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Balancing security and dignity in prisons:

a framework for preventive monitoring



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I. Introduction

When a state deprives a person of their liberty, it incurs a duty of care to ensure that the dignity of that person is respected. States must also ensure that prisons are safe and secure for detainees, staff, visitors and the outside community. These two obligations are not contradictory, but go hand in hand, as security can be best ensured in a well ordered and justly administered system, which treats prisoners with humanity and fairness.¹

In coercive establishments such as prisons, there is a danger that concerns about security and order prevail too easily over dignity and fairness. Security measures that are excessive or conducted in a systematic way can infringe on the dignity of detainees, for example through unnecessary restrictions on movement, possessions or activities, routine body searching or the disproportionate or prolonged use of solitary confinement. While individual security measures may not reach this threshold, collectively they may amount to inhuman or degrading treatment.

This risk is greater when there is political or media pressure for tighter security and tougher responses to crime. This trend has been observed in many countries over the last decade including as a response to an upsurge – or perceived upsurge – in organised crime, social violence and the threat of terrorism related offences.

Persons deprived of their liberty are in a situation of power imbalance and particularly vulnerable to abuse. In many ways security ‘trumps’ dignity, for a number of reasons, including the following:

- the assumption that persons deprived of their liberty are dangerous or violent can lead to an over-reliance on security measures;
- security measures are sometimes increased to compensate for a shortage of human resources;
- prison staff want to avoid being criticised for ‘lax security’ and therefore may opt for more severe security options;
- insufficient training can mean that staff employ security measures that are unnecessary or disproportionate.

Monitoring bodies, including National Preventive Mechanisms (NPMs) designated under the Optional Protocol to the UN Convention against Torture (OPCAT), have an important role to play in detecting, assessing and analysing the risks to human dignity posed by an overemphasis on security measures.

Through their regular visits to places of detention and interviews in private with staff and persons deprived of their liberty, monitoring bodies can obtain first-hand information about how security policies and practices are impacting on the dignity of prisoners. They can analyse whether such measures are necessary and proportionate, and whether they are applied in a fair and non-discriminatory way. On this basis, they can make concrete recommendations on how to ensure that the dignity of detainees is protected rather than compromised by security measures.

This paper aims to assist monitoring bodies, including National Preventive Mechanisms (NPMs), by providing them with an analytical framework to:

- understand the concepts of dignity and security in prisons and the relationship between them;
- identify situations where there is a particular risk that security in prisons is overemphasised to the detriment of the dignity of prisoners.

¹ Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (International Centre for Prison Studies, 2002) p58.

II. Understanding dignity and security in prisons

1. Dignity in detention: a fundamental right

Dignity is inherent to all human beings. It recognises the innate worth and right of individuals to be treated with respect and humanity. It is enshrined in Article 10 of the International Covenant on Civil and Political Rights (ICCPR) that: '[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. The UN Human Rights Committee specified that respect for human dignity constitutes a norm of general international law not subject to derogation.²

As the Inter-American Commission on Human Rights (IACHR) stressed, deprivation of liberty establishes a regime 'of absolute control, loss of privacy, limitation of living space and, above all, a radical decline in the individual's means of defending himself'. The Commission concludes that as a consequence the act of imprisonment 'carries with it a specific and material commitment to protect the prisoner's human dignity'.³

While its most fundamental component is the absolute prohibition of torture, the right to dignity includes the provision of adequate material conditions, including sufficient food, water and access to healthcare. De-humanising or humiliating prison routines can also infringe on the dignity of prisoners, such as particularly uncomfortable prison uniforms. In Texas⁴ and Rwanda,⁵ for example, male prisoners were forced to wear pink prison uniforms, purposefully humiliating them. Obliging women prisoners to wear overalls as prison uniform may have the same effect in that it forces them to undress when using the toilet. In some countries, problematic practices, not justified by security considerations, include pointless routines such as prisoners having to march and sing patriotic songs or only being allowed to walk in certain ways.⁶

The right to dignity also includes operating fair and just rules and procedures, which do not discriminate, and promoting respectful relations between staff and detainees. Attitudes, behaviours, public exposure or abusive language can equally infringe human dignity, taking into account what individuals experience as humiliating or debasing.

The responsibility of the state goes beyond preventing active abuse against prisoners: it includes refraining from humiliating routines that infringe on human dignity and serve no security or other purpose, and ensuring that the suffering involved in places of detention does not exceed the level inherent in the deprivation of liberty.

2. Security in detention: a legitimate concern

Providing for security and order is fundamental in places of detention. From a human rights perspective, security and safety constitute an integral part of the state's responsibility to protect persons deprived of their liberty. The state 'assumes a heightened duty of protection by severely limiting an individual's freedom of movement and capacity for self-defence'.⁷

Inter-American Commission on Human Rights

'The fact that States exercise effective control of the prisons implies that it must be capable of maintaining internal order and security within prisons, not limiting itself to the external perimeters of the prisons. It should be capable of ensuring at all times the security of the prisoners, their family members, visitors and those who work in the place.'⁸

2 General Comment No 29, States of emergency (Article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001, para.13a.

3 Inter-American Commission on Human Rights (IACHR), *Special report on the human rights situation at the Challapalca prison in Peru*, para 113; IACHR, Report No.41/99: Minors in Detention, Honduras, March 10 1999, para.135.

4 For example <http://edition.cnn.com/US/9907/27/tough.sheriff/>; <http://wagingnonviolence.org/2009/07/the-cruellest-sheriff-in-america/>. <Accessed 23 September 2013>

5 For example <http://www.theguardian.com/world/2011/mar/15/letter-from-rwanda-prisons-walls>. <Accessed 23 September 2013>

6 BBC Radio 4, 'Kazakhstan's Living Gulags', 19 August 2013, <http://www.bbc.co.uk/programmes/b03859mq> <Accessed 23 September 2013>

7 UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Report to the UN General Assembly*, 5 September 2006, A/61/311, para.51.

8 Inter-American Commission on Human Rights (IACHR), *Report on the human rights of persons deprived of liberty in the Americas*, 2011, para.77.

Ensuring safety includes the provision of measures to prevent and respond to fires or other emergencies, and appropriate working conditions for prisoners and staff. It also includes policies to prevent and reduce levels of suicide and self-harm.

Security in places of detention has several components. Firstly, there is the question of external security (sometimes called perimeter or physical security) aimed at the need to prevent escapes and other undesired and unlawful contact with the outside world. This is mainly achieved through physical structure, such as the prison buildings, walls and fences, alarms and detection systems.

Secondly, there is the question of security within the prison, sometimes referred to as procedural security or control. Procedural security covers such matters as to how prisoners move around the facility, what possessions they are permitted to keep, how they and their visitors are searched, as well as the basic daily routine. Reasonable and proportionate disciplinary rules, that both prisoners and staff have the responsibility to observe, contribute to a well-ordered environment. Effective procedural security requires not only a clear set of regulations, but must be implemented by staff that are adequate in number, recruited on merit, well trained and adequately paid.

UN Prison Incident Management Handbook

‘Effectively managing the movement of prisoners within a prison depends on:

- staffing levels being commensurate with the number of prisoners;
- the level of staff skills and competency;
- the layout/configuration of the prison;
- the effectiveness of static security infrastructure;
- the ability to effectively classify and separate categories of prisoners.’⁹

Almost all prison systems have a range of different security levels to match the risks presented by prisoners. Prisoners will be subjected to a process of classification when they first arrive and are allocated to an appropriate level of security. In many countries a ‘progressive’ system is applied which means that if prisoners comply with the rules they may later be moved to a less restrictive security categorisation.

At one extreme, there are facilities or parts of facilities with very high levels of security, catering for individuals perceived to pose a high risk to other prisoners or themselves, a flight risk, or a high risk to the public if they were to escape. At the other extreme, there may be open prisons where prisoners go to work in the community, have keys to their rooms and live with relative freedom of movement. In between, most states have prisons with a variety of security levels or categories.

