

A Human Rights Approach to Prison Management

Handbook for prison staff

THIRD EDITION

Andrew Coyle

Helen Fair

**Institute for Criminal Policy Research
at Birkbeck, University of London**

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In cooperation with the
International Committee of the Red Cross



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The Institute for Criminal Policy Research

A Human Rights Approach to Prison Management has been produced by the Institute for Criminal Policy Research (ICPR), which is based in the Law School of Birkbeck, University of London. ICPR conducts policy-oriented, academically grounded research on all aspects of criminal justice, including comparative research on prisons and the use of imprisonment worldwide. As part of its work on imprisonment, ICPR compiles and hosts the World Prison Brief: an online database providing free access to statistics and other information on prison systems around the world. Further details of ICPR's work are available at www.icpr.org.uk, and the World Prison Brief can be accessed at www.prisonstudies.org.

The International Committee of the Red Cross

The International Committee of the Red Cross helps people around the world affected by armed conflict and other violence, doing everything it can to protect their dignity and relieve their suffering, often with its Red Cross and Red Crescent partners. The organization also seeks to prevent hardship by promoting and strengthening humanitarian law and championing universal humanitarian principles.

In 2017, ICRC delegates conducted more than 4,400 visits to about 1,400 places of detention in 92 contexts. Through their visits, the delegates reached over 940,000 people deprived of their liberty, including detainees under the jurisdiction of international courts and tribunals. They followed up on 35,274 detainees individually.

Designed by Intertype

Preface

The first two editions of this handbook (2002 and 2009) were published by the International Centre for Prison Studies (ICPS). In 2014 ICPS was incorporated in the Institute for Criminal Policy Research (ICPR), part of the School of Law of Birkbeck, University of London. The handbook is available in 19 languages, several of which are available for free download from www.prisonstudies.org.

The handbook is used regularly by intergovernmental organisations and other international bodies in their prison reform work. From the outset the International Committee of the Red Cross (ICRC) has been especially supportive and has funded translations of the handbook to assist its work in a number of countries. We are delighted that ICRC has been directly involved in work on this third edition.

The handbook is also used by governments and prison administrations in a number of countries as a tool for developing reform strategies. Another satisfying feature of the previous editions has been the manner in which the handbook has been accepted by first line prison staff around the world as a practical help in their daily work.

In this third edition the core text has been left largely unaltered since it has stood the test of time. However, in the last decade there have been a number of new international and regional standards as well as developing case law concerning the use of imprisonment. An obvious example is the revision of The UN Standard Minimum Rules for the Treatment of Prisoners now known as The Nelson Mandela Rules (2015) and, as far as possible, all of these have been incorporated into the new edition.

Particular thanks are due to Dr Jessica Jacobson, Director of ICPR, and Catherine Heard, Director of the World Prison Research Programme at ICPR, and to Mary Murphy, ICRC Detention Adviser, and her ICRC colleagues, for their contributions to this edition.

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Foreword

by the International Committee of the Red Cross

For over a century visits by the ICRC to places of detention and private discussions with the people held there have been at the heart of the institution's efforts to ensure that detainees' fundamental rights and basic human needs are met with dignity.

Addressing humanitarian concerns through practical recommendations and within a confidential dialogue between the ICRC and those responsible for meeting those needs, usually prison staff, is also a vital part of that endeavour. It is, after all, the duty of the authorities to address the vulnerability inherent in deprivation of liberty, when people suddenly have reduced access to family and community and become dependent on others for their most basic needs. This is a challenging duty anywhere, but particularly in the countries where ICRC is most often active in detention, those affected by war and other violence.

Since it was first published in 2002, *A Human Rights Approach to Prison Management* has been a tool used by the ICRC in discussing with prison staff what it means in practice to treat with humanity those accused or convicted under criminal law.

In 2009 a second edition of the Handbook reflected a welcome and growing trend of prisons opening up to external monitoring by both international and national bodies. At the same time, however, events in the external world meant that the book needed to re-emphasize the centrality of the notion of dignity in all dealings with prisoners and to restate the absolute prohibition of torture and ill treatment. The Handbook also featured new chapters devoted to high security prisoners and foreign nationals, reflecting what was already then, and continues now, to be a worrying growth in their numbers.

This third edition, to which the ICRC has gladly contributed from its experience in places of detention worldwide, gives an opportunity to disseminate important messages contained in the most recent international detention standards, the Nelson Mandela Rules and the Bangkok Rules. Among the provisions particularly welcomed by the ICRC are those that expand the data which must be recorded and acted upon in relation to each individual detainee. For example, information that facilitates family contact and which enables timely access for detainees to legal representation and the courts.

Also included in this new edition are a swathe of provisions in the Nelson Mandela Rules concerning healthcare for prisoners. These emphasize firstly that this is a State responsibility. They recall also the clinical independence of health staff working in prisons, the importance of continuity in healthcare and of prompt access to healthcare in emergency, the need to obtain the informed consent of the prisoner to treatment, and for up to date and confidential medical records to be maintained and to accompany each prisoner on their journey. The particular needs of women and girls, and others who experience particular vulnerabilities in detention are acknowledged, as is the consideration that must be given to the best interests of the child in decisions made when those on whom they depend are detained, in addition to when children are detained in their own right.

The book reflects too the Rules' clear definition of solitary confinement and the strict limitations and control to be placed on this and other extreme forms of deprivation of liberty. Searches, and in particular intimate body searches, are to be restricted. Access for the detainee to effective reporting and complaints mechanisms is encouraged and the need for and nature of effective inspections and investigations are clarified, particularly when torture is alleged. Also spelt out is what is expected in the recruitment and training of prison staff at all levels.

The ICRC is well aware that implementing these and other relevant standards can sometimes seem challenging to prison staff. They often face infrastructure that may impede rather than facilitate their tasks, resources inadequate to the numbers of prisoners confined and lack of clarity as to what is ultimately expected of them and the institution they serve.

We hope that this handbook, which explains what it means in practice to be guided by the core principle of human dignity when working with prisoners, will be of encouragement to prison staff who wish to deliver humane treatment and conditions. We hope too that it will influence the many other actors who have the power and responsibility to bring about positive and necessary change in prisons. The ICRC will continue to endeavour to support such efforts wherever it can.

Dominik Stillhart

Director of Operations, International Committee of the Red Cross

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Who the handbook is for

This handbook is intended to assist everyone who has anything to do with prisons. Readers are likely to include government ministers whose portfolio covers parliamentary accountability for prisons, officials who work within Ministries of Justice and other ministries which have oversight of prison issues, as well as intergovernmental agencies such as the United Nations, the Organisation of American States, the African Union, the Council of Europe, the European Union, the Organisation for Security and Co-operation in Europe and the World Health Organisation. It will also be of interest to the many non governmental organisations and groups from civil society which work in prisons. It should be made available where possible to prisoners. But its primary audience is intended to be those who work directly with prisons and prisoners. These include national and regional prison administrators. Above all, it is intended for those who are actually employed in prisons and who deal with prisoners on a day to day basis.

A set of clear principles

The topics covered in the handbook demonstrate the complexity of prison management and the wide range of skills which are required from those whose task it is to direct prisons. The issues covered show that there is a common set of factors which, when taken together, constitute a model for good prison management. However, it is not sufficient to consider these topics in a vacuum. It is also important that they should be grounded in a set of clear principles. Since it is intended that this handbook should have application in every prison system in the world it is essential that the set of principles which is to be used as a reference point should be applicable in every country. They should not be based on a particular culture or on the standards which are accepted in one country or region. The handbook meets this requirement by taking as its starting point for each chapter the relevant international human rights standards.

International standards

These standards have been agreed by the international community, usually through the United Nations. The main human rights instruments, such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, are treaties which are legally binding on all states which have ratified or acceded to them. Most of them contain references to the treatment of people who are deprived of their liberty.

In addition, there are a number of international instruments which deal specifically with prisoners and conditions of detention. The more detailed standards which are set out in these principles, minimum rules or guidelines provide a valuable complement to the broad principles contained in the legal treaties. These include *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (2015), *The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988), *The Basic Principles for the Treatment of Prisoners* (1990), the *Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)* (2010) and *The Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)* (1985). There are also a number of instruments which refer specifically to staff working with people who have been deprived of their liberty. They include the *Code of Conduct for Law Enforcement Officials* (1979), 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* (1982) and the *Basic Principles on the Use of Force and Firearms* (1990).

Regional standards

These international standards are supplemented by a number of regional human rights instruments. In Europe these are the *Convention for the Protection of Human Rights and Fundamental Freedoms* (1953), the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (1989) and the *European Prison Rules* (1987 revised 2006). The *American Convention on Human Rights* entered into force in 1978, while the *African Charter on Human and Peoples' Rights* came into force in 1986.

