient, i.e., the person who is detained. Over the last few years, more and more countries have transferred the responsibility for health in prisons from their Ministry of Justice/Interior to their Ministry of Health to address these challenges.

### *Informed consent and medical confidentiality*

In health care contexts, informed consent can be understood as the consent of a patient based on the principle of autonomy. Patients, including patients who are in detention, must always give their informed consent to any medical intervention and examination. True consent requires a patient fully understands a diagnosis, options for treatment, and/or examination or procedure that will be conducted—which in detention settings requires that health professionals consider illiteracy, difficulties in understanding, and language barriers.

Breaches of medical confidentiality are common in places of detention. A breach of medical confidentiality occurs for instance, when medical examinations are carried out in presence of others than relevant health professionals and when a patient’s private health information is disclosed to a third party without his/her informed consent. For example, in Egypt’s Qasr El-Nile Police Station female detainees complain of unnecessary, intrusive, and humiliating body searches taking place for purposes of intimidation and coercion. Searches are frequently performed in front of, or by, male soldiers or police officers, and are accompanied by highly gendered and sexualized verbal harassment about the detainee’s body.[[89]](#endnote-90) It is self-evident that such breaches of privacy and confidentiality not only violate patients’ dignity, but cause harm. Indeed, in many cases such as Egypt, the prevailing power dynamics and contexts surrounding arrest and detention provide a ripe environment for using the pretext of prison security and standardize health checks to stigmatize, embarrass and discriminate against people in prison.

1. Recommendations

* States should ensure that all detainees systematically receive an initial medical assessment upon entry into a detention facility. This is a key measure in the early identification of cases of torture and ill-treatment as well as in their prevention.
* Prison authorities should ensure that health care services systematically record injuries and, when appropriate, then provide information to the relevant authorities. The record drawn up after the medical screening should contain:
  + an account of statements made by the person which are relevant to the medical examination (including their description of their state of health and any allegations of ill-treatment),
  + a full account of objective medical findings based on a thorough examination (supported by a “body chart” for marking traumatic injuries and, preferably, photographs of injuries), and
  + the health-care professional’s observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings. The record should also contain the results of additional examinations carried out, detailed conclusions of specialized consultations and a description of treatment given for injuries and of any further procedures performed.[[90]](#endnote-91)
* States should take all possible measures to respect, protect, and ensure that prisoners enjoy the same standards of health care that are available in the community and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.[[91]](#endnote-92)
* Prison authorities should ensure that health professionals working in places of detention are fully independent of the prison authorities in carrying out their professional duties.[[92]](#endnote-93)
* Prison authorities should ensure that detainees with a severe mental health problem are not kept in prisons but instead in forensic psychiatric institutions where appropriate treatment and care is available.

## 7. Prison staff

1. Issue in Brief

The climate in a prison is largely dependent on the quality and resources of the people operating it. Ensuring a positive climate requires a professional team of staff, who must be present in adequate numbers at any given time in detention areas and in facilities used by persons in prison for activities.

Yet, globally, many prison systems struggle with grossly insufficient staffing levels. In several countries, this is further exacerbated by challenges in recruitment and retention of qualified staff. Overall low staff levels impede the development of positive relations between staff and persons in prison by giving way to an insecure environment for everyone inside the prison. Low and untrained staff further hinders efforts to maintain effective control, which often leads to stronger groups of persons in prison exercising unchecked powers over others.[[93]](#endnote-94) In some contexts, low staffing levels prompt prison authorities to partially relinquish the responsibility for order and security, which properly falls within the ambit of custodial staff. It exposes weaker incarcerated persons to the risk of being exploited by their fellow inmates.[[94]](#endnote-95) (See above.) The shortage of custodial staff also undermines the quality and level of the activities offered to persons in prison and jeopardizes the prospect of preparation for release and social rehabilitation.[[95]](#endnote-96)

Where staff levels, expertise and training are inadequate, there is a tendency to resort to significant amounts of overtime to maintain a basic level of security and regime delivery in a prison establishment. This frequently results in high levels of stress in staff and their premature burnout, a situation exacerbates the tension inherent in any prison environment.[[96]](#endnote-97)