One key aspect of safety within prison is the need to prevent violence between prisoners. This can have several dimensions, from isolated acts of violence against individual inmates, regular violence against the most vulnerable detainees, systems of violence by informal structures of gangs or leaderships, to systems of ‘self-government’ where the prison’s internal security is left in the hands of inmates themselves.¹⁰ In many parts of the world, particularly where prisoners are held in dormitory style accommodation or in large halls, control is effectively in the hands of the most dominant prisoners.

Under ‘measures to combat violence and emergency situations’ the Inter-American Commission on Human Rights identifies the following preventive measures, inter alia:¹¹

- separate the different categories of persons deprived of liberty;
- provide periodic and appropriate instruction and training for the personnel;
- increase the number of personnel in charge of internal security and surveillance, and set up continuous internal surveillance patterns;
- set up early warning mechanisms to prevent crises or emergencies;
- promote mediation and the peaceful resolution of internal conflicts.

So-called ‘dynamic security’ is an approach to security, which combines positive staff-prisoner relationships with fair treatment and purposeful activities that contribute to their future reintegration into society.

It encompasses actions that contribute to a professional, positive and respectful relationship between prison staff and prisoners. It requires knowledge of the prison population and an understanding of relationships between prisoners, and between prisoners and prison staff, allowing

9 United Nations, *Prison Incident Management Handbook*, 2013, p26.

10 On this issue, see the IACHR report op.cit, para.79-93. The European Committee for the Prevention of Torture’s (CPT) *Report on Latvia 2007* para.40 describes the informal caste based hierarchy common in post-Soviet countries.

11 Principle XXIII, Inter-American Commission of Human Rights (IACHR), *Principles and Best Practices on the Protection of People Deprived of Liberty in the Americas*.

staff to anticipate problems and security risks. The approach acknowledges that the power imbalance of prison staff over prisoners may easily be perceived as provocation or punishment. Dynamic security needs to be accompanied by appropriate policies and procedures, and in particular by adequate staff recruitment and training.

UN Prison Incident Management Handbook

‘Prison staff members need to understand that interacting with prisoners in a humane and equitable way enhances the security and good order of a prison. (...) Irrespective of staffing ratios, each contact between staff and prisoners reinforces the relationship between the two, which should be a positive one, based on dignity and mutual respect in how people treat each other, and in compliance with international human rights principles and due process.’¹²

Examples of dynamic security are found, for example, in so-called direct supervision prisons in the United States. These are organised into small, decentralised living units, with staff working in direct contact with prisoners, rather than in control rooms or towers. Comparative research has shown that without greater spending on buildings or staffing, this kind of facility reduces levels of assaults and other serious infractions, and provides settings that are less stressful and more accessible to counselling and rehabilitation programmes.¹³ In short, they are more likely to provide both safety and dignity.

3. The relationship between dignity and security in detention

Security and dignity in places of detention are interdependent. ‘Not only are prisons and human dignity compatible, they must be compatible’.¹⁴

Security and control are best ensured in environments that respect the inherent dignity of detainees. As the International Centre for Prison Studies pointed out, ‘[i]t is quite wrong to suggest that treating prisoners with humanity and fairness will lead to a reduction in security or control.’ In fact, fairness and legitimacy are not only critical to wellbeing in prisons, but have demonstrable effects on order.¹⁵ When detainees’ rights are respected,

it is more likely that they will acknowledge the legitimacy and authority of prison staff, reducing the risk of tensions and disorder. Research in UK prisons suggests that prisoners experience order and safety along with fairness, respect and humanity as what matters most in prison life.¹⁶

At the same time, certain security practices and measures can by their nature be intrusive and restrictive, limiting the enjoyment of detainees’ rights. Security concerns may be overemphasised to the detriment of the dignity of detainees; measures taken in the name of security may be disproportionate or even excessive; the manner in which they are implemented can be brutal or oppressive and/or applied in a systematic manner without consideration of whether or not the individual poses an actual risk.

The challenge for prison administrations is to maintain security while safeguarding the human rights and dignity of the persons deprived of liberty. Policies, for example in the format of a code of conduct, should be in place in order to authoritatively guide prison administration and staff when implementing measures in the name of security. Moreover, contingency planning should be conducted in order to establish appropriate procedures and behaviour of personnel in different scenarios, and allow for prison staff to be trained accordingly.

UN Prison Incident Management Handbook:

‘Contingency plans need to clearly detail and describe the nature and extent of authorized use of force to address the incident. Key aspects of contingency planning include:

- roles, responsibilities and chain of command for key prison staff and external support personnel (police, fire services, medical services, etc.) are explicit, and mutually agreed-upon and understood;
- joint training and simulation exercises are conducted with police and other external support;
- detailed processes are outlined to effectively respond to a particular incident;
- communication linkages between the prison and external support are provided for, before, during and after the incident.’¹⁷

¹² United Nations, *Prison Incident Management Handbook*, 2013, p21, 22.

¹³ Wener R E, The effectiveness of direct supervision correctional design and management: A review of the literature, *Criminal Justice and Behaviour* 33, 2006, pp367-391.

¹⁴ Andrew Coyle, ‘Prisons and human dignity: are they compatible?’ A paper delivered at the 6th worldwide conference of the International Prison Chaplains’ Association, Stockholm, 21 August 2010, p8.

¹⁵ Alison Liebling, ‘Moral performance, inhuman and degrading treatment and prison pain’, *Punishment and Society* 13, 2011, p533.

¹⁶ Alison Liebling, ‘Moral performance, inhuman and degrading treatment and prison pain’, *Punishment and Society* 13, 2011, p533.

¹⁷ United Nations, *Prison Incident Management Handbook*, 2013, p32.

It is important for bodies monitoring places of detention to enquire whether and which protocols exist and how they balance security and dignity.

4. Legality, necessity and proportionality of security measures

Limitations or other encroachments of rights may be legitimate; however, they must fulfil all three of the following criteria established under international law.

- **Legality** – the measure must be provided for by laws that are in conformity with international human rights standards.
- **Necessity** – other means must have proven incapable of maintaining order or security.
- **Proportionality** – the measure taken must be the least intrusive to achieve the objective of maintaining order and security and be imposed for the shortest duration.

However, in the context of security procedures applied in places of detention, these principles are often neither enshrined in laws and policies, nor observed in practice. Security measures are also regularly applied based on vague possibilities rather than concrete indication of their necessity, or applied in a systematic manner without individual risk assessment. Furthermore, in the context of public pressure and ‘tough on crimes policies’, the boundaries of necessity and proportionality may be pushed.

For example in many countries, without regard to the presumption of innocence, detainees who are under investigation or subject to pre-trial detention may be subject to regimes even more restrictive than those for convicted prisoners.

Clear rules and regulations are needed governing matters such as the use of force, instruments of restraint, body searches, disciplinary sanctions and any other schemes applied in the name of security. Moreover, the application of such measures should be documented in order to allow for scrutiny, including through an independent complaints mechanism. Policies and procedures should be reviewed on a regular basis, and they should be published in line with established good practice on transparency.

Monitoring bodies should examine these regulations and should inquire what security levels are applied in the respective place of detention, what they imply and how detainees are classified for allocation to such security levels. They should also request information on who takes decisions relating to classification and the application of security measures such as body searches, instruments of restraint, use of force or solitary confinement, on what criteria these decisions are based, who oversees their application, and whether and how they are documented.

5. Public attitudes and societal context

Over the last decade, in many countries there has been a growing perception of insecurity by the general public that has led to an increased demand for a more repressive response by state authorities.

While this does not always reflect the reality – crime has been falling in many Western countries for example – there has been increased pressure to get ‘tough on crime’. Be it the fight against terrorism,¹⁸ drug trafficking, organised crime,¹⁹ crimes against or by children, high profile media cases in particular have resulted in a call for expanded competences for law enforcement, longer prison sentences and the rights of detainees to be restricted. These have even included an erosion of the prohibition of torture.²⁰

The Inter-American Commission on Human Rights has reiterated that ‘this climate of fear, in which the media and political discourse convey the idea that human rights are a way of protecting criminals, can bring as a consequence a certain social acceptance of torture and cruel, inhuman and degrading treatment. Experience has shown over the past years that resorting to torture, to arbitrary detentions, and to repressive legislation and practices, has not been effective in responding to the justified demand for citizen security’.²¹

In general, public opinion appears at best to be indifferent to the situation in prisons or at worst to consider that ‘criminals’ get the treatment they deserve. Public attitudes often call for harsh treatment and regimes in detention, not factoring in that imprisonment itself constitutes the sanction handed down by courts and should not be compounded by inhumane treatment or abuse in prison.