Regional judicial bodies are a useful reference point for measuring the extent to which individual states implement international standards. In the Americas this role is fulfilled by the Inter-American Court of Human Rights, while in Europe a similar role is carried out by the European Court of Human Rights.

International monitors

Within the member states of the Council of Europe the observance of human rights standards in places of detention is monitored by the *Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, and over the years its reports have become increasingly significant. In 1997 the African Commission on Human and Peoples' Rights appointed a *Special Rapporteur on Prison Conditions*. In 2002 the United Nations adopted the *Optional Protocol to the Convention Against Torture*. This entered into force in 2006 and established a system of regular visits to places of detention by a sub committee appointed by the UN Committee Against Torture, complemented by sustained regular visits conducted by national independent inspection groups.

Legitimacy

The legitimacy of this handbook on good prison management comes from its solid grounding in these international human rights standards, which are recognised around the world.

Throughout the second half of the 20th century there was broad acceptance of the principle that human rights were to be applied universally. This was a principle which had come, not from theorists and academics, but from the horrors which were part of the Second World War. Although on occasion there might be failures in practice to reach these standards, there was an understanding that every attempt should be made to implement them without exception. Prisoners were not to be excluded from these rights. Indeed, a number of them applied specifically to those deprived of liberty.

In the early years of the 21st century there has been an attempt from some quarters to argue that current threats to world peace and security are of such unparalleled severity that the human rights standards which were developed in the course of the last 50 years of the 20th century can no longer be regarded as universal; in particular, they cannot be applied to some people who are in detention, charged with or even suspected of threats against national or international security.

This is a serious misunderstanding and it is important to demonstrate that an observance of universal human rights standards is more necessary than ever in an insecure and uncertain world. It is necessary to protect those who, in whatever circumstances, are deprived of their liberty; it is necessary as an ethical context for all of those whose task on behalf of society is to deprive people of their liberty; and it is important as a reminder for everyone who lives in a democratic society of what it is that provides the foundation of democracy and freedom.

Practical experience

It is not sufficient for those responsible for prisons to be aware of and to refer to these international standards. If they are to implement the standards in their daily work, they must be able to interpret them and to apply them in real working situations. This is what the handbook sets out to help them to do. Its legitimacy in this respect comes from the practical experience of those who have been involved in the writing of the handbook. The main author of the handbook spent 24 years working as a prison director. During the drafting of the first edition

considerable support was given by an international advisory group, all of whom had extensive experience of working in prisons in different regions of the world. They were:

- M Riazuddin Ahmed, Deputy Inspector General of Prisons, Hyderabad, India
- Richard Kuuire, Director General, The Ghana Prisons Service
- Julita Lemgruber, former Director General of Prisons for the State of Rio de Janeiro, Brazil
- Patrick McManus, former Director of Kansas Department of Corrections, United States of America
- Dmitry Pankratov, Deputy Head of Academy of Law and Management, Ministry of Justice, Russian Federation

Human rights are an integral part of good prison management

The handbook demonstrates in many chapters the importance of managing prisons within an ethical context which respects the humanity of everyone involved in a prison: prisoners, prison staff and visitors. This ethical context needs to be universal in its application and this universality is provided by the international human rights instruments.

There is also a more pragmatic justification for this approach to prison management: it works. This approach does not represent a liberal or soft approach to prison management. The members of the original handbook advisory group and others involved in writing this handbook have worked in some of the most problematic prisons in the world. They were convinced that this style of management is the most effective and safest way of managing prisons. Time and again experience has shown that first line prison staff in different countries, from a variety of cultures, respond positively to this approach. It relates the international standards to their daily work in a manner which is immediately recognisable.

What this approach underlines is that the concept of human rights is not merely another subject to be added to the training curriculum. Rather, it suffuses all aspects of good prison management and is integral to it.

Additional tools

In recent years there have been a number of useful publications which have dealt with some of the issues covered in this handbook. They include:

- Making Standards Work, published by Penal Reform International, London, in 2001 (second edition)
- Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials, published by the Office of the UN High Commissioner for Human Rights, New York and Geneva, in 2005
- Medical Investigation and Documentation of Torture: A Handbook for Health Professionals, published by the Human Rights Centre, University of Essex, United Kingdom, in 2005
- Guide to the Establishment and Designation of National Preventive Mechanisms, published by the Association for the Prevention of Torture in 2006
- Handbook on Prisoner File Management, published by the UN Office on Drugs and Crime, New York, in 2008
- Handbook on Prisoners with Special Needs, published by the UN Office on Drugs and Crime, New York, in 2009
- Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Manual for Prevention, published by the Association for the Prevention of Torture, Geneva, and the Inter-American Institute of Human Rights, San Jose, Costa Rica, in 2010 (revised edition)
- Handbook for Prison Leaders: A Basic Training Tool and Curriculum for Prison Managers based on International Standards and Norms, published by the UN Office on Drugs and Crime, New York, in 2010

- Handbook on the International Transfer of Sentenced Persons, published by the UN Office on Drugs and Crime, New York, in 2012
- Handbook on Strategies to Reduce Overcrowding in Prisons, published by the UN Office on Drugs and Crime, New York, in 2013
- United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, published by the UN Office on Drugs and Crime, New York, in 2013
- Water, Sanitation, Hygiene and Habitat in Prisons, published by the International Committee of the Red Cross, Geneva, in 2013
- Prisons and Health, published by the World Health Organisation, Copenhagen, in 2014
- Handbook on Women and Imprisonment, published by the UN Office on Drugs and Crime, New York, in 2014 (second edition)
- The Torture Reporting Handbook, published by the University of Essex, United Kingdom, in 2015 (second edition)
- Handbook on the Management of High Risk Prisoners, published by the UN Office on Drugs and Crime, New York, in 2016
- Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, published by the UN Office on Drugs and Crime, New York, in 2016
- Handbook on Anti-Corruption Measures in Prisons, published by the UN Office on Drugs and Crime, New York, in 2017
- Roadmap for the Development of Prison-based Rehabilitation Programmes, published by the UN Office on Drugs and Crime, Vienna, in 2017
- Assessing Compliance with the Nelson Mandela Rules: A Checklist for Internal Inspection Mechanisms, published by the UN Office on Drugs and Crime, New York, in 2017
- Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders, published by the UN Office on Drugs and Crime, New York, in 2018

The future

While this handbook sets out to be comprehensive in the topics which it deals with, it is impossible when dealing with such a complex subject to be exhaustive. There has had to be a selection in identifying the key features for prison management. It is recognised that many issues which will have to be faced in the prison setting are not dealt with in this handbook. ICPR welcomes reactions from readers and recommendations about what might be added to any future edition.

Note about terminology

Prisons

In some jurisdictions different terms are used to denote places of detention which hold people who are awaiting trial, who have been convicted or who are subject to different conditions of security. In the United States of America, for example, places which hold persons who are awaiting trial at minor courts or who have been sentenced to short sentences are usually described as jails; those holding convicted prisoners are often called correctional institutions. In the Russian Federation there are only a handful of prisons, since this term denotes places of detention with the highest security. Establishments for other convicted persons are usually described as penal colonies.

Prisoners

In some jurisdictions different words are used for various groups of people who are detained. Those awaiting trial may be known as pre-trial, under-trial or remand and are often referred to as detainees.

In this handbook the word 'prison' has been used for all places of detention and the word 'prisoner' has been used to describe all who are held in such places. The context in which these words are used will be clear from the text.

The principles of good prison management

The framework

Liberty of the person is one of the most precious rights of all human beings. In certain circumstances judicial authorities may decide that it is necessary to deprive some people of that right for a period of time as a consequence of the actions of which they have been convicted or of which they are accused. When this happens the persons concerned are handed over by the judicial authority to the care of the prison administration. They are then described as prisoners.

The essence of imprisonment is deprivation of liberty and the task of the prison authorities is to ensure that this is implemented in a manner which is no more restrictive than is necessary. It is not the function of the prison authority to impose additional deprivations on those in its care.

What the international instruments say

International Covenant on Civil and Political Rights, Article 10:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Nelson Mandela Rules, Rule 1:

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

Basic Principles for the Treatment of Prisoners, Principle 1:

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 1:

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

The African Charter on Human and Peoples' Rights, Article 5:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.