1. Good Practices: Nordic and Irish approaches to prison staff

The Netherlands, Sweden, Norway, Iceland, Ireland, and Denmark have relatively low ratios of incarcerated persons per one prison staff member, ranging from 0,8-1.[[97]](#endnote-98) In Norway in particular, all prison officers go primary education through an accredited two-year program leading to the degree University College Graduate in Correctional Studies.[[98]](#endnote-99)

1. Recommendations[[99]](#endnote-100)

* Prison authorities should introduce a professional management career path within the prison system and ensure that prison directors and senior managers are recruited and given security of employment subject to satisfactory performance and are provided with relevant management training to enable them to fulfil their tasks competently. [[100]](#endnote-101)
* Prison authorities must develop the capacity and role of prison officers; properly reward any overtime working; develop initiatives to tackle absenteeism, and reform the system of promotion by length of service to a promotion system that is based on merit, and one that can identify the best candidates to fulfil crucial middle-management roles.[[101]](#endnote-102)
* Prison authorities should develop recruitment strategies based on proper funding and enhanced conditions of service, including competitive salaries.[[102]](#endnote-103)
* Prison systems should ensure that men and women are represented in a balanced manner on the prison staff. This can help foster a degree of normality and it allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches.[[103]](#endnote-104)
* As continued exposure to highly stressful or violent situations can generate psychological reactions, prison systems should take measures to ensure that prison staff benefit from adequate psychological support.[[104]](#endnote-105)

## 8. Discipline

1. Issue in Brief

The centrally referenced reason for imposing discipline in prisons is to maintain law, order, and control. In its ideal form, discipline seeks to ensure safety for both persons in prison and a prison’s staff. Discipline, however, rarely takes its ideal form, and often is used to disproportionately punish people in prison. No where is this more evident than in the too frequent and extended use of solitary confinement.

Solitary confinement is recognized as the most severe form of discipline. Research demonstrates that persons placed in solitary confinement demonstrate higher rates of mental health symptoms compared to the general prison population.[[105]](#endnote-106) The health consequences of solitary confinement are well-document but vary depending on the conditions of confinement (light and sound stimuli, pre-existing health status, etc.). Depression, anxiety, difficulty concentrating, substance abuse and dependence, cognitive disturbances, perceptual distortions, paranoia, psychosis, and Post Traumatic Stress Disorder (PTSD), suicide and self-harm have all been associated with solitary confinement.[[106]](#endnote-107)

Given the potentially very damaging effects of solitary confinement, the Mandela Rules set an absolute upper limit on its duration of 15 days, only as a measure of last resort, and prohibit its use in relation to certain vulnerable groups. Yet, several states worldwide continue to widely use this disciplinary sanction, sometimes for months on end. For instance, in the Russian Federation, trivial infringements of prison rules, such as using the familiar form of the word “you” when addressing a prison officer, lying on the bed in daytime or leaving a button undone, carry up to 15 days of solitary confinement. However, in case of repeated violations of internal rules, incarcerated persons may be placed in solitary confinement up to 6-12 months, and this can be prolonged with an additional year.[[107]](#endnote-108) Moreover, despite a clear guidance prohibiting solitary confinement, several countries, including Romania,[[108]](#endnote-109) Guatemala, Jordan, and the Philippines nevertheless persist in using the measure in such cases.[[109]](#endnote-110)

Beyond solitary confinement, other disciplinary proceedings must likewise be applied fairly, consistently, and transparently, in accordance with applicable rules. Any grey zones carry the risk of informal systems of punishment developing—whether run by staff or persons serving sentences.[[110]](#endnote-111) In Ukraine in 2020, for instance, there was an extraordinarily low recourse to formal disciplinary sanctions. Instead, the prison staff relied heavily on so-called “duty prisoners” to obtain submissive behavior from all persons in prison. Upon arrival at a prison, new occupants were ordered by prison staff to clean the occupancy unit; anyone who refused was punished by the unit’s “duty prisoners”. During such informal punishment, new occupants to the prison were reportedly undressed, made to lie prone on the floor and beaten on the soles of the feet and/or the buttocks with a plastic pipe. [[111]](#endnote-112)