18 See, inter alia, Association for the Prevention of Torture (APT), *Defusing the ticking bomb scenario: why we must always say no to torture, always*, 2007; Jean Maria Arrigo, ‘A utilitarian argument against torture interrogation of terrorists,’ *Science and Engineering Ethics* 10, 2004, pp543-572.

19 See, for instance, a recent report on the situation in Mexico: ‘*In the name of the fight against crime’: study of the torture phenomenon in Mexico*. Available (in French) at http://unmondetortionnaire.com/IMG/pdf/Rapport_Mexique.pdf <accessed 17 October 2013>

20 See ACAT France, Annual Report 2010, ‘Les écrans de la torture’ by Jean-Etienne Linarés, pp273-290.

21 Inter-American Commission on Human Rights (IACHR), *Report on the human rights of persons deprived of liberty in the Americas*, 2011, para.364.

Such narratives ignore the fact that in many countries a high proportion of prisoners are held on remand, pending trial, to be presumed – and often found – innocent, and that in most countries a high proportion are imprisoned for minor, non-violent offences. Furthermore, studies have demonstrated that providing adequate conditions of detention and meaningful preparation for release have a direct impact on the social reintegration of inmates and consequently on the security of the general population.²² Such public attitudes are rarely countered by political actors or authorities, however.²³

22 See, for instance, UNODC, *Introductory handbook on the prevention of recidivism and the social reintegration of offenders*, 2012.

23 An exception is Georgia where following the exposure of torture in September 2012, a large-scale amnesty was applied and a penal reform strategy introduced.

III. Risk factors deriving from an overemphasis on security

Security measures form an integral part of the daily reality for detainees when they enter prisons, go to the courtyard or work, interact with staff or receive visits from relatives. The way in which security is managed in prisons, and its impact on the dignity of detainees, will differ from institution to institution and may be the subject of detailed assessment by monitoring bodies.

This section does not provide an exhaustive list of how approaches to security can impact on dignity in prisons, but seeks to identify certain common security practices and measures, which involve a particular risk of infringement upon the dignity of detainees.

1. Institution in charge of prisons

The nature of the institution in charge of prisons has a direct impact on how security is managed within it. Where prisons and the penitentiary service are under the responsibility of the Ministry of Defence, military institutional culture can result in an overemphasis on discipline and security with prisoners seen as enemies.²⁴ To a lesser extent, this can also be true when the prison service is run by the Ministry of Interior, given the measures of value, behaviour patterns and role of police officers in the criminal justice system. The rather military culture of these institutions is commonly reflected in their structure, hierarchy, training programmes, employment conditions, mandate and the self-image of staff in prisons under their responsibility.

Recognising this risk, one of the measures required for accession to the Council of Europe by former Soviet countries, therefore, was the transfer of the penitentiary service from the Ministry of Interior to the Ministry of Justice.²⁵ The UN Committee against Torture has made a similar recommendation, ‘permitting the demilitarization of the penitentiary system’.²⁶

The separation of the functions of investigation and prosecution on the one side, and of execution and supervision of criminal sanctions on the other, has proven to be an important factor in the humanisation of prison systems. The UN Standard Minimum Rules for the Treatment of Prisoners reflect this observation and call for professional prison officers who ‘have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness’.²⁷

New Prison Service in Honduras

On December 2012, Honduras adopted a National Penitentiary Law that addressed a systemic structural deficiency in the prison system in the country – the lack of a proper regulatory framework.²⁸ The Subcommittee on the Prevention of Torture had recommended in 2010 the adoption of a prison policy that sets out a comprehensive plan for the establishment of an autonomous structure, independent of the police and capable of carrying out the duties and tasks that are vital to its purposes.²⁹ While until then the National Police was the institution in charge of prison administration, the reform created an autonomous institution, the National Penitentiary Institute, linked to the Ministry of Interior and Population and established a specialised professional civil service career for prison staff and guards.

Prison management requires very distinct skills from those of policing, and experience across the globe has confirmed that rehabilitation of offenders has a far higher prospect of success if allocated to judicial authorities rather than police. The civilian control of the Ministry of Justice is therefore considered to be more compatible with the rehabilitative aim of imprisonment and the need to ensure human rights of detainees.³⁰

24 See PRI/APT, *Institutional culture in detention: a framework for preventive monitoring*, 2013.

25 For example, Council of Europe Parliamentary Assembly, Opinion No. 193 (1996) on Russia’s request for membership of the Council of Europe, para.7x, 25 January 1996.

26 Committee Against Torture (CAT), *Concluding observations on Kazakhstan*, A/56/44(SUPPL), para.129(a).

27 Article 46, UN Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

28 See recommendation by the UN Subcommittee on Prevention of Torture (SPT) following its 20 September 2009 visit to Honduras, CAT/OP/HDN/1, para.212c.

29 Report on the visit of the UN Subcommittee on Prevention of Torture (SPT) to Honduras, 10 February 2010, CAT/OP/HND/1.

30 PRI/APT, *Institutional culture in detention: a framework for preventive monitoring*, 2013.

Kazakhstan: Double transfer of authority

In 2001, Kazakhstan reported to the UN Committee against Torture the transfer of authority for the penitentiary system to the Ministry of Justice as one of the main achievements of legal reform at that time. In its concluding observations, adopted on 17 May 2011, the UN Committee against Torture recommended Kazakhstan to ‘complete the transfer of responsibilities for prisons from the Ministry of Internal Affairs to the Ministry of Justice, thereby permitting the demilitarization of the penitentiary system.’³¹

Allegations of torture and ill-treatment raised by monitoring bodies until then were concentrated in facilities under the responsibility of the Ministry for the Interior, in isolation cells of temporary detention and cells in police stations. Following the transfer of authority in 2002, the prison population decreased, with Kazakhstan slipping from 3rd highest place in the ranking of global prison populations in 2001 to 22nd place in 2010. Public control over prisons was enhanced and significant progress was made with regard to dealing with the problem of tuberculosis in prisons.

However, on 26 July 2011 Kazakhstan revoked this transfer of authority by Presidential Decree ‘On the Penitentiary System’.

Monitoring bodies should enquire whether and to what extent the culture of the ministry responsible for prisons, its hierarchy, training and self-image impacts on the treatment of prisoners and the security measures applied. When interacting with prison authorities, they should stress the distinct roles of policing and investigation of offences and the management of a penal institution. They should also highlight the presumption of innocence for pre-trial detainees and the benefits of a rehabilitative rather than punitive penitentiary system.

2. Over-classification

Prison systems in almost all countries operate some form of classification. The UN Standard Minimum Rules for the Treatment of Prisoners define two purposes for classification: the first to separate from others those prisoners who, by reason of their criminal record or background, are likely to exercise a bad influence; and the second to divide the prisoners into classes in order to facilitate their treatment

with a view to social rehabilitation.³² The Rules also state that ‘so far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.’³³

Given the diversity of a prison’s population, the same level of security is not applicable to all prisoners in one institution. A one-size-fits-all approach does not improve prison security nor does it contribute to the objective of prisoner rehabilitation. Individual classification of prisoners should take place as soon as possible after admission. However, the classification system should be flexible in order to allow prison officials to adapt to situational changes. Classification should avoid imposing a high security regime ‘to be on the safe side’.

In every country, there is likely to be a small number of prisoners who are considered to present a particularly high security risk and who may require special conditions of detention. These prisoners may need to be held in a special security unit where their movements and activities are (highly) restricted.

However, prisoners are frequently over-classified and subject to regimes more restrictive than required. Often classification is based solely on the nature of the offence committed, rather than individualised and taking into account the background of the offence and other factors. In particular, prisoners on death row and those serving a life sentence are frequently subject to harsh security regimes based only on the nature of their sentence rather than on any risk they may in fact represent to other prisoners or staff.