American Convention on Human Rights, Article 5 (2):

All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Putting it into practice

The ethical basis of prison management

Prison management needs to operate within an ethical framework. Without a strong ethical context, the situation where one group of people is given considerable power over another can easily become an abuse of power. The ethical context is not just a matter of the behaviour of individual staff towards prisoners. A sense of the ethical basis of imprisonment needs to pervade the management process from the top down. An emphasis by the prison authorities on correct processes, a demand for operational efficiency, pressure to meet management targets without a prior consideration of ethical imperatives can lead to great inhumanity. A concentration by the prison authorities on technical processes and procedures will lead staff to forget that a prison is not the same as a factory which produces motor cars or washing machines. The management of prisons is primarily about the management of human beings, both staff and prisoners. This means that there are issues which go beyond effectiveness and efficiency. When making decisions about the treatment of human beings there is a fundamental consideration; the first question which must always be asked is “Is what we are doing right?”.

The inherent dignity of all human beings

In democratic societies the law underpins and protects the fundamental values of society. The most important of these is respect for the inherent dignity of all human beings, whatever their personal or social status. One of the greatest tests of this respect for humanity lies in the way in which a society treats those who have broken, or are accused of having broken, the criminal law. These are people who may well have themselves shown a lack of respect for the dignity and rights of others. Prison staff have a special role on behalf of the rest of society in respecting their dignity, despite any crime which they may have committed. This principle of respect for all human beings, whatever wrong they might have done, was articulated by a famous former prisoner and ex-President of South Africa, Nelson Mandela:

“ It is said that no one truly knows a nation until one has been inside the jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.¹

This is the basis for placing prison management, above all else, within an ethical framework. This imperative must never be lost sight of by senior administrators, by prison management or by first line prison staff. Without an ethical context, managerial efficiency in prisons can take a path that leads ultimately to the barbarism of the concentration camp and the gulag.

A clear message to staff

This principle must be kept in mind at all times by those who are responsible for the administration of prisons. Applying it in very difficult circumstances requires commitment. First line prison staff will only be able to maintain this commitment if they get a clear and consistent message from those in charge of the system that this is an imperative.

Which rights are forfeited?

There has to be careful consideration of what rights are to be forfeited as a consequence of the deprivation of liberty and what this forfeiture implies.

The following are examples of issues that need to be considered:

- The right of freedom of movement (Universal Declaration of Human Rights, Article 13) is obviously restricted by the nature of imprisonment, as is that of free association (UDHR, Article 20). Even these rights are not completely removed since prisoners are rarely held in total isolation and, if they are, there has to be very good and specific reason.
- The right to family contact (UDHR, Article 12) is not taken away but its exercise may well be restricted. A father, for example, does not have unrestricted access to his children, nor they to him, in a prison setting. The ability to create and to maintain a family (UDHR, Article 16) is another right which is dealt with in different ways in different jurisdictions. In some countries prisoners are not allowed to have any intimate relations with partners or

spouses; in some they may have sexual relations under very limited conditions; in others they are allowed to have virtually normal relations for specific periods of time. These matters are dealt with in chapter 11 of this handbook.

- The rights of mothers and children to family life require special consideration. Some of the important issues arising in these contexts are dealt with in chapters 17 and 18 of this handbook.
- The right of everyone to take part in the government of his or her country directly or through freely chosen representatives (UDHR, Article 21) may also be restricted by imprisonment. Article 25 of the International Covenant on Civil and Political Rights indicates that this right is to be exercised by voting in elections. In some jurisdictions prisoners who have not yet been convicted are eligible to vote; in others all prisoners may vote. In other countries, no-one who is in detention is allowed to vote in elections and the prohibition on voting may even extend to those who have served their sentence and left prison.

A common humanity between prisoners and staff

Men, women and children who are in prison are still human beings. Their humanity extends far beyond the fact that they are prisoners. Equally, prison staff are human beings. The extent to which these two groups recognise and observe their common humanity is the most important measurement of a decent and humane prison. Where such recognition is lacking there will be a real danger that human rights will be abused.

Protecting human rights also improves operational efficiency

The proper behaviour of staff towards prisoners is the key lesson of this handbook. If staff do not behave in a way which respects the prisoner as a person and which recognises the inherent dignity of the person, then any regard to individual human rights becomes impossible. Staff behaviour and the humane and dignified treatment of prisoners should underpin every operational activity in a prison. This is not merely a question of human rights principles. In operational terms it is also the most effective and efficient way in which to manage a prison. In addition to being an abuse of human rights, a failure to observe this obligation can sometimes have legal consequences for the prison administration.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

What this approach means in practical terms is described in greater detail in the United Nations Standard Minimum Rules for the Treatment of Prisoners. The original rules were approved by the General Assembly of the United Nations in 1957. In 2015 the Rules were updated and they are now known as the Nelson Mandela Rules. They are referred to continuously in this handbook. The Rules deal with the essential features of daily life in prison. While making clear that some aspects of the treatment of prisoners are non-negotiable and reflect legal obligations, the text of the Rules also recognises that a variety of legal, social, economic and geographical conditions prevail in the world. The document states that the Rules are designed to ‘stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations (Nelson Mandela Rules, Preliminary Observation 2:1).

One fact is clear both from the Nelson Mandela Rules and from the principle enunciated in Article 10 of the International Covenant on Civil and Political Rights, on which the Nelson Mandela Rules are based. This is that the obligation to treat all prisoners at all times with “humanity and with respect for the inherent dignity of the human person” is not derogable in any circumstances, including conflict and post conflict situations.

“ Circumstances such as state of war, threat of war, internal political instability or any other public emergency, shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment. Notions such as “necessity”, “national emergency”, “public order”, and “ordre public” shall not be invoked as a justification of torture, cruel, inhuman or degrading treatment or punishment.

African Commission on Human and Peoples’ Rights, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), 2002

“ Circumstances such as war, states of exception, emergency situations, internal political instability, or other national or international emergencies may not be invoked in order to evade the obligations imposed by international law to respect and ensure the right to humane treatment of all persons deprived of liberty.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle I, 2008

Prison staff and the administration of prisons

The framework

An important public service

Work in prison is a public service. Prison authorities should have accountability to an elected legislature and the public should be regularly informed about the state and aspirations of the prisons. Government ministers and senior administrators should make clear that they hold prison staff in high regard for the work they do and the public should frequently be reminded that prison work is an important public service.

“ Developing civilian-run prisons linked to the national health and welfare systems, and with strong local links to assist social reintegration and rehabilitation, can make an important contribution to crime control and community peace and stability.²

Organisation for Economic Co-operation and Development, Development Assistance Committee, Handbook on Supporting Security and Justice, 2007

Public education about prisons

In many countries there is little public knowledge about prisons, prison staff or their work. Whilst society generally recognises the intrinsic worth, for example, of health workers and teachers, prison staff do not attract similar public esteem. Government ministers and senior prison administrators should consider arranging a programme of public education and stimulate media interest to educate society about the important role which prison staff have in safeguarding civil society.

Staff/prisoner relationships are the key

When people think of prisons they tend to consider their physical aspect: walls, fences, a building with locked doors and windows with bars. The reality is that the most important aspect of a prison is the human dimension, since prisons are primarily concerned with people. The two most important groups of people in a prison are the prisoners and the staff who look after them. The key to a well managed prison is the nature of the relationship between these two groups.

The need for good staff

Prisons cannot usually select their prisoners; they have to accept whoever is sent to them by the court or the legal authority. They can, however, choose their staff. It is essential that the staff should be carefully selected, properly trained, supervised and supported. Prison work is demanding. It involves working with men and women who have been deprived of their liberty, many of whom are likely to be mentally disturbed, suffer from addictions, have poor social and educational skills and come from marginalised groups in society. Some will be a threat to the public; some will be dangerous and aggressive; others will try very hard to escape. None of them wants to be in prison. Each of them is an individual person.

The role of staff

The role of prison staff is:

- to treat prisoners in a manner which is decent, humane and just
- to ensure that all prisoners are safe
- to make sure that dangerous prisoners do not escape
- to make sure that there is good order and control in prisons
- to provide prisoners with the opportunity to use their time in prison positively so that they will be able to resettle into society when they are released

Personal integrity

It requires great skill and personal integrity to carry out this work in a professional manner. This means first of all that men and women who are to work in prisons need to be carefully chosen to make sure that they have the appropriate personal qualities and educational background. They then need to be given proper training in the principles which should underlie their work and in the human and technical skills which are required. Throughout their careers they should be given the opportunity to develop and expand these skills and to keep up to date with the latest thinking on prison issues.

The danger of insularity

Prison staff generally work in an enclosed and isolated environment which, over time, can make them narrow and inflexible. The way they are trained and managed needs to be designed to guard against this insularity. Staff need to remain sensitive to changes in the wider society from which their prisoners come and to which they will return. This will be particularly important where prisons are remotely sited and staff live in accommodation attached to the prison.

The status of prison staff

Generally speaking prison staff are held in lower regard than other people who work in the criminal justice field, such as the police. This is often reflected in the pay of prison staff, which in many countries is very low. As a consequence it is often very difficult to recruit properly qualified staff to work in prisons. In order to attract and to retain high quality personnel it is essential that salaries should be set at a proper level and that the other conditions of employment should be the same as in comparable work elsewhere in the public service.