1. Good Practices: Abolition or reduction of solitary confinement as a disciplinary measure

Sweden abolished solitary confinement as a disciplinary sanction in 1976.[[112]](#endnote-113) The reforms were driven by the recognition of the harms resulting from isolation and the recognition that disciplinary offences could be dealt with adequately without resorting to this punitive measure.[[113]](#endnote-114) Twenty-five years later, Norway abolished solitary confinement as a disciplinary sanction in 2001,[[114]](#endnote-115) though partial preventive solitary confinement can still be used if necessary to ‘maintain peace, order and security’, and to prevent negatively influencing the prison environment, criminal acts or material damage.[[115]](#endnote-116)

With respect to use of solitary confinement in cases of self-harm, Morocco’s prison authority adopted a national policy calling for alternative disciplinary measures for persons at risk of suicide and trained medical staff to exercise extra caution regarding disciplinary measure for persons at risk of self-harm or suicide.

1. Recommendations

* States should ensure that solitary confinement is only used in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. The duration of solitary confinement should never exceed 15 days and should never be used in relation to children, women who are pregnant, with infants or breastfeeding; and, incarcerated persons with mental or physical disabilities when their conditions would be exacerbated by such measures. [[116]](#endnote-117)
* States should ensure that sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period should be prohibited. Any offences committed by an incarcerated person which might call for more severe sanctions should be dealt with through the criminal justice system.[[117]](#endnote-118)
* In order to ensure that disciplinary sanctions are lawful and proportionate, states should guarantee that as a matter or right incarcerated persons facing disciplinary charges: (a) be informed in writing of the charges against them and be given sufficient time to prepare their defense; (b) be heard in person by the decision-making authority; (c) have the effective right to legal assistance; (d) have the right to call witnesses and to cross-examine evidence given against them; (e) be given a copy of any disciplinary decision and (f) have the right to appeal the to an independent authority against any sanctions imposed.[[118]](#endnote-119)

## 9. Security

1. Issue in Brief

In prison settings, there is often a heavy reliance on physical security (walls, bars, doors, alarms, surveillance etc.) and less attention is given to procedural security (laws, regulations, internal prison rules) and even less to dynamic security (fostering positive and respectful relations between staff and incarcerated persons).

Despite the fact that around a third of the global prison population is detained on remand and thus presumed innocent, there is a trend of “securitization” of prisons with high investments made in terms of physical security. In many cases, there is a tendency to over-classify (i.e., place persons in higher security regimes than necessary) in the absence of an effective system that allows for a holistic assessment of a person in terms of their needs, vulnerabilities, and risks. Some groups are also over-represented in high-security regimes (for example indigenous people and members of national, ethnic, religious, or linguistic minorities). Allocation to the minimum security level necessary has three primary benefits: the treatment will be more humane (and in line with the principle of minimizing differences to life at liberty); staff will have greater capacity to mitigate and minimize the risk of those persons who do pose an actual risk; and as higher security facilities are more expensive, there will be financial gains by minimizing the number of persons allocated to high security levels.

Although the nature of an offence is a relevant indicator for classification purposes, it should not be the sole factor leading to placement in higher security regimes. The assessment of risk during classification should include, among other things, the nature, severity, and motivation of current and previous offences, any history of involvement in violence among incarcerated persons, escape attempts, personal history including victimization (e.g., whether the person has experienced domestic abuse or child abuse), attitude towards the victim and towards others in prison, and ‘emotional maturity’.[[119]](#endnote-120) Digital approaches are being developed by more and more prison services, including artificial intelligence and virtual reality sometimes replacing staff functions.[[120]](#endnote-121) Such digital solutions need to be solution-oriented addressing the real needs of those in prison and need to respect human rights.