Risk assessments often wrongly perceive prisoners’ needs as ‘risk factors’. A prisoner who displays symptoms of depression or another mental health issue may receive a higher security classification, which can lead to greater isolation. Instead, mental health issues require a holistic programme in a lower security setting.

In some jurisdictions, authorities may have limited choices for placing detainees in appropriate facilities and low-risk detainees may be over-classified because the adequate facility is overcrowded or located a long distance away from their home, family and friends.

Due to the generally lower security risk they pose, some countries have established separate security categorisation arrangements for women, for children under the age of 18 or for young adult offenders. However, in other countries women tend to be over-classified and made subject to levels of security that are not justified.

31 Committee against Torture, *Concluding observations on Kazakhstan*, 17 May 2011, A/56/44(SUPPL).

32 Rule 67.

33 Rule 68.

Discrimination of women during classification

In Thailand, according to a 2013 report, some male prisons were reported to house a small number of women inmates in a separate section. Only one male officer was responsible for classification and women were often uncomfortable with sharing information with a male prison guard.³⁴

The Australian Human Rights Commission reported in 2012 that due to the lack of a sufficient number of women's prisons, female prisoners were being detained in maximum security prisons with male prisoners, increasing the risk of abuse.³⁵

UNODC reported in 2007 that in Afghanistan the same methods for classification were used for men and women. Information about a history of domestic violence, sexual abuse and parental responsibility was not addressed or recorded, and therefore procedures did not provide information essential for enabling adequate classification of women prisoners.³⁶

A proper classification system is needed to categorise prisoners based on well-defined criteria, such as the exceptionally grave nature of the offence,³⁷ or persistently dangerous behaviour and attitudes that represent a serious threat to staff or other detainees.

Decisions to place prisoners in highly restrictive settings should only be made after a thorough and structured assessment of risk and a judgement that this risk cannot be managed in other ways. It should involve a detailed analysis of a prisoner's current offence, its nature, seriousness, pattern of previous offences and disciplinary, escape and incident history. It should also take into account personal and situational factors, such as age, gender, vulnerability, family and community support. Risk assessments should make use of the best available information gathered from documents and interviews, and ensure that decisions are not compromised by cultural, gender or social bias.

Risk assessment instruments should be used to develop an individualised implementation of a

sentence and be periodically repeated to allow for a dynamic re-assessment of the detainee's risk. The decision should be appropriately documented in order to facilitate effective oversight. A draft recommendation being prepared by the Council of Europe concerning dangerous prisoners further suggests assessments be linked to opportunities for offenders to address their needs and change their attitudes and behaviour, and for the offender to be involved in the assessment. Another recommendation emphasises the need to differentiate between the offender's risk to the outside community and inside prison.³⁸

For women prisoners, the UN Bangkok Rules require that prison administrators develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners to ensure appropriate and individualised planning and implementation towards early rehabilitation, treatment and reintegration into society.³⁹

3. Instruments of restraint

In order to maintain order and security, detaining authorities may resort to instruments of physical restraint such as handcuffs, ankle cuffs, body belts, strait jackets or electro-shock devices.

However, some instruments of restraint are prohibited explicitly by international law. The prohibition of the use of restraints that are 'inherently degrading or painful', such as chains or irons and body-worn electro-shock devices, derives from the general prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Body-worn electro-shock belts, sleeves or cuffs, which encircle parts of the subject's body (usually the waist, but variants have been developed to fit on legs or arms) and deliver an electric shock when a remote control device is activated, have been found to inflict pain and mental suffering by their very nature, as well as to have a humiliating and degrading effect. Consequently, they have been increasingly condemned. The UN Committee against Torture has recommended the abolition of electro-shock stun belts and restraint chairs as methods of restraining those in custody, noting that their use often violates

³⁴ UNODC, East-Asia Pacific Regional Meeting on the Implementation of the Bangkok Rules, Bangkok, 19 to 21 February 2013, UNODC/JSDO/BKEGM/2013/1, 14 March 2013, paras.39, 47.

³⁵ Australian Human Rights Commission, Australian Study Tour Report, Visit of the UN Special Rapporteur on violence against women, 10-20 April 2012, p4.

³⁶ Tomris Atabay/UNODC, *Afghanistan: female prisoners and their social reintegration*, March 2007, p74.

³⁷ However, the placement should not be based exclusively on the prisoner's sentence but on an individual risk assessment, see for example European Committee for the Prevention of Torture (CPT) report on its 2011 visit to Serbia, CPT/Inf (2012) 17, p32.

³⁸ Draft Recommendation CM/REC(201X) XX of the Committee of Ministers to Member States Concerning Dangerous Offenders, 30 April 2013, PC-GR-DD (2013) 1_Rev3, paras.13 to 20.

³⁹ Rule 40 and 41, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), adopted by the UN General Assembly on 21 December 2010, A/RES/65/229.

Article 16 of the Convention against Torture.⁴⁰ The European Committee for the Prevention of Torture (CPT) opposes the ‘use of electric stun belts for controlling the movement of detained persons, whether inside or outside places of deprivation of liberty.’⁴¹

The use of other physical restraints is legitimate only if lawful, necessary and proportionate.⁴² They should only be applied in exceptional circumstances, when no other options are available, in order to prevent the detainee from inflicting injuries to others or themselves, or to prevent escape during a transfer, for the shortest possible period of time.⁴³

Restraints must not cause humiliation or degradation, and must be ended/removed as soon as the risk ceases. They should not be applied as a disciplinary measure, and are usually an inadequate means of preventing suicide or self-harm among prisoners. Measures involving regular monitoring of such prisoners by staff or trained prisoners are preferable.

Reduction in the use of shackles in Thailand

In May 2013 the government of Thailand announced that they had put an end to the practice of shackling all death row inmates at the highest security prison in Thailand, Bangkokwan prison in Nontaburi Province. Death row prisoners had to wear leg irons weighing up to 5 kilograms for 24 hours a day, including for sleeping, bathing, eating or praying. On the day the announcement about unshackling was made, a detainee of the prison said ‘Prisoners are not animals. They should not be chained because of their wrongdoing. They already were punished by being in jail’. In other prisons in Thailand, detainees can be shackled on reception or as a punishment. The government said there are plans to remove all shackles in all prisons all over Thailand.⁴⁴

Under international law, the use of restraints for juveniles is limited strictly to exceptional, specified cases.⁴⁵ Furthermore, the use of instruments of restraint is prohibited for women during labour, during birth and immediately after birth.⁴⁶

Clear provisions should be in place, prescribing the above parameters, including strictly defined cases of use. The application of instruments of restraint should be subject to authorisation by the director and be recorded.

Means of restraint should not be used in a routine manner, but employed only on a case-by-case basis following an individual risk assessment. In this regard, routinely handcuffing detainees within a prison for all out-of-cell movement is not justified by security considerations. Even where the use of restraints is necessary and proportionate in a given situation, the manner in which they are employed may give reason for concern, for example if handcuffs are purposely tightened in a way that harms the detainee.

Use of handcuffs in Maldives

‘The delegation also heard several accounts of use of handcuffs in a particularly humiliating and painful way, for purposes of punishment and control. The delegation is also concerned about the alleged use of restraints as a security measure to respond to incidents. The SPT emphasizes that discipline and order should be maintained with no more restriction than is necessary for safe custody and well-ordered prison life. Instruments of restraints, such as handcuffs, should never be applied as punishment. The SPT recommends that the practice of using handcuffs as a means of punishment be eliminated immediately.’ (Report on the visit of the Subcommittee on Prevention of Torture to the Maldives, CAT/OP/MDV/1, 26 February 2009, para. 207)

Monitoring bodies should assess whether and which regulations and procedures are in place, setting out the circumstances of the use of instruments of restraint and specific safeguards against abuse. They should establish whether instruments prohibited under international law are explicitly forbidden, and whether the use of restraints is applied consistently with the principles of necessity and proportionality, rather than on a routine basis.

40 Committee against Torture, for example, *Concluding observations on United States of America*, A/55/44, May 2000, para.180c.

41 20th report of the European Committee for the Prevention of Torture (CPT), para.74, CPT (2011) CPT Standards CPT/Inf/E (2002) 1 – Rev. 2011.

42 Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979, Article 3.