The need for professionalism

First line prison staff need to understand that they are not merely guards, whose sole task is to deprive people of their liberty. They are certainly not vigilantes, whose task is to inflict greater punishment than that already imposed by the judicial authorities. Instead, they have to combine a custodial role with an educational and reformatory role. This requires great personal talent and professional skill.

Personal qualities of staff

Working in prison requires a unique combination of personal qualities and technical skills. Prison staff need personal qualities which enable them to deal with all prisoners including the difficult and the dangerous in an even-handed, humane and just manner. This means that there should be strict recruitment and selection processes so that only persons with the right qualities are taken into the organisation. Only when these are in place will it be possible to describe work in prisons as a profession.

The perils of poor staffing

In many countries it is very difficult to recruit anyone to work in a prison. As a result, the only people who will work there are those who cannot find any other means of employment. Sometimes they will come to work in the prison service as an alternative to carrying out obligatory military service and will leave as soon as they can. Since they are also badly trained and poorly paid, it is predictable that they have little professional pride in their work, that they are vulnerable to temptations to become involved in corrupt practices and that they have no sense of carrying out a worthwhile public service.

A coherent strategy

To instil into staff such as these a sense of vision or a belief that what they do is of value is a huge task for those who are in charge of a prison system. It cannot be done in a haphazard manner, nor will it come about by accident. It can only be achieved if there is a coherent strategy based on the premise that good staff who are publicly valued are the key to a good prison system.

The managerial responsibility

Those with responsibility for prisons and prison systems should look beyond technical and managerial considerations. They also have to be leaders who are capable of enthusing the staff for whom they are responsible with a sense of value in the way they carry out their difficult daily tasks. They need to be men and women who have a clear vision and a determination to maintain the highest standards in the difficult work of prison management. They need to reassure staff constantly that the work they do is important for society and is highly valued by it.

What the international instruments say

Nelson Mandela Rules, Rule 74 (2):

The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

Nelson Mandela Rules, Rule 77:

All prison staff shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

Basic Principles for the Treatment of Prisoners, Principle 4:

The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

Code of Conduct for Law Enforcement Officials, Article 2:

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Putting it into practice

A clear statement of purpose

In order to ensure that these values are properly understood and implemented by staff it is important that a prison administration sets out its statement of purpose clearly. Such a statement will be based on international instruments and standards and will be clearly communicated to all who are involved in the work of prisons. The website of the Uganda Prisons Service gives an example of such a statement. It sets out a clear Mission Statement for the service and identifies the core values that underpin its work. Amongst those values is an acknowledgement of the fundamental importance of an effective system for recruiting and training staff.



Vision and Mission

Vision

A centre of excellence in providing human rights based correctional services in Africa.

Mission

To provide safe, secure, and humane custody of offenders while placing human rights at the centre of their correctional programmes.

Core Values

1. Justice as the core value.
2. Fundamental to an effective Correctional and Justice System is a firm commitment to the belief that offenders are responsible for their own behaviour and have the potential to live as law-abiding citizens.

- “ 3. The majority of offenders can be dealt with effectively in the community by means of non-custodial correctional programs; imprisonment should be used with restraint.
4. In the interest of public protection, decisions about offenders must be based on informed risk assessment and risk management.
5. Effective corrections is dependent on close co-operation with criminal justice partners and the community in order to contribute to a more just, humane and safe society.
6. Carefully recruited, properly trained and well-informed staff members are essential to an effective correctional system.
7. The public has a right to know what is done in prisons and should be given the opportunity to participate in the criminal justice system.
8. The effectiveness of corrections depends on the degree to which correctional systems are capable of responding to change and shaping the future.
9. Remand prisoners are presumed to be innocent and shall be treated as such. They shall be kept separate from convicted prisoners.
10. Men and women shall as far as possible be detained in separate institutions. In an institution, which receives both men and women, the whole of the premises allocated to women shall be entirely separate.
11. Imprisonment shall always be regarded as a means of last resort, following unlawful behaviour.³

From Uganda Prisons Service website

No matter how good the statement of values may be, it can only be effective if it is clearly communicated to all staff through the example and leadership of the prison administration.

Informing the public

It is also important that the public and the media should be aware of the values within which its prisons operate. If the role of the prison in a civil society is properly understood, it is more likely that the public will appreciate efforts made by the prison authorities to implement good practice. In order that this should happen, it is important that senior prison staff should develop good relations with their local public and media. It is wrong that the public should only hear about prisons when things go wrong; they should also be informed about the daily realities of prison life. Prison administrations should encourage prison directors to meet regularly with groups in civil society, including non-governmental organisations, and where appropriate to invite them into the prison.

“ New York, NY—Mayors, Chamber of Commerce leaders, public school teachers, physicians, prosecutors, faith leaders, and other community members will visit prisons and jails in 17 geographically and politically diverse states, from Nebraska and Michigan, to New Jersey, North Carolina, and Ohio. It’s all part of National Prison Visiting Week, led by the Vera Institute of Justice. The effort aims to increase the understanding of incarceration and conditions of confinement, encourage transparency of facilities, and foster public engagement around criminal justice reform.⁴

Vera Institute of Justice Press Release,
November 11 2016

Prisons in the government structure

The public good

Just like schools and hospitals, prisons are institutions which should be run by the civil power with the objective of contributing to the public good. The state has a duty to protect society against crime, while at the same time promoting the well-being of all members of society. The proper management of prisons is an important contribution to those duties.

A civilian service

Not military

Imprisonment is part of the criminal justice process and in democratic societies people are sent to prison by independent judges appointed by the civil power. The prison system should also be under the control of the civil rather than the military power. The administration of prisons should not be directly in the hands of the army or other military power. There are, however, a number of countries where the head of the prison administration is a serving member of the armed forces who has been seconded or sent for a limited time to the prison administration to carry out that role. Where this is the case, the government should make clear that this person is acting in a civilian capacity as head of the prison administration.

“ In states with a military government, prisons may be under the control of the military. In states with a history of military dictatorship, one legacy may be prisons run on militarised lines – with prison staff having military ranks and imposing military discipline. Where reform of the defence forces is under way, disentangling the military from the civilian prison system should be part of the reform.⁵

Organisation for Economic Co-operation and Development, Development Assistance Committee, Handbook on Supporting Security and Justice, 2007

Not police

In terms of separation of functions, it is important that there should be a clear organisational separation between the police and the prison administrations. The police are generally responsible for investigating crime and arresting criminals. Once a person has been detained or arrested, he or she should as soon as possible appear before a judicial authority and should thereafter be remanded into prison service custody. In many countries the administration of the police comes under the Ministry of the Interior while the administration of prisons comes under the Ministry of Justice. This is one way of ensuring the separation of powers and of underlining the close link that should exist between the judicial authority and the prison system.

“ Personnel of places of deprivation of liberty

The personnel shall comprise suitable employees and officers, of both sexes, preferably with civil service and civilian status. As a general rule, members of the Police or Armed forces shall be prohibited from exercising direct custody of persons deprived of liberty, unless it is a police or military institution.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XX, 2008

What the international instruments say

Nelson Mandela Rules, Rule 74 (3)

To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison staff and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

Putting it into practice

Democratic control

In democratic countries prison administrations are generally public authorities which normally come under the control of a government ministry. In some countries, such as Brazil, India or Germany, this ministry is within a state or regional government. In most countries the prison system is organised nationally and is responsible to a department of the central government. In others, such as the United States and Canada, there is a combination of both models. It has become increasingly common that the responsible government department should be the Ministry of Justice, where one exists.

Separating police from prisons

Placing prison administration within the Ministry of Justice emphasises the close link between the judicial process and the detention of citizens. It also separates the work of the police from that of the prison system. This is important since the investigation process should be separate from pre-trial detention so that suspects are not put under duress.

Another reason for encouraging this transfer is the fact that the police in many of these countries are in effect military units, carrying army ranks, organised on a military basis and liable to be called on by the government when necessary to act as a military force. This does not sit easily with the requirement that prison personnel should have civil service status.

“ The transfer of responsibility to the Ministry of Justice in Russia “was one of the most significant steps aimed at ensuring more reliable guarantees for compliance with norms of legality and with human rights. The Ministry of Justice is more free to act in this respect, since it is not burdened with the legacy of the past and has not been associated with bringing psychological pressure to bear on those who have violated the law and are serving custodial sentences.”⁶

Yuri Kalinin, Deputy Minister of Justice in the Russian Federation,
The Russian penal system: past, present and future, 2002

The consequences of transferring responsibility

It has to be recognised that such a transfer of responsibility within the government can have severe consequences for staff in countries where the military have special arrangements for salary and for other conditions of employment, such as free access to health care for themselves and their families, free travel, subsidised housing and holiday arrangements. These issues are dealt with later in this chapter.