Upon entry into the prison facility, strip searches are highly common, a very invasive, and potentially degrading measure, which can be particularly (re-)traumatizing for persons who have experienced sexual violence. To apply such a measure in every case is excessive and unnecessary. Strip searches should only be carried out when there are reasonable grounds to suspect that a detained person may have hidden on him/her items that may be used to harm him-/herself or others or that may be evidence of a crime and such a search is necessary to detect these, an ordinary search being unlikely to result in their discovery. Carrying out such a search should require the authority of a senior officer and should be subject of a written policy, setting out in clear terms the circumstances in which it is permissible to resort to it.[[121]](#endnote-122)

Once classified and inside a prison, the practice of routinely handcuffing persons outside their cells is highly questionable, even more so when it is applied for a prolonged period. Handcuffs should never be applied as a punishment. Further, to be handcuffed when receiving a visit has been considered degrading for both the prisoner concerned and his visitor.[[122]](#endnote-123) Similarly, handcuffing persons in prison during medical consultations is a practice that infringes upon the dignity of the handcuffed person and, in addition, prohibits the development of a proper doctor-patient relationship (and is possibly detrimental to the establishment of an objective medical finding).[[123]](#endnote-124)

When violent and/or recalcitrant persons in prison pose a serious danger to themselves and/or to others, several prison systems resort to means of restraint (such as belt-fixation). In Spain, for instance, persons in prison have been fixated to a bed for periods that are longer than necessary—up to 21 hours, despite the fact that such persons have long since quieted and no longer pose security risks. In some cases, persons with mental illness or who committed an act of self-harm or attempted suicide are continually be subjected to mechanical restraint to a bed, taking a form punishment rather than security measure.

Overall, constructive methodologies 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. Therefore, a spirit of communication and care should accompany measures of control and containment. Such an approach, far from undermining security in the establishment, will enhance it.[[124]](#endnote-125)

In some contexts, so-called security concerns serve as a pretext to target marginalized social groups for retribution and punishment. For example, since the 7 October 2023 attacks by Hamas in Israel, Palestinians held in Israeli detention centers have been subjected to unnecessary and severe actions and procedures under the guise of security concerns, including severe restrictions in electricity, for and sanitation services, intentional overcrowding, denial of connections to the outside world, and direct and arbitrary acts of abuse and humiliation. According to national civil society organizations,[[125]](#endnote-126) in the wake of the 7 October attacks, Israel’s Minister of National Security declared a state of emergency in Israeli prisons precipitating a radical escalation in the oppressive tactics and policies directed at Palestinian detainees. One such tactic is proposed legislation,[[126]](#endnote-127) reportedly already implemented in some areas,[[127]](#endnote-128) to further reduce living space in Israeli prisons by permitting housing Palestinians in Israeli prisons on mattresses on the floor. Palestinians in Ketziot Prison report that cells which used to hold 5 people now hold more than twice as many. Moreover, all Palestinian prisoners held across Israeli prisons are reportedly restricted to their cells for 24 hours a day, which is, in turn, restricting access to medical care. Under no circumstances can claimed security imperatives serve as cover for inhuman and degrading treatment of people in incarceration or violate their right to dignity and health.

1. Good Practices: Respect Module in Spain and France, and dynamic security in Norway

Spain and France have developed and implemented Respect Modules as systems for organizing life in prison that have proven to be useful, realistic and generalizable for the achievement of therapeutic objectives, training, education and coexistence within the prison institution.[[128]](#endnote-129) The objective of the Respect Modules is to create a living environment that is comparable, in terms of rules, values, habits and forms of interaction, to that of any normalized social group. Among the main benefits observed are the following: (1) professionals and persons in prison are bound by other codes of conduct, which increases trust. The quality of interpersonal relations is highly valued by some of them and others; (2) the numbers of conflicts and disciplinary proceedings have decreased; (3) The motivation of prisoners to carry out specific treatment activities and programs has increased; (4) the modules promote the development of normalized behavior, a far cry from prison codes based on individualism.