43 See Principle 9, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

44 See <http://m.bangkokpost.com/opinion/360858> and <http://www.bbc.co.uk/news/world-asia-22555030> <Accessed 23 September 2013>

45 Article 64, United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

46 Rule 24, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

4. Body searches

Searches of various kinds are a necessary and legitimate means of preventing prisoners from having access to dangerous or prohibited items or substances, which may constitute a threat to the safety and health of staff, other prisoners and visitors.

However, when conducted routinely, in a disproportionate, humiliating or discriminatory way, searches infringe upon the dignity of detainees and can amount to inhuman or degrading treatment. There is also a risk that searches, including cell searches, are used as a means of intimidation or retaliation against certain detainees.

Body searches are usually applied at the time of admission, before and/or after physical contact with relatives or even legal representatives,⁴⁷ when ordering placement in a segregation cell or after exercise, workshops or following meals in the refectory.

However, there are often no rules governing searches, and in a large number of prisons, officers can search prisoners, their cells and possessions at any time.

There are various kinds of body searches. A pat down, rub down or frisk search represents a search of person's outer clothing by a person running his/her hands along the outer clothes. Prison staff may ask the prisoner to take off their shoes and empty their pockets, and may check in their mouth, nose, ears and hair. By contrast, a full body or strip search refers to the removal or rearrangement of some or all of a person's clothing so as to permit a visual inspection of a person's private areas, without physical contact. Lastly, invasive body searches involve a physical inspection of the detainee's genital or anal regions.

The humiliating and traumatising effect of invasive body searches, in particular strip searches and cavity searches, has been widely recognised. As for women, the Special Rapporteur on violence against women described their improper touching during searches carried out by male prison staff as 'sanctioned sexual harassment'.⁴⁸

Wherever possible, alternatives to body searches,⁴⁹ such as scans and metal detectors, should be developed and used to replace strip searches and body cavity searches, and appropriate training should be provided to staff.

Strip searches of women prisoners in Australia

In 2012 the Special Rapporteur on violence against women reported that many Australian prisons require women to undergo highly invasive and often traumatic strip searches. A prisoner from Farlea Prison reported: 'We are strip searched after every visit. We are naked, told to bend over, touch our toes, spread our cheeks. If we've got our period we have to take the tampon out in front of them. It's degrading and humiliating. When we do urines it's even worse, we piss in a bottle in front of them. If we can't or won't we lose visits for three weeks.'⁵⁰

Vaginal examinations in Greece

Prisoners in Greece who refused a vaginal examination on arrival to prison were placed in segregation for several days and forced to take laxatives. On the occasion of a visit of the European Committee for the Prevention of Torture (CPT) in January 2011, authorities claimed that these types of searches had been ended, and were only undertaken in exceptional circumstances and by trained doctors. However, during their visit the CPT found the practice was still ongoing in Greek prisons.⁵¹

Clear and strict regulations and procedures should be in place governing the use of body searches, in order to avoid abuse. They should specify when searches are allowed, based on the criteria of necessity, reasonableness and proportionality. Alternatives should be applied wherever possible. For example, if there is suspicion that a prisoner is concealing an illegal item in his/ her body, alternatives include modern scanning technology or making arrangements to keep the prisoners under close supervision until such time as any forbidden item is expelled from the body.

Regulations should also specify the modalities of their conduct. Most importantly, body searches should preserve the right to privacy and dignity and should be undertaken in a sensitive way. Strip searches and body cavity searches should only be carried out as a last resort, and require authorisation by the supervisor on duty. Prisoners should never be completely naked,

47 It has to be noted that authorities – and hence monitoring bodies – must take into account not only the risk of families voluntarily introducing prohibited items but also situations where they are forced to do so by other inmates' families or criminal groups outside the place of detention.

48 Report of the Special Rapporteur on violence against women of the mission to the United States of America on the issue of violence against women in state and federal prisons, 4 January 1999, E/CN.4/1999/68/Add.2, paras.55, 58.

49 In 2011, the government of Argentina decided to install detectors to control the entry of visitors in prisons. These are not all installed yet. See CELS Derechos humanos en Argentina, informe 2012, p231.

50 Australian Human Rights Committee, Australian Study Tour Report, Visit of the UN Special Rapporteur on violence against women, 10-20 April 2012, p16.

51 PRI, Guidance Document on the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 2013, p61, footnote 208.

but the search should be conducted in two steps (first upper and then lower body), avoiding physical contact, in order to avoid humiliation. Staff should explain exactly what will happen before they give a full body search and strict documentation is to be maintained of the reason for the search, those conducting it, the authorising official and findings of the search.⁵²

Detainees should only be searched by a staff member of the same gender, as emphasised by the UN Bangkok Rules,⁵³ the Human Rights Committee,⁵⁴ in Rule 54(5) of the European Prison Rules,⁵⁵ and in the standards developed by the European Committee for the Prevention of Torture.⁵⁶

Standards of medical ethics emphasise that the 'physician's obligation to provide medical care to the prisoner should not be compromised by an obligation to participate in the prison's security system'⁵⁷ and therefore, involvement in 'any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health' is in contravention of medical ethics for health personnel.⁵⁸ It is therefore recommended that body cavity searches are performed by medically trained staff who are not part of the regular health-care service of the prison or by prison staff with sufficient medical knowledge and skills to safely perform the search.

Principle XXI, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas

'Whenever bodily searches, inspections of installations and organizational measures of places of deprivation of liberty are permitted by law, they shall comply with criteria of necessity,

reasonableness and proportionality. (...) Member States shall employ alternative means through technological equipment and procedures, or other appropriate methods. Intrusive vaginal or anal searches shall be forbidden by law. The inspections or searches in units or installations of places of deprivation of liberty shall be carried out by the competent authorities, in accordance with a properly established procedure and with respect for the rights of persons deprived of liberty.'

Considering the high risk of abuse during searches, in particular body searches, monitoring bodies need to analyse carefully the reasons why such searches are conducted, whether they are based on individual risk assessments or constitute a routine, disproportionate policy. They should also carefully assess how the searches are carried out in practice.⁵⁹

Annual report of the French NPM (searches)

The 2011 annual report of the French NPM, the General Controller of Places of Deprivation of Liberty, contains a whole section devoted to the issue of searches in prisons. The thorough analysis covers factual data as well as a review of the legal basis and its development. It also includes a broader sociological perspective on the use of searches in prisons. 'The conclusion to draw from all this data is simple: staff attachment to systematic searches is legitimate in view of their ability to maintain order in prisons. However, it is only a last resort (...). The key to a justified – and hence limited - use of strip searches lies in the manner in which prison staff is able to distinguish the real troublemakers (a minority) from the others. (...) This will not require new analysis of the 'dangerousness' of individuals but rather a careful and daily observation of the life of detainees.'⁶⁰

52 *Ibid.*

53 Rule 19 of the UN Bangkok Rules: 'Effective measures shall be taken to ensure that prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures'. For body searches on LGBTI detainees see PRI/APT, *LGBTI persons deprived of their liberty: A framework for preventive monitoring*, 2013.

54 Human Rights Committee in General Comment 16 on Article 17 of the ICCPR, para. 8: '(...) So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex'.

55 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006.

56 CPT Standards, para. 26.: '(...) the CPT wishes to stress that, regardless of their age, persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender; these principles apply a fortiori in respect of juveniles'.

57 WMA Statement on Body Searches of Prisoners, adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993, and editorially revised by the 170th WMA Council Session, Divonne-les-Bains, France, May 2005.

58 Principle 3 of the 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.

59 See, for example, the thorough analysis on searches carried out by the French National Preventive Mechanism (NPM) in its 2011 annual report, p238-256. Le Contrôleur général des lieux de privation de liberté, *Rapport d'activité* 2011, 2012.

60 *Ibid.* p256.