Links with social agencies

There is another reason why prisons should be administered by a civilian authority. Virtually all prisoners will one day return to life in civil society. If they are to live within the law it will be important that they have somewhere to live, that they have the opportunity of employment and that they have a proper social support structure. It is very important, therefore, that the prison administration should have close links with other public service agencies, such as the social welfare and health authorities. This is more likely to happen if the prison administration itself is a civil organisation and not a military one.

A disciplined and hierarchical organisation

At the same time, it should be understood that although prison staff should have civilian status the prison system itself will usually remain a disciplined and hierarchical organisation. Prisons are not democracies. In order to function properly there has to be a clearly recognised chain of command. This is true of most large organisations. It is especially true in the prison setting where there has always to be an awareness, even in the best managed prisons, of the possibility of unrest and disorder. It is quite feasible to have a system which is civilian in status yet well disciplined. As will be discussed in chapter 7 of this handbook, it is in the interests of everyone concerned, staff and prisoners, that prisons should be well-ordered institutions. This is much more likely to happen if they are organised in a disciplined manner.

Prison management

Prison management is above all else about the management of people, primarily the prisoners and the staff. The individual who is in charge of a prison, described in various jurisdictions as the director, governor, inspector or superintendent, is the key person in setting the tone throughout the whole prison, and more fundamentally his or her method of directing can determine whether or not the prison is a place of decency, humanity and justice.

In many countries there is little concept of prison management as a profession or even a skill which requires specific training and development. A newly appointed prison director may have had previous general legal, administrative or military training or will be expected simply to possess intuitively the specific skills which are required to manage a prison. This is surprising given the complex nature of many prisons. Large prisons, such as Tihar in New Delhi and the Rikers Island complex in New York, can hold between 10,000 and 17,000 prisoners, while the smallest may hold no more than a dozen or so prisoners. Managing them requires a defined set of skills, some of which are common to general management and some of which are peculiar to prisons.

The use that a country makes of imprisonment is likely to affect the internal management of prisons. When prisons are overcrowded and under-resourced management may well be restricted to providing the basic necessities of life for those who are under their care. Simply ensuring that prisoners have sufficient food and clean water, have a bed to sleep on and access to fresh air may become a full time task in some prison administrations.

In other jurisdictions it may be possible to set much higher targets. This may involve doing everything possible to ensure that the damage done to individuals who are imprisoned is kept to a minimum by maintaining family ties and community links. It may also mean encouraging prisoners to face up to the offences which led to their prison sentence and attempting to enhance their personal, social and work skills. All of these activities will be undertaken with the intention of helping prisoners to live law-abiding lives after they are released.

What the international instruments say

Nelson Mandela Rules, Rule 79:

1. The prison director should be adequately qualified for his or her task by character, administrative ability, suitable training and experience.
2. The prison director shall devote his or her entire working time to official duties and shall not be appointed on a part-time basis. He or she shall reside on the premises of the prison or in its immediate vicinity.
3. When two or more prisons are under the authority of one director, he or she shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these prisons.

Putting it into practice

Prison management needs to take account of the political and cultural environment which surrounds it. This has been particularly true in the climate of radical change which has existed in so many parts of the world over the last twenty five or so years. This implies that good prison management needs to be dynamic rather than static and that any process of improvement has to be a continuous one.

Good leadership is vital

Those with responsibility for prisons and prison systems need to look beyond technical and managerial considerations. They also have to be leaders who are capable of enthusing the staff for whom they are responsible with a sense of value in the way they carry out their difficult daily tasks. They need to be men and women who have a clear vision and a determination to maintain the highest standards in the difficult work of prison management.

Staff recruitment

Ensuring high standards

The importance of the right staff

High personal and professional standards should be expected of all prison staff but especially of those who are going to work directly with prisoners in any capacity. These include first line uniformed staff or guards as well as professional staff such as teachers and instructors. The staff who come into contact with prisoners every day need to be chosen with special care. So recruitment is very important. The prison administration should have a clear policy to encourage suitable individuals to apply to work in prisons. If the prison service has already established its values and the ethical context within which it is to operate, it is important that these should be clearly articulated in any recruiting material or process. This should make clear to anyone who wishes to apply for such work what will be expected of him or her in terms of behaviour and attitude. It will also make clear that anyone with unacceptable personal standards, say in respect of the treatment of racial minorities or towards women or foreigners, need not apply for work in the prison system.

“ We run an organisation where respect for inmates and clients is fundamental to all that we do and not subject to compromises. It is imprinted throughout the entire organisation and it is non-negotiable. Positive and reinforcing interaction with the inmates is vital. We don't ask for the impossible of our staff. No one can like everyone all the time. That is not the point. But staff must be equipped with a mind-set which is firm and open - enforcing but at the same time understanding.⁷

Nils Oberg, Director General of the Swedish Prison and Probation service
in The Telegraph, 27 November 2014

Selecting suitable candidates

Even when such a policy is in place to ensure applicants understand the nature of the work in prisons, not all those who apply will be suitable. There has to be a clear set of procedures to ensure that only those applicants who are suitable are in fact selected to join the prison system. In the first place these procedures should be able to test the integrity and humanity of the applicants and how they are likely to respond in the difficult situations which they may well face in the course of their daily work. This part of the procedure is the most important since it covers qualities that are an essential requirement for prison work. Only when the applicants have shown that they meet these requirements should the procedures go on to test such matters as the educational standards of the applicants, their physical capabilities, their previous work records and their potential to learn new skills.

No discrimination

There should be no discrimination in the selection of staff. This means that women should have the same opportunities as men to work in prisons and should be paid the same salaries, given the same training and have the same opportunities for promotion. The vast majority of prisoners are men and traditionally in many countries work in prisons has been regarded as a male preserve. There is no reason why this should be so.

In some prisons a substantial number of prisoners come from minority racial or ethnic groups. This strengthens the argument that prison administrations should make an effort to recruit sufficient proportions of staff from similar backgrounds.

What the international instruments say

Convention on the Elimination of All Forms of Discrimination Against Women, Article 2:

States Parties condemn the discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end, undertake:

- (a) To embody the principle of equality of men and women in their national constitutions and other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Nelson Mandela Rules, Rule 74:

1. The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of prisons depends.
3. To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison staff and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

Nelson Mandela Rules, Rule 78:

1. So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.
2. The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

Code of Conduct for Law Enforcement Officials, Article 18:

Governments and law enforcement agencies shall ensure that all law enforcement agencies are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

Putting it into practice

An active recruitment policy

Many prison administrations have great difficulty in recruiting staff of a high quality. There can be a variety of reasons for this. It may be due to low levels of salary. It may be because the standing of prison work in the local community is very low. It may be because of competition from other law enforcement agencies such as the police. Whatever the reason, prison administrations may have to pursue an active recruitment policy instead of simply waiting for potential recruits to come to them.

A programme of public education

The need for an active recruitment policy gives additional support to the argument set out earlier in this chapter for a programme of public education about what goes on inside prisons. This will help to counter false assumptions and may stir interest among the public in general and potential recruits in particular. If members of civil society are ignorant about the reality of prison life it will be unlikely that any of them will consider the possibility of joining the prison system. This public education can be carried out in a variety of ways. It may involve encouraging responsible members of the community to visit prisons to see for themselves what they are like. It may include regular contact with the media so that they can be encouraged to publish a wide range of information rather than merely report critically when things have gone wrong.

The prison administration should also target specific bodies which might supply recruits to the prison system. These might be educational institutions, such as colleges and universities, or they might be community groups. They should be given specific information about the role of staff, about what kind of people might like to work in the prison system and the fact that this is a worthwhile career in the public service.

Specialist staff

Particular attention needs to be paid to the recruitment of specialist staff. These are likely to be individuals who are already trained in a specific profession. They will include teachers, instructors and health care staff. In some prisons there will also be a need for psychiatrists and psychologists. It should not be assumed that people who have had a professional training, say as teachers, will automatically be suitable to work in a prison environment. They also need to be selected carefully and there needs to be clarity about the role they are expected to carry out in the organisation.

Women prison staff

Experience in a number of countries has shown that women can carry out the normal duties of a prison officer just as well as men. Indeed, in situations of possible confrontation the presence of women staff can often defuse potentially volatile incidents. There are a few situations, such as supervision of sanitary areas and carrying out personal body searches, in which the member of staff involved should be of the same gender as the prisoner. Apart from these situations, women prison staff can be assigned to all duties.