In Norway, dynamic security practices are structured in such a way that prison staff are present and interact with prisoners throughout most of the day.[[129]](#endnote-130)  This requires that the prison officer be both the one who controls and manages the person in prison in their unit, as well as being there to be a part of the daily life together with persons in prison and contribute to a safe and positive environment. Through a humanistic approach, the officer aims to maintain professional and positive relationships with those occupying the prison, which is crucial to being able to recognize both the needs of each individual as well as the risks they may pose and to identify hazards, threats, risks, and negative developments in the unit. This system requires good staffing and there is a higher level of staffing than in many other countries.

1. Recommendations

* Prison authorities should embed dynamic security in prison staff training and operational policies and procedures.
* States should address “over-securitization” of prisons through gathering data about the prison population to inform relevant security policies and introduce individual risk and needs assessment upon admission for designing an individual sentence/treatment plan that takes into consideration, among others, security issues.
* Prison authorities should invest in prison staff skill- development to handle and de-escalate tensions, to perform effective prison intelligence and information sharing and to address needs of persons in prison.
* While noting that digital solutions may assist prison management, such solutions must be aligned with human rights standards, while staff functions may also need to be operational to supplement such digital measures.

## 10. Persons in prison in situations of vulnerability

1. Issue in brief

### A person in prison may experience vulnerabilities with respect to experiences of incarceration based on multiple and intersecting factors including, but not limited to, race, ethnicity, religion, sex, gender, class, age, ability, sexual orientation. The following provides a general overview of the types of vulnerabilities facing women, transgender persons, and persons serving life sentences.

### *Women in prison*

With a global prison population that is male-dominated, prisons are largely designed and managed for men, by men. Male-dominated architecture and governance persists, despite an alarming trend towards increased incarceration of women.[[130]](#endnote-131) Since 2000, the female prison population has risen by approximately 50%, while the total world prison population has grown by ‘only’ 20% during the same period.[[131]](#endnote-132)

Yet, worldwide, women continue to constitute a small minority, 2-9% on average of the total prison population. As a result, they find themselves held under conditions that, at best, have been poorly adapted for them from the male model or, worse, are the same as those for men or, worst, are poorer and more repressive than those provided to men.[[132]](#endnote-133) Many prison systems and the conditions they offer do not to address the distinctive biological and gender-specific needs of women, and prison policies and daily practices around the world range from being gender-neutral to being gender-biased.[[133]](#endnote-134)

Prison systems often fail to recognize that women in prison have different trajectories than their male counterparts. Incarcerated women are characterized by having disproportionately higher levels of mental health disorders such as anxiety and depression, and drug dependence than men.[[134]](#endnote-135) The prevalence of trauma among incarcerated women as a result of childhood abuse, sexual assault and intimate partner violence inflicted prior to their admission to prison is also extremely high. In fact, there is a strong correlation between sexual and other gender-based violence against women and women’s incarceration. It is well-known that the effects of trauma continue well after the traumatic events. Rates of deliberate self-harm and suicide are also considerably higher among women, and this is known to be associated with increased risk of later attempted suicide.[[135]](#endnote-136) Due to their histories of often multiple traumatic experiences, many incarcerated women require specific health and social care interventions that take account of their gender and traumatic life.

As a result, women entering prison often require psychological and somatic health care, at times long overdue. In addition, women in prison have biological health needs, such as gynecological, obstetric, and other reproductive health care, as well as gender-specific needs related to their role as primary caretakers for children before their incarceration, prompting needs to ensure alternative placement and proper care. Globally, prisons often fail to identify, let alone respond adequately to these needs.[[136]](#endnote-137) Finally, women in prison generally pose a lower security risk than incarcerated men, as most are charged with or convicted of non-violent crime.