5. Isolation and solitary confinement

Solitary confinement is a term used to describe the physical isolation of individuals by confinement to their cell for twenty-two to twenty-four hours a day. In many jurisdictions prisoners under such regimes are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli in such a prison regime is not only quantitative but also qualitative. Usually the available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic.⁶¹

In the security context, solitary confinement is applied in three main ways in prison settings. During pre-trial detention, solitary confinement is often used as a technique for ‘softening-up’ detainees before and between interrogation sessions. For sentenced prisoners, it is applied as a disciplinary punishment; as a way of managing specific groups of prisoners considered to pose a high risk; and as a way to (allegedly) ‘protect’ prisoners from violence by other detainees. This justification is often used for placing persons with mental disabilities or illnesses, and lesbian, gay, bisexual, transgender and intersex (LGBTI) detainees in solitary confinement.⁶² Political detainees deemed to be a threat to national security are also sometimes held in this way.⁶³

In the absence of sufficient numbers of staff, solitary confinement can seem an easier way of managing challenging prisoners rather than providing the supervision and control required.

In the past decade, there has been an increase in large-scale solitary confinement in the form of ‘super-max prisons’ (see 6). Other prisons have introduced ‘small group isolation’ where prisoners classified as dangerous or high risk are held in small high security units, and are only allowed limited association with one to five others at designated times, typically during the one-hour long outdoor exercise period.

Special Disciplinary Regime in Brazil

In Brazil, a form of solitary confinement called the Special Disciplinary Regime (RDD – Regime disciplinar diferenciado) is used as a disciplinary measure in response to infractions committed by detainees considered as dangerous. RDD can be applied for up to one sixth of the sentence. The worst conditions are observed in RDD within federal prisons: detainees are held in their cell 24 hours a day under constant camera surveillance, with no access to TV, radio or newspapers. They can receive two visitors per week but without any physical contact.⁶⁴

Isolation and solitary confinement constitute a high-risk situation for human rights abuse. Because of the absence of witnesses, it increases the risk of torture or other ill-treatment going unnoticed and undetected. Prolonged, solitary confinement can in itself amount to torture or other cruel, inhuman or degrading treatment,⁶⁵ and has been found to have significant adverse health effects. Medical research confirms that the denial of meaningful human contact can cause ‘isolation syndrome’ the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide, and can destroy a person’s personality.⁶⁶

Istanbul statement on the use and effects of solitary confinement

‘Solitary confinement may cause serious psychological and sometimes physiological ill effects. A long list of symptoms ranging from insomnia and confusion to hallucinations and psychosis has been documented. Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions. (...) The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and well-being.’⁶⁷

61 The Istanbul Protocol on the use and effects of solitary confinement, adopted on 9. December 2007 at the International Psychological Trauma Symposium, Istanbul.

62 See PRI/APT, *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, 2013.

63 Sharon Shalev, *A sourcebook on solitary confinement*, Mannheim Centre for Criminology, London School of Economics, 2008.

64 Pastoral carceraria do Brasil/Association for the Prevention of Torture. Situação das Pessoas Privadas de Liberdade no Brasil – Informação Preliminar para Audiência da Comissão Interamericana de Direitos Humanos, 20 de outubro de 2012.

65 Special Rapporteur on Torture, *Report to the UN General Assembly*, 5 August 2011, A/66/268.

66 Grassian S, ‘Psychiatric effects of solitary confinement’, *Journal of Law and Policy* 22, 2007, pp325-383; Haney C, ‘Mental health issues in long-term solitary and ‘supermax’ confinement’, *Crime & Delinquency* 49(1) pp124-156, 2003; Shalev S, *A sourcebook on solitary confinement*, Mannheim Centre for Criminology, London School of Economics, 2008.

67 The Istanbul Protocol on the use and effects of solitary confinement, adopted on 9. December 2007 at the International Psychological Trauma Symposium, Istanbul.

For these reasons, a significant body of international law has developed that requires restriction of the use of solitary confinement.⁶⁸

The Basic Principles for the Treatment of Prisoners commit to 'efforts towards the abolition of solitary confinement or the reduction of its use'.⁶⁹ The Istanbul Statement on the use and effects of solitary confinement, the European Prison Rules⁷⁰ and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas reiterate that solitary confinement should be used only in very exceptional cases, as a last resort and for as short a time as possible, 'when it is evident that it is necessary to ensure legitimate interests relating to the institution's internal security, and to protect fundamental rights, such as the right to life and integrity of persons deprived of liberty or the personnel'.⁷¹

An absolute prohibition on the use of solitary confinement has been enshrined for juveniles,⁷² and for pregnant women, women with infants and breastfeeding mothers in prison.⁷³ The Istanbul Statement on the use and effects of solitary confinement also recommends a prohibition for persons with mental illness.⁷⁴

Most recently, the UN Special Rapporteur on Torture called for a ban on prolonged or indefinite solitary confinement as incompatible with the prohibition of torture and other ill-treatment⁷⁵ and as a 'harsh' measure, which is contrary to rehabilitation, the aim of the penitentiary system.⁷⁶ He further recommended an absolute prohibition for juveniles and persons with mental disabilities.

In line with the principles established in international law and recommended by human rights bodies, solitary confinement should therefore be imposed only as a last resort, respecting the principles of necessity, proportionality, legality and accountability. To this end, procedural safeguards need to be in place, including a regular, substantive independent review of the use of isolation or segregation against individual detainees, and recording of its use. An

explicit prohibition should be in place for solitary confinement of children, of pregnant women, women with infants and breastfeeding mothers in prison and persons with mental illnesses.

Where isolation or solitary confinement is applied, prison regimes must ensure that prisoners have meaningful social contact with others, for example by raising the level of staff-prisoner contact, allowing access to social activities with other prisoners and more visits, arranging in-depth talks with psychologists, psychiatrists, volunteers of NGOs, from the local community, or religious prison personnel if so wished by the detainee. Regular contact with family members through visits, letters, phone calls or emails are crucial for detainees. The provision of meaningful in cell and out of cell activities, such as educational, recreational and/or vocational programmes, are equally important to prevent infringements of the right to dignity and health and will have a positive effect on levels of violence.

Prisoners in isolation should be subject to particular attention by monitoring bodies. Monitors should ensure that their visits include a thorough examination of the use of isolation, segregation and solitary confinement, including its frequency and length. They should closely review the classification systems, and decisions to isolate prisoners, including whether these are based on an individual risk assessment. The use of isolation for 'protection' of vulnerable groups should be examined carefully.

Monitoring bodies should also pay particular attention to the conditions in segregation units and their impact on the mental well-being of the prisoners, examining in particular the possibility for detainees to maintain meaningful human contact. Furthermore, monitoring bodies should inquire whether segregation is applied in a discriminatory way towards certain groups or individuals. This requires interviews in private with detainees in actual or recent solitary confinement, checking the relevant registers, and interviews with staff.

68 See, for example, Principle 7 of the Basic Principles; the Human Rights Committee, General Comment No. 20.

69 Principle 7, UN Basic Principles for the Treatment of Prisoners, 1990.

70 European Prison Rules, Rule 60(5): 'Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible'.

71 Principle XXII (3) of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

72 Rule 67, UN Rules for the Protection of Juveniles Deprived of their Liberty.

73 Rule 22, UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

74 The Istanbul Protocol on the use and effects of solitary confinement, adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul.

75 Interim report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment, 5 August 2011, A/66/268. The European Committee for the Prevention of Torture (CPT) has made comparable recommendations: CPT 21st General report, 1 August 2010–July 2011, November 2011.

76 First interim report to the General Assembly on 18 October 2011, A/RES/65/205 at para.79 (noting that: 'that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions').

6. 'Super-max' prisons

The increase of so-called 'super-max prisons' in various countries illustrates the excessive recourse to high-security facilities, even though violent prisoners who pose a high threat to staff and other detainees are generally only a small proportion of the prison population.

'Super-max prisons' are characterised by a very restrictive detention regime where detainees spend 22 to 23 hours in their cell, with only an hour's outdoor exercise, usually alone in small courtyards. Limited human contact with staff, fellow inmates or family lead to social isolation and *de facto* solitary confinement, despite its sustained consequences on the mental health of prisoners (see above 2.).