Staff training

The underpinning values

Once staff have been properly recruited and selected they need to be given appropriate training. Most new staff will have little or no experience or knowledge of the prison world. The first requirement is to reinforce for all of them an appreciation of the ethical context within which prisons must be administered, as described earlier in this chapter. It must be made clear that all the technical skills which will subsequently be taught are underpinned by a belief in the dignity and humanity of everyone involved in prisons. These include all prisoners, whoever they may be and whatever crimes they may have been convicted of, and all staff and visitors. Staff need to be taught the basic skills which are required to deal with other human beings, some of whom may be very awkward and difficult, in a decent and humane manner. This is not simply a matter of theory. It is a crucial first step towards the technical training which will follow. Sometimes even in the most developed prison system there remains a lack of understanding about what it is that staff are being trained for. There is an absence of appreciation about the main features which are at the basis of good prison work.

In 2012 the Committee of Ministers of the Council of Europe approved a Code of Ethics for Prison Staff.



The Committee of Ministers:

Considering the need to recommend common European principles and guidelines for the overall objectives, performance and accountability of prison staff to safeguard security and the rights of individuals in democratic societies governed by the rule of law;

Recommends that the governments of member States be guided in their internal legislation, practice and codes of conduct for prison staff by the principles set out in the text of a model European Code of Ethics for Prison Staff, appended to the present recommendation, which should be read in conjunction with the European Prison Rules;

Further recommends that governments of member States give the widest possible circulation to this text and codes of ethics based upon it, and oversee their implementation by appropriate bodies.⁸

Recommendation CM/Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff

Technical training

Staff should then be given the necessary technical training. They need to be aware of security requirements. This involves learning all about the use of security technology: keys, locks, surveillance equipment. They need to learn how to keep proper records and what sort of reports need to be written. Above all, they need to understand the importance of their direct dealings with prisoners. The security of the lock and the key must be supplemented by the kind of security that comes from knowing who their prisoners are and how they are likely to behave. These are the issues of dynamic security referred to in chapter 7 of this handbook.

The prevention of disorder

As far as keeping good order is concerned, new prison staff need to learn that prevention of disorder is always better than having to deal with it after it has occurred. Disorder extends from incidents involving a single prisoner to mass insurrection and riot. It is very rare that disorder erupts spontaneously. There are usually many warning signs that trouble is brewing. A properly trained member of staff will recognise these warning signs and will act to divert trouble. This is a skill which can be taught.

Continuing training

The appropriate training of staff is a requirement which continues from the moment of first recruitment to that of final retirement. There should be a regular series of opportunities for continuing development for staff of all ages and all ranks. This will help to make staff aware of the latest techniques. It will also provide training in specific skills for staff who work in specialist areas and opportunities for more senior staff to develop their management skills.

What the international instruments say

Nelson Mandela Rules, Rule 75:

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

Nelson Mandela Rules, Rule 75:

1. Training referred to in paragraph 2 of rule 75 shall include, at a minimum, training on:
 - (a) Relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates;
 - (b) Rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment;
 - (c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation;
 - (d) First aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.
2. Prison staff who are in charge of working with certain categories of prisoners, or who are assigned other specialized functions, shall receive training that has a corresponding focus.

Nelson Mandela Rules, Rule 80:

1. The prison director, his or her deputy, and the majority of other prison staff shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.
2. Whenever necessary, the services of a competent interpreter shall be used.

Nelson Mandela Rules, Rule 81:

1. In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.
2. No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.
3. Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.

Nelson Mandela Rules, Rule 82:

1. Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.
2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.
3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.

Code of Conduct for Law Enforcement Officials, Article 3:

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Code of Conduct for Law Enforcement Officials, Article 4:

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Code of Conduct for Law Enforcement Officials, Article 5:

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Code of Conduct for Law Enforcement Officials, Article 6:

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Code of Conduct for Law Enforcement Officials, Article 7:

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and vigorously oppose any violations of them.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4:

Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

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

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 15:

Law enforcement officials, in their relations with people in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal security is threatened.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 16:

Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

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, Principle 1:

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Declaration on the Elimination of Discrimination against Women, Article 10:

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:
 - (a) The right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;
 - (b) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;
 - (c) The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;
 - (d) The right to receive family allowances on equal terms with men.
2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including child care facilities.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rule 33:

1. All staff assigned to work with women prisoners shall receive training relating to the gender-specific needs and human rights of women prisoners.
2. Basic training shall be provided for prison staff working in women's prisons on the main issues relating to women's health, in addition to first aid and basic medicine.
3. Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rule 34:

Capacity-building programmes on HIV shall be included as part of the regular training curricula of prison staff. In addition to HIV/AIDS prevention, treatment, care and support, issues such as gender and human rights, with a particular focus on their link to HIV, stigma and discrimination, shall also be part of the curriculum.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rule 35:

Prison staff shall be trained to detect mental health-care needs and risk of self-harm and suicide among women prisoners and to offer assistance by providing support and referring such cases to specialists.

Rules for the Protection of Juveniles Deprived of their Liberty, Rule 82:

The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

Rules for the Protection of Juveniles Deprived of their Liberty, Rule 85:

The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present rules.

Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 22:

1. Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilised to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.
2. Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Putting it into practice

Initial training

The standard and length of the training given to new recruits to prison work varies enormously from country to country. The most basic arrangement is that in which new staff are expected to learn purely by working alongside experienced staff. They are given only the most rudimentary advice before being handed a set of security keys and left to get on with their tasks. This is a very dangerous practice. At best, it means that new staff will not understand what their work really involves and will learn habits from older staff which do not represent best practice. At worst, it means that the new staff will be vulnerable to pressure from powerful prisoners who will take advantage of their vulnerability and will have power over them in a way which will weaken security and good order.

In some countries new recruits are sent for a few weeks to a training school or college where they learn the rudiments of their work before taking up their duties in prison. In other countries first line staff undertake up to two years' training before beginning work as qualified prison officers. Prison systems in a number of countries require new staff to undertake a mixture of classroom and practical training. In Norway all newly recruited prison officers undertake a two year course of education in the Staff Academy. During this period they receive full pay and they are required to give a commitment to stay in the service for a fixed period on successful completion of training. The course covers psychology, criminology, human rights and ethics as well as security and operational issues. In year one the first semester is spent in the Academy, as is the final semester in year two. The two intervening semesters are spent in a selected prison under close tutorial supervision. A third training year is spent in an allocated prison under supervision.

However it is achieved, all new prison staff should be given a clear set of principles about what their work involves and sufficient technical knowledge to carry out their basic work before they enter a prison. They should then work alongside experienced staff who have been identified by management as most likely to give the new members of staff the best example and instil in them a confidence in their work.

“ The personnel of places of deprivation of liberty shall receive initial instruction and periodic specialized training, with an emphasis on the social nature of their work. Such instruction and training shall include, at least, education on human rights; on the rights, duties, and prohibitions in the exercise of their functions; and on national and international principles and rules regarding the use of force, firearms, and physical restraint.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XX, 2008

Senior staff training

Senior prison staff need to have a more sophisticated form of training. This is true whether they are recruited directly at that level or whether they graduate through the ranks of more junior staff. It cannot be assumed that experience alone equips people for the higher levels of prison management. Even staff who have worked in prisons for many years at a junior level need to be helped to develop additional skills before taking on a management role. In some countries staff are directly recruited for senior posts and are required to undertake a diploma or degree course lasting several years before they go to work at a management level in a prison.

The director of a prison and his or her deputies are key persons in setting the culture and ethos of a prison. They need to be selected with special care for their personal qualities and to be given extensive training.

Training specialist staff, especially medical staff

Staff who have a specialist function, such as teachers and instructors, will need additional training in order to carry out their roles properly. This applies especially to medical staff. Medical doctors have to realise that when they come to work in a prison they bring with them all the ethical obligations of their profession. Even though these people are in prison, the doctor's first responsibility is to treat their illness, whether it be physical or mental. This needs to be made clear to any doctor who comes to work in a prison.

“ All health care staff working with prisoners on an ongoing basis should have access to a specific training programme. Training should address the specificities and inner workings of different types of prison, the handling of potentially dangerous or violent situations, and the risks of ethical breaches specific to their activities as health care providers in prisons.⁹

World Health Organisation, *Prisons and Health*, 2014

Training for work with special groups of prisoners

Staff who are to work with specific groups of prisoners should be given the special training necessary to work with them. This applies especially to staff who are to work with juvenile and younger prisoners. There is sometimes a tendency to regard this sort of work as somehow less important or demanding than work with adult prisoners. The reality is often quite different. Juvenile prisoners are frequently more volatile and demanding than adult prisoners. There is also a greater possibility that they will respond positively to appropriate training and encouragement. One of the principal tasks of staff who work with younger prisoners is to help them to grow into mature adults who will live in a lawful manner. Similar training considerations apply to staff who work with women prisoners, with elderly prisoners, with mentally disturbed prisoners and with high security prisoners.