Body searches, in particular strip and body cavity searches, are prone to humiliation and abuse for both male as well as incarcerated females. Yet, the anatomy, socialization, and background, and especially the high rate of previous abuse, makes body searches a particularly degrading experience for women.[[137]](#endnote-138) This is exacerbated when conducted by male staff or in the presence of men, which is the case in many countries. [[138]](#endnote-139)

*Recommendations*

* Prison authorities should develop clear policies, regulation and practices regarding the management of incarcerated females, which reflect the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).[[139]](#endnote-140) They should be gender-sensitive and trauma-informed, and be aimed at providing protection against any form of sexual or gender-based violence and re-traumatization and at fostering a prison environment of safety and stability.
* Prison authorities should dedicate adequate attention to the admission procedures for women and children, due to their particular vulnerability at this time, and prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children.[[140]](#endnote-141)
* Prison authorities must guarantee that punishment by close confinement or disciplinary segregation is not applied to pregnant women, women with infants and breastfeeding mothers in prison.[[141]](#endnote-142)
* Prison authorities must guarantee that incarcerated women allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman’s preference and the availability of appropriate programs and services.[[142]](#endnote-143) Health screening on entry to prison shall determine incarcerated women’s primary health-care needs, including mental health-care needs (including post-traumatic stress disorder and risk of suicide and self-harm), and sexual abuse and other gender-based violence they may have been suffered prior to admission.[[143]](#endnote-144)
* Prison authorities must provide gender-specific health care services, at least equivalent to those available in the community, to women in prison. This shall include: (a) Individualized, gender-sensitive and trauma-informed mental healthcare, (b) prevention of suicide and self-harm and provision of gender-specific and specialized support to those at risk, and (c) preventive health care.[[144]](#endnote-145)

### *Transgender incarcerated persons*

To say nothing about transpersons pathways into detention settings (often because of regressive statutes criminalizing trans identities or gender expressions outside strict binaries), most prison systems worldwide allocate incarcerated persons according to an individual’s sex assigned at birth rather than according to their gender identity. As a result, transgender women often end up in incarcerated males, where they may be placed in conditions akin to solitary confinement sometimes for months or years on end, because no safe accommodation can be found for them within the main prison population. Likewise, transgender persons in prison are often subject to harassment, intimidation, and persecution staff and other persons in prison (see above re: informal hierarchies).

*Good Practices: allocation according to gender identity in Portugal*

In Portugal, people serving prison sentences are allocated to prisons that correspond with their gender identity. This practice has been in place since March 2022 when Portugal’s Prison and Probation Service (DGRPS) issued a recommendation on placement of transgender persons.[[145]](#endnote-146)

*Recommendations*

* Prison authorities must take effective measures to ensure that incarcerated persons’ dignity is protected during personal searches, which shall only be carried out by staff who are the same gender as the searched person, have been properly trained in appropriate searching methods and in accordance with established procedures.[[146]](#endnote-147)
* Incarcerated trans-gender persons should either be accommodated in prisons (or prison sections) corresponding to their gender identity or, if exceptionally necessary for security or other reasons, in a separate section, which will best ensure their safety. If accommodated in a separate section, they should be offered activities and association time with the other incarcerated persons of the gender with which they self-identify.[[147]](#endnote-148) Furthermore, transgender persons in prisons should have access to assessment and treatment of their gender identity issue and, if they so wish, to the existing legal procedures of gender reassignment.[[148]](#endnote-149)
* States must provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognizing any particular needs of persons on the basis of their sexual orientation or gender identity, including regarding reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired.[[149]](#endnote-150)

### *Persons serving life sentences or on death row*

The United Nations Committee against Torture has expressed concerns about the conditions under which persons on death row are held.[[150]](#endnote-151) Besides the obvious violence involved in applying the death penalty, incarcerated persons awaiting their execution in the 54 countries in which the death penalty is still legal[[151]](#endnote-152) are often subjected to practices such as extended periods of solitary confinement and poor living conditions.[[152]](#endnote-153) In fact, research is increasingly demonstrating that ‘Death row syndrome’ is exhibited by extreme anxiety, dissociation and psychosis.[[153]](#endnote-154) Additionally, the rates of psychological disorders among death row inmates are high, with conditions of confinement appearing to speed up or aggravate these disorders including increased suicide risk.[[154]](#endnote-155) Psychiatrists face an ethical dilemma in treating detainees on death row in case restoration of competence results in their execution.[[155]](#endnote-156)