High security and 'super-max' in Brazil

In 2006, Brazil built three federal high security prisons to detain prisoners considered too dangerous to be kept in the state's prison system. Detainees are locked in their individual cell for 22 hours a day, with two hours outdoor exercise. They are not allowed to receive newspapers and have no access to radio or TV. Family visits, including conjugal visits, are allowed every two weeks, and are difficult due to the remote location of these prisons. The staff, with a ratio of almost 1 guard to 1-2 detainees, are under the control of the federal police. In a report to the federal prison of Campo Grande, the Ministry of Justice considered that the quasi-absolute isolation of detainees was one of the main issues of concern, with consequences on detainees' mental health, evidenced by the general use of anti-depressants.⁷⁷

In such a system, human dignity is infringed in various ways, from deprivation of human contact to an increased risk of torture and ill-treatment and infringements of the right to mental health, with consequences beyond the duration of such confinement.

While security considerations are used to justify such high-security regimes, experience demonstrates that isolation does not necessarily lead to a more

secure environment but exacerbates misconduct and psychiatric disorders.

In the state of Mississippi, USA, litigation filed in 2002 – which ultimately was settled out of court – resulted in reform within the Mississippi Department of Corrections, including the reduction of the segregated population in the Unit 32 Super-max facility from 1,000 to 150. The transfer of segregated prisoners to less restrictive regimes was based on a revision of the classification procedure,⁷⁸ which limited segregation to detainees who committed serious infractions of the prison rules, are high-level gang members, or have made prior escape attempts. This was combined with a mental health treatment programme. The changes in policy were accompanied by a sharp reduction in prison violence.⁷⁹ According to the study, monthly statistics showed an almost 70 per cent drop in serious incidents, both prisoner-on-staff and prisoner-on-prisoner.⁸⁰ While prisoners remaining in the segregation unit continued to constitute a difficult population, following the change in policy they felt a greater sense of fairness and the rate of serious incidents remained relatively low.⁸¹

Following this positive experience, the extensive use of solitary confinement and super-max in the US has been questioned. In June 2012, the Senate Committee on the Judiciary scheduled a hearing of the Subcommittee on the Constitution, Civil Rights and Human Rights entitled 'Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences'.⁸² In February 2013, the Federal Bureau of Prisons agreed to a comprehensive and independent assessment of its use of solitary confinement in the nation's federal prisons.⁸³ Since then, the Federal Bureau of Prisons has reportedly reduced its segregated population by nearly 25 per cent and closed two of its Special Management Units, a form of segregated housing.

The National Institute of Corrections reportedly assisted states like Colorado⁸⁴ and Mississippi to reform their solitary confinement practices, with Mississippi reducing its segregated population by more than 75 per cent, which resulted in a 50 per cent reduction in prison violence.⁸⁵

77 Ministerio da Justicia, Conselho nacional de política criminal e penitenciária, *Relatório da visita de inspeção ao Estado do Mato Grosso do Sul*, 8-9 March 2010.

78 "When the classification staff employed the new criteria and reviewed all the prisoners in Unit 32, they discovered that nearly 80% of the population in administrative segregation did not meet the new criteria." See *Beyond supermax administrative segregation – Mississippi's experience rethinking prison classification and creating alternative mental health programs*, 21 July 2009, p5.

79 *Ibid.* p3.

80 *Ibid.* p7.

81 *Ibid.* p11.

82 *Reassessing solitary confinement: the human rights, fiscal and public safety consequences*. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Human Rights, 19 June 2012.

83 See the press statement by Senator Dick Durbin, Chair of the Senate Subcommittee on the Constitution, Civil Rights and Human Rights, 4 February 2013. <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=07260483-4972-4720-8d43-8fc82a9909ac> <accessed 8 October 2013>

84 In March 2012, the Canon City Super-max prison in Colorado, USA, was closed down, whereas the Illinois Tamms Super-max prison was officially shut in January 2013.

85 See ⁸³.

7. The overuse of technology and surveillance

The use of technology in prisons can make a positive contribution to the safety of staff and detainees and reduce the risk of abuse. This is the case, for example for metal detector devices used to replace strip searches, video cameras installed in courtyards to reduce risks of inter-prisoner violence, or video conferencing with courts to accelerate judicial procedures.⁸⁶ The presence of cameras can also deter violence or other inappropriate behaviour by staff and other detainees.

However, the indiscriminate use of high-tech systems, on a permanent basis, in particular constant CCTV surveillance in cells,⁸⁷ can constitute a serious infringement of the right to privacy. Research in a UK prison showed that a sense of being monitored contributed to an ‘atmosphere of constant suspicion, paranoia, and self-conscious reflection’ leading prisoners to suppress and lose touch with their identities.⁸⁸

Furthermore, audio-visual surveillance must not be used to infringe the confidentiality and professional secrecy of detainees’ meetings with lawyers, or their right to privacy during medical examinations. Audio-visual transmissions also tend to be over-relied upon as a means to prevent self-harm and suicide.

Video surveillance, and especially video recording, should therefore be accompanied by safeguards including in relation to storage of and access to the footage.⁸⁹

There is also a risk that an increased use of technology, including high-security architecture and mechanical security mechanisms such as automatic gate locking/unlocking systems, replace human contact between detainees and staff and lead to the dehumanisation of places of detention. For example, in 2012, the South Korean government was reported to be testing robot prison guards at a facility in Pohang. The robots are equipped with cameras, a microphone, and software to analyse signs of danger emanating from prisoners in order to alert the human guards.⁹⁰

Monitoring bodies and NPMs should examine general policies and trends related to the use of technology in places of detention, as well as their implementation in practice, with a view to assessing their impact on the dignity of detainees.

While audio-visual surveillance, such as recording of police interrogations, can provide a key safeguard against torture and other ill-treatment, monitoring bodies should be as specific as possible when recommending such measures, in order not to indirectly undermine the right to privacy and confidential consultation with legal representatives. They should also be attentive to overreliance on technology and surveillance, which carries the risk of dehumanising a place of detention.

8. Staff-prisoner relations and inter-prisoner violence

Many countries do not invest adequately in their prison system, limiting their role to the building of walls and reducing staffing levels to what is required to prevent escape, and otherwise leaving prisoners more or less to their own devices. High levels of violence and systems of self-government, leaving control in the hands of the strongest prisoners, are the logical consequences of such neglect.

When prisons are a dangerous place, people come out more likely to offend again, potentially even brutalised. Violent institutions are also very inefficient. Fights and assaults monopolise time that staff could spend on rehabilitation of prisoners; staff sick leave increases when they have to deal with violence; and there are wider healthcare costs of physical injuries.

The UN Committee against Torture has raised the concern that overcrowding and understaffing are conducive to inter-prisoner violence, including sexual violence, in detention facilities, especially during the night.⁹¹ As well as improving conditions and staff numbers, the Committee recommended action to address the lack of purposeful activities, the availability of drugs, and feuding gangs.

86 On the use of video-conferencing for court hearings and the risks for the right to defence, see Opinion of the French General Inspector on places of detention (NPM) of 14 October 2011: http://www.cgjpl.fr/wp-content/uploads/2011/11/Avis-JO_visioconference_20111109.pdf <accessed 8 October 2013>

87 For example, this is the case for detainees under the Special Disciplinary Regime (RDD) in federal prisons in Brazil, or in Serbia in the Special Department of Pozarevac Zabela Correctional Institution, CPT Report to the Government of Serbia, visit from 1-11 February 2011, CPT/Inf (2012) 17, para.96.

88 Alison Liebling, Helen Arnold and Christina Straub, *An exploration of staff prisoner relationships at HMP Whitemoor: 12 years on*, Revised final report, Ministry of Justice, 2011, p30.

89 See PRI/APT factsheet on ‘Video recording in police custody’, in *Detention Monitoring Tool: Addressing risk factors to prevent torture and ill-treatment*, 2013.

90 See ‘Robot prison guards to go on duty in Pohang’, The Korea Herald: <http://www.koreaherald.com/view.php?ud=20111124000755> <Accessed 23 September 2013>

91 Committee against Torture, *Concluding observations*, Bulgaria, 14 December 2011, CAT/C/BGR/CO/4-5.

Particular groups, such as LGBTI detainees or detainees with psycho-social disabilities are frequently at a higher risk of inter-prisoner violence, and require adequate protection. Where incidents occur, they need to be properly investigated and proportionate sanctions imposed on those responsible.