Development and continuing training

The initial training which staff receive should be merely the beginning of their development. Prisons are dynamic institutions, continuously changing, being influenced by expanding knowledge and external influences. Staff need to be given regular opportunities to bring their knowledge up to date and to sharpen their skills. This will require development within the prison administration and also with other criminal justice and social welfare agencies. This development will continue throughout the whole of a staff member's career.

Training in the use of force

In most prisons for the vast majority of the time prisoners will respond quietly to legitimate orders. They do not wish to be in prison but they accept the reality and go about their business as instructed. From time to time individuals or small numbers may act in a violent manner and have to be controlled using force. This matter is dealt with in chapter 7 of this handbook. It is important that all staff at the outset of their training should be made aware of the circumstances in which force may be used against prisoners.

Procedures for the use of force

The first principle is that force may only be used when it is absolutely necessary and then only to the extent that is necessary. This means that there should be a clear set of procedures which lay down the circumstances in which force may be used and the nature of that force. A decision to use any kind of force should only be made by the most senior member of staff on duty in the prison at the time. A record should be made of any use of force and the reason for it.

Minimum use of force

All staff should be trained in legitimate means of physically restraining violent prisoners, acting either individually or as a group, by use of minimum force. Selected members of staff should be trained to a high level. The form of control and restraint training used by the prison services in the United Kingdom is an example of minimum use of force.

Training in the use of firearms

In some prison services a number of staff carry firearms. Special care must be taken to make sure that these staff are properly trained and that they have a clear understanding of the circumstances in which firearms may be used. It is not recommended practice that staff who work directly with prisoners should be armed. This is to make sure that firearms are never used in haste and that they can never fall into the hands of prisoners.

Use only to prevent loss of life

Lethal firearms should only be used when directly necessary to prevent loss of life. This means that there must be an immediate and clearly perceived threat to someone's life. For example, lethal fire should not be used simply because a prisoner is escaping. Using lethal fire is only permissible when such an escape presents an immediate threat to someone's life.

Conditions of employment for staff

The need for good conditions

If the principles of good prison management as described in this handbook are to be realised it is essential to have a well-motivated staff who are highly trained and committed to the public service which they perform. This chapter has described in more detail what this involves. However, it is not sufficient to recruit able persons, to imbue them with a sense of professionalism and to train them to a high standard. If they do not have appropriate levels of pay and conditions of employment they will be unlikely to remain working in the prison system. Instead, they may benefit from the training which they are given and may then take these skills to another job which has better conditions of employment. In the 1990s this became a real problem for many prison services in countries of the former Soviet Union, which still provided a high level of education for incoming staff, especially at senior levels, but were then unable to pay them sufficient to keep them in the service for more than a few years.

Pay levels

In the world of today the standing of a profession is measured in large part by the level of salary which it attracts. The best individuals are not likely to be attracted to work with very low levels of pay. Prison work is one of the most complex of public services. That should be recognised in the level of salary paid to prison staff at all levels. There are a number of possible comparative groups, which may differ from country to country. In some cases, they will be other criminal justice agencies such as the police. In others, they may be public servants such as teachers or nurses. Whatever comparative group is used, governments have to recognise that prison staff are entitled to a proper remuneration for their difficult and sometimes dangerous work. An added consideration in some countries is that if staff are not paid at an appropriate level they may be open to corruption of a direct or indirect nature.

Other conditions of employment

In many countries prisons are in very isolated locations, far from centres of population. This has an effect not only on staff but also on their families. It affects access to schools, to medical facilities, to shops and to other social activities. In addition, many prison staff are expected to transfer regularly from one prison to another, sometimes uprooting their families hundreds or even thousands of kilometres. In such circumstances, other conditions of employment are as important as levels of pay.

In some instances staff are provided with free or subsidised housing, either because of the remoteness of the prison, the expense of finding accommodation locally or because it is provided for all public servants. For similar reasons staff and their families have free access to the medical facilities of the prison. In recent years in a number of countries the responsibility

for the prison administration has been moved from the Ministry of the Interior to the Ministry of Justice. The Council of Europe expected new accession states in Eastern Europe to transfer responsibility for their prison administrations from the Ministries of the Interior to the Ministries of Justice. In October 2002 the Department of Corrections in Thailand moved to the Ministry of Justice, after 69 years in the Ministry of the Interior.

There are good reasons in terms of the accountability of the system why this is a positive development. What has to be taken into account as a consequence however is that, as officers of the Ministry of the Interior, staff and their families may have had access to free health care, to free education, to free housing and to free or subsidised transport and holidays. In many instances these facilities compensated for low levels of salary. On transfer to the Ministry of Justice many of these facilities were lost and staff found it very difficult to support their families in a decent manner. The solution to these difficulties is to pay staff a reasonable salary so that they do not have to depend on payment in kind. This is sometimes very difficult in countries where there are scant public resources.

Preferable to live in the community

It is beneficial for staff and their families to be able to live in the general community rather than in a community made up only of other prison workers. This will make it easier for them to develop other interests away from their work and to mix with people from other walks of life. It will also enable their partners and children to enjoy a normal life outside the prison ghetto. A fuller lifestyle is also liable to make staff more committed while they are at work.

Equality of treatment

Chapter 14 of this handbook deals with the need to make sure that there is no discrimination towards prisoners who belong to any kind of minority. As indicated earlier in this chapter the same principles apply to staff. Women staff should have parity of salary and other conditions of service with their male colleagues. They should also have the same opportunities for promotion and for work in areas requiring special skills. The same principles apply to staff from minority groups, whether minorities of race, religion, culture or sexual orientation.

Transfer

In some prison systems staff have to accept transfers to other prisons. When this happens, consideration needs to be given not only to the needs of the staff themselves but also those of their families. For example, if children of staff are at a particularly sensitive time in their schooling a transfer may have a major detrimental effect on their education. Factors such as this should be taken into account. Except in rare emergency situations, staff should always be consulted before a transfer takes place and whenever possible they should be invited to agree to such moves. Transfers should not be used as a form of disciplinary action against a member of staff.

Staff representation

Most prison systems are disciplined organisations. That does not mean that staff should be treated unreasonably or without respect for their position. In most countries staff are entitled to belong to trade unions which negotiate with management on their behalf about levels of pay and conditions of employment. This arrangement is to be recommended. If there is no formal trade union, staff should at least have a recognised negotiating machinery. Trade union and other staff representatives should not be penalised for the work which they do in representing their fellow members of staff.

Total prohibition of torture

The framework

Human Dignity

Prisoners are entitled to human rights protections

People who are detained or imprisoned do not cease to be human beings, no matter how serious the crime of which they have been accused or convicted. The court of law or other judicial agency which dealt with their case decreed that they should be deprived of their liberty, not that they should forfeit their humanity.

The prisoner as person

Prison staff should never lose sight of the fact that prisoners are human beings. They must continually resist the temptation to regard the prisoner merely as a number rather than as a whole person. Nor do prison staff have any right to inflict additional punishments on prisoners by treating them as lesser human beings who have forfeited the right to be respected because of what they have done or are accused of having done. Ill-treatment of prisoners is always legally wrong. In addition, such behaviour lessens the very humanity of the member of staff who acts in such a way. The need for prison administrations and prison staff to work always within an ethical context was dealt with in chapter 2 of this handbook. This and subsequent chapters will deal with the practical consequences of this.

Total prohibition of torture

Persons who are detained or imprisoned retain all their rights as human beings with the exception of those that have been lost as a specific consequence of deprivation of liberty. The prison authority and prison staff need to have a clear understanding of the implications of this principle. Some issues are very clear. There is, for example, a total prohibition of torture and deliberately inflicted cruel, inhuman or degrading treatment. There has to be an understanding that this prohibition does not merely apply to direct physical or mental abuse. It also applies to the totality of conditions in which prisoners are held.

Torture and ill-treatment are never permitted

No circumstances ever justify torture

The international human rights instruments do not leave room for any doubt or uncertainty in respect of torture and ill-treatment. They state clearly that there are absolutely no circumstances in which torture or other cruel, inhuman or degrading treatment or punishment can ever be justified. Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, other than that pain or suffering which is inherent in the fact of detention or imprisonment.

Extracting confessions by torture is prohibited

The prohibition on torture is particularly important in relation to places where those undergoing interrogation or investigation are detained, as there may be a temptation to use duress in order to obtain information to resolve a criminal investigation. The most obvious example of this is where a prisoner confesses to a crime as a direct consequence of the ill-treatment which he or she suffers while under investigation. This is an important argument for a separation of the agencies which investigate crime from those which detain accused persons.