Similarly, persons serving life sentences are often subjected to stricter prison regimes. For example, they may not benefit from rehabilitation activities or educational prospects. Often, persons on life sentences are also subjected to stricter security measures such as more frequent hand cuffing, increased separation from other incarcerated persons or limited contact with the outside world.[[156]](#endnote-157) The risk of suicide among persons serving life sentences is higher compared to other incarcerated persons. One study in China found that the longer a person stays in prison, the higher their chance of suicidal ideation.[[157]](#endnote-158) Several studies also demonstrate that the risk of self-harm in prison increases for those serving long and life sentences.[[158]](#endnote-159)

*Recommendations*

* Prison authorities should adapt their strategies and management approaches to ensure the prison regimes of persons on life sentences and on death row are as similar as possible to the prison regime of other persons in prison. This includes access to rehabilitation services, contact with the outside world and both mental and physical health services.
* Prison authorities should offer those on death row and serving life sentences supplementary psychosocial support to mitigate the effects of long-term incarceration and death row syndrome.

## 11. Complaints Mechanisms and Independent Monitoring

* 1. Issue in Brief

Complaints mechanisms in prison facilities constitute a fundamental safeguard against torture and ill-treatment.[[159]](#endnote-160) In many parts of the world, complaints mechanisms are either non-existent or suffer from major shortcomings, such as insufficient legal basis, lack of/inadequate provision of information about complaints bodies or procedures, undue delays in initiating the examination/investigation of complaints, lack of thoroughness in the examination/investigation of complaints, lack of independence or impartiality of the officials dealing with complaints, or insufficient protection against intimidation and reprisals.

In addition, independent oversight mechanisms, whether established as National Preventive Mechanisms or some other structure, play a key role in the prevention of torture and ill-treatment and offer supplementary protection to other complaints (internal, external) and inspection (internal) mechanisms. Although many states have ratified the OPCAT and established an NPM, NPMs are still facing challenges and shortcomings. Many NPMs are not allocated adequate resources to ensure regular visits to places of detention, while others are challenged in terms of guarantees of independence, professional expertise, and immunities. Such shortcomings undermine the effectiveness of these oversight mechanisms and are indicative of States’ commitment to torture prevention obligations.

* 1. Good Practices: access to complaint mechanisms in states of emergency in Bulgaria and establishment of National Preventive Mechanisms

In Bulgaria during the COVID-19 pandemic, the Ombudsman ensured immediate public access to the cell phones of the national preventive mechanism experts to provide effective protection of the rights of all citizens residing in closed institutions.[[160]](#endnote-161)

Globally, scrutiny of prisons is expanding with 77 countries now having designated a National  
Preventive Mechanism as an external monitoring mechanism, under the Optional Protocol to the Convention against Torture.[[161]](#endnote-162)

* 1. Recommendations
* All states should ratify the Optional Protocol to the Convention against Torture (OPCAT) and establish effective National Preventive Mechanisms in line with OPCAT standards.
* States must allow and facilitate independent complaint mechanisms unhindered and confidential access to complaints submitted by persons in prisons.
* States must allocate adequate resources, financial and otherwise, to complaints and oversight mechanisms to be effective and operational.
* States must engage in constructive dialogue with complaints and oversight mechanisms for implementation of recommendations.
* States must combat impunity through carrying out independent, prompt, thorough and effective investigations into allegations of torture and ill-treatment in prisons.

1. Endnotes

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15. There are only two exceptions: (1) lack of fixed or known place of residence, and (2) theft or harm resulting from traffic accidents under certain circumstances (*i.e*., driving without driving license or under influence of drugs or alcohol (CCP Article 114(3)). *E.g.*, detention is no longer permissible when related to the crime of defamation (punishable with 1 year of imprisonment pursuant to CCP Article 358). [↑](#endnote-ref-16)
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