The key to a secure and humane prison system lies with the staff and the nature of its relationship with the prisoners.⁹² Maintaining security requires investment in terms of the configuration of the prison, and in particular in an adequate staff to prisoner ratio. Professional staff who are carefully selected, properly trained and supervised will be able to deal with prisoners in a humane way while paying attention to matters of security and good order.

Early intervention by staff, challenging the harmful behaviour that leads to, or escalates, conflict is far more effective in reducing the costs of running prisons than staff reacting with force to violent incidents after they occur. Prisons can be made safer by meeting people's basic human needs; teaching more effective ways of managing conflict; confronting tactics that escalate disputes; and working with the social context to promote conflict resolution.

Permanent Committee of Latin America on the Revision and Updating of the UN Standard Minimum Rules for the Treatment of Prisoners (2009):

'As far as possible, prison authorities should have recourse to mechanisms of a restorative nature to settle disputes with persons deprived of liberty, and such quarrels as may arise among them.'⁹³

Prisons, which make use of dynamic security or direct supervision, have been shown to produce better outcomes than those which continue to employ a traditional guarding and surveillance role.

However, in some countries, prison staff are still required to maintain formal and distant relations with the detainees in the name of security or in order to reduce risks of corruption. Staff may only be allowed to talk to prisoners to give instructions, while other conversations are prohibited. Prisoners may have to stand facing a wall or keep their hands behind their back in the presence of guards.

The CPT has stated that such 'practices are unnecessary from a security standpoint' and that 'the development of constructive and positive relations between prison staff and prisoners will not only reduce the risk of ill-treatment but also enhance control and security'.⁹⁴

Although Rule 28(1) of the UN Standard Minimum Rules for the Treatment of Prisoners prohibits using prisoners in disciplinary capacity, in many countries the authority to maintain order is delegated to privileged detainees through informal or recognised self-management systems. Detainees to which prison management is partly 'outsourced' in this way can control every aspect of a detainee's life, from access to phone calls, to meetings with relatives and contact with the authorities. Not surprisingly, these prisoners often misuse this power, resulting in threats, intimidation and violence.

The UN Subcommittee on Prevention of Torture has noted that internal self-management can lead to arbitrary use of power and violence 'to the detriment of vulnerable prisoners, or [be] used as means of coercion or extortion' if not regulated and managed properly.⁹⁵

Monitoring bodies, including NPMs, should pay attention to the nature of the staff-prisoner ratio and relationship and how it is affected by security measures. This can include examining relevant standard operating procedures and training, as well as the day-to-day relations observed. Monitoring bodies need to attend to the problem of inter-prisoner violence, which is a threat to the safety and dignity of both prisoners and staff.

92 Andrew Coyle, *A human rights approach to prison management: handbook for prison staff*, International Centre for Prison Studies, 2002, p13.

93 Rule 24.2(f), Permanent Committee of Latin America on the Revision and Updating of the UN Standard Minimum Rules for the Treatment of Prisoners (2009): General Report.

94 European Committee for the Prevention of Torture (CPT) Standards, Extracts from the 11th General Report [CPT/Inf (2001)16], para.26.

95 Fourth annual report of the Subcommittee on Prevention of Torture (SPT), 3 February 2011, CAT/C/46/2, p15-16.

IV. How can monitoring bodies address the balance between security and dignity?

There is a risk that in a prison, security concerns prevail over any other considerations and infringe the human rights and dignity of the persons deprived of their liberty. In order to address this risk, monitoring bodies need to exercise their mandate in a comprehensive way, taking into account the collectivity of security measures applied and their justification in the context of the specific prison and the individual case. They should critically appraise specific practices as well as their impact collectively, on whether they are justified, necessary and proportionate, and actually result in an increase of security and safety. In their reports and recommendations, they should be ready to challenge security measures, especially when practices are systematic and applied to all detainees disregarding individual security risks they may or may not pose.

Monitoring bodies may need to conduct a number of private interviews with detainees that are representational of all groups, including persons in situations of vulnerability. They should reach out to groups of prisoners who may have been subjected to excessive security measures, for example, prisoners in security or isolation cells or under solitary confinement.

Informal conversations and formal interviews in private with the staff, especially staff in direct contact with detainees, are essential for understanding their security concerns. Interviews with other personnel, such as health personnel and social workers, but also with families, professional associations or trade unions of prison staff are also helpful to understanding whether security measures and policies are legitimate or arbitrary. Monitoring bodies need to cross-check the information gathered through interviews with documents and registers, including registers of incidents, use of force and medical files in order to assess whether or not security measures are lawful, necessary and proportionate to reduce the risk they claim to tackle.

Monitoring bodies should enquire into possible discriminatory practices and the misinterpretation of specific needs as ‘security threats’. They should be conscious that in prison systems that overemphasise security, persons in situations of vulnerability, including children, women,⁹⁶ older people, people living in poverty, members of ethnic or religious minorities, indigenous people, LGBTI people,⁹⁷ migrants, and persons with psycho-social disabilities⁹⁸ may be more affected and face higher risks of being exposed to abuse. For example, foreign nationals may be perceived as representing a high risk of flight and members of ethnic and religious minorities and LGBTI people may be seen as a threat to the dominant culture and therefore a hindrance to the smooth running of a prison.

Monitors also have to keep in mind the security of the persons deprived of liberty they speak to, and their risk of being subjected to reprisals or sanctions for having been in contact with them.⁹⁹ In this regard, monitors should respect the ‘do no harm’ principle and consider alternative ways of information gathering where available.

They must also be mindful of their own security. It is ultimately the responsibility of members of the monitoring team to determine whether or not to follow the advice of the authorities on matters relating to their security. When monitors decide to conduct an interview against the advice of the authorities, they should also consider the conditions in which such interaction takes place, for example out of hearing but in sight of guards. In this regard, monitoring bodies and NPMs may want to consider adopting an internal security policy in order to be prepared to respond to security concerns during their monitoring visits.

As an overemphasis on security in detention is part of a more global trend, monitoring bodies should also be mindful of the broader picture and societal trends that demand ‘more security’ in places of detention, and their impact on the management of prisons. They

96 See PRI/APT, *Women in detention: a guide to gender-sensitive monitoring*, 2013.

97 See PRI/APT, *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, 2013.

98 There is a disproportionately high rate of detainees suffering from some form of mental disorder in prisons, ranging from anxiety to suicidal thoughts. Due to scarcity of resources, staff or space, and because sometimes mental illness goes unnoticed for lack of medical attention from the outset of detention, persons suffering from severe psychosocial disabilities, such as psychosis, are often held in prisons, mixed with the general prison population.

99 Reprisals might also affect staff who have been in contact with the monitoring bodies.

have a responsibility to counter false perceptions about insecurity, simplistic messages about detainees and demands for more repressive policies. In order to do this, they need to develop well-defined outreach and communication strategies targeting the media, policy-makers and the general public.

Finally, monitoring bodies have an important role to play in alerting decision-makers and the broader public about the immediate, as well as the more long-term, consequences of some policies, in particular where 'security measures' in effect are counter-productive and result in an increase of violence and a deterioration of safety and order.

Ultimately, the goal of a more secure society will only be achieved through a criminal justice system that is fair and just, and where the dignity of all detained persons is respected.



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Detention Monitoring Tool

Addressing risk factors
to prevent torture
and ill-treatment



About this paper

This paper is part of PRI/APT's Detention Monitoring Tool, which aims to provide analysis and practical guidance to help monitoring bodies, including National Preventive Mechanisms, to fulfil their preventive mandate as effectively as possible when visiting police facilities or prisons.

The tool seeks to support such bodies in addressing systemic risk factors that contribute to an environment where torture or other ill-treatment occur. It includes:

Thematic papers: these analyse broader themes that will benefit from a comprehensive monitoring approach, examining regulations and practices throughout the criminal justice process with a systemic lens, such as gender, sexual orientation or institutional culture.

Factsheets: these provide practical guidance on how monitoring bodies can focus on a number of systemic issues that are particularly high risk factors for torture or ill-treatment, such as body searches or the working conditions of prison staff.

All resources in the pack are also available online at www.penalreform.org and www.apr.ch.

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