Torture must never be seen as normal

The closed and isolated nature of prisons can offer the opportunity for abusive actions to be committed with impunity, sometimes in an organised manner and at other times because of the actions of individual members of staff. There is a danger that in countries or institutions where the punitive function of prisons is given priority, actions which amount to torture, such as routine unlawful use of force and beatings, can come to be regarded by staff as 'normal' behaviour.

What the international instruments say

Universal Declaration of Human Rights, Article 5:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.1:

... the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification for torture.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 10:

Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Nelson Mandela Rules, Rule 1:

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

Nelson Mandela Rules, Rule 57 (3):

Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority in accordance with paragraphs 1 and 2 of rule 71.

Code of Conduct for Law Enforcement Officials, Article 3:

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Body of Principles For the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 34:

Whenever the death or disappearance of a detained or imprisoned person occurs during his sentence or imprisonment, an enquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case.

Inter-American Convention to Prevent and Punish Torture, Article 5:

Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.

European Union Charter of Fundamental Rights, Article 4:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Putting it into practice

Staff must be told torture is prohibited

All those authorities responsible for the administration of prisons have an obligation to ensure that all staff and others involved in prisons are fully aware of what constitutes torture and of the complete prohibition on torture.

Danger moments for torture

Authorities should ensure that none of the operational regulations in prison can ever be interpreted by staff as permission to inflict such treatment on a prisoner. This applies particularly to regulations for dealing with difficult or obstructive prisoners and those who are held in segregation units. There are certain key moments which set the tone for how staff are expected to deal with prisoners. The first occurs when the prisoner is admitted into prison. The treatment he or she receives at that point is an important indicator to the prisoner and to others of what is to follow. On first admission to prison some people will be subdued and afraid. Others may be truculent or under the influence of drugs or alcohol. It is important that staff should treat every prisoner on admission with dignity and respect. Another important set of regulations will relate to the treatment of prisoners who are violent, who breach prison rules or who are in any way difficult to manage. This treatment can be firm and decisive while at the same time avoiding any suggestion of cruelty or inhumanity.

Sexual abuse

Prisoners, whether women or men, young or old, are vulnerable to sexual abuse. This may be as a result of coercion or barter in exchange for privileges. In some cases the perpetrator may be a member of staff or another prisoner. In many cases sexual abuse by prisoners may be condoned by staff as a form of punishment or control. In a number of countries prison rape has become a widespread and serious concern. In addition to the physical and psychological damage which it causes it increases the spread of HIV/AIDS and other diseases. Prison administrations have a responsibility to ensure that prisoners are safe from the threat of sexual abuse.

“ The United States Prison Rape Elimination Act of 2003 requires “zero tolerance for sexual violence and abuse among offenders as well as between staff and offenders”. Under the Act a National Prison Rape Elimination Commission has been set up. The Commission is charged with studying federal, state and local government policies and practices related to the prevention, detection, response and monitoring of sexual abuse in correction and detention facilities in the United States. Consistent with the Act, the Commission’s recommendations will be designed to make the prevention of rape a top priority in America’s jails, prisons, lockups, juvenile facilities, and other detention facilities.¹⁰

From the website of the National Prison Rape Elimination Commission

“ As of 2017 nineteen states have fully adopted standards under the Prison Rape Elimination Act (PREA), according to the U.S. Justice Department’s latest compliance list. Another 34 states and U.S. territories have demonstrated they are working toward compliance.¹¹

The Crime Report, “UT, AR Still Refuse to Adopt U.S. Prison Rape Law”, 14 May 2017

Regulating the use of force

It must be made clear to staff that the behaviour of a prisoner can never be used as a justification for the use of torture or ill-treatment. When force has to be used, it must be in accordance with agreed procedures and then only to the extent that it is essential to restrain a prisoner. There should be specific regulations covering the use of all methods of physical force. Staff should not have unrestricted access to handcuffs, body belts and straitjackets. Instead, they should be held in a central location in the prison and any use should be authorised in advance by a senior member of staff. A full record should be maintained of any instance when this equipment is issued and the circumstances in which it is used.

Use of batons or truncheons

In many countries individual members of staff are issued with some form of baton or truncheon for their personal use. There should be clear instructions as to the circumstances in which this may be used. This should always be to do with personal defence and not as any form of punishment. Batons or truncheons should not be carried openly in the hand by staff as they go about their daily duties. These and other related matters are dealt with more fully in chapter 7 of this handbook, which deals with security and good order.

Minimum use of force methods

There are a variety of techniques for controlling violent prisoners by methods using minimum force. These reduce the likelihood of both staff and prisoners being seriously injured. Staff should be trained in these techniques; this training should be updated on a regular basis. Whenever there is a violent incident or a prisoner has to be subdued, a senior member of staff should attend the scene as soon as possible and should not leave until the incident has come to an end.

Complaints against torture and ill-treatment

There should be a formal and open set of procedures which prisoners can use to complain, without any fear of recrimination, to an independent authority against any incidence of torture or cruel, inhuman or degrading treatment. Chapter 13 of this handbook deals with the right of prisoners to make complaints.

“ States parties shall undertake prompt, effective and impartial investigations, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction as the result of its actions or omissions and... ensure that impartial and effective complaints mechanisms are established. Complaints mechanisms shall be made known and accessible to the public, including to persons deprived of their liberty, whether in detention, psychiatric facilities, or elsewhere, via, for example, telephone hotlines or confidential complaints boxes in detention facilities, and to persons belonging to vulnerable or marginalized groups, including those who may have limited communication abilities.¹²

United Nations Committee Against Torture, General Comment 3, 2012

Access for independent observers

There should be a system of regular access by a judge or other independent persons to prisons in order to ensure that torture or cruel, inhuman or degrading treatment does not take place. The need for independent inspection is dealt with in chapter 15 of this handbook.

Admission procedures that prevent torture

Detainees and prisoners are particularly vulnerable when they first arrive in detention or imprisonment. International law recognises that the right to life and to freedom from torture require a specific framework of protection at this time. A number of international instruments describe the rights of the imprisoned person and the obligations of prison staff at the point of first admission to a place of detention in order to safeguard against torture, ill-treatment, disappearance, extrajudicial killing and suicide.

Admission procedures which respect human dignity

All prisoners have these rights

Good practice has evolved in countries around the world, showing how staff can conduct admission procedures not only lawfully, but with sensitivity to the welfare and essential dignity of the detained person. Out of this good practice it is possible to make a series of recommendations that are of universal applicability and that can be adapted to local custom, cultural traditions and socio-economic level.

These rights apply to all prisoners, whether they are on remand, pre-trial awaiting sentence or convicted. Important additional considerations apply to particular groups of prisoners, such as those who have not been convicted, foreign prisoners, juveniles and young prisoners and women. Where foreign national prisoners wish to see a consular official such access must be granted.

What the international instruments say

Nelson Mandela Rules, Rule 6:

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

Nelson Mandela Rules, Rule 7:

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

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

Nelson Mandela Rules, Rule 30:

A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

- (a) Identifying health-care needs and taking all necessary measures for treatment;
- (b) Identifying any ill-treatment that arriving prisoners may have been subjected to prior to admission;
- (c) Identifying any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and undertaking all appropriate individualized measures or treatment;
- (d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;

Nelson Mandela Rules, Rule 54:

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

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

Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, Article 6:

Governments shall ensure that persons deprived of their liberty are held in officially recognised places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

Declaration on the Protection of All Persons from Enforced Disappearance, Article 10:

An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralised registers.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 13:

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16:

- (1) Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his detention or imprisonment or of his transfer and of the place where he is kept in custody.
- (2) If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organisation, if he is a refugee or otherwise under the protection of an intergovernmental organisation.
- (3) If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention should be given to notifying parents or guardians.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 18:

A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24:

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and this medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

- (e) Determining the fitness of prisoners to work, to exercise and to participate in other activities, as appropriate.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rule 2:

1. Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.

The health screening of women prisoners shall include comprehensive screening to determine primary healthcare needs, and also shall determine:

- (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling;
- (b) Mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm;
- (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive health issues;
- (d) The existence of drug dependency;
- (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.

Putting it into practice

There must be a valid judicial order

All prisoners have the right to be held only in an officially recognised place of detention. The first task of the prison authorities is to check that there is a valid order for the detention of each individual who is brought to the prison. This order should be issued and signed by a judicial authority or other competent agency.

Secure registration

The prison authorities must keep an up-to-date official register of all detainees, both at the place of detention and, if possible, also at a central location. The register should show the date and time of admission and the authority under which the person is imprisoned. The information in such registers, which are sometimes called gate books, must be accessible to the courts and other competent authorities and any other person with a legitimate interest in the information. Nelson Mandela Rule 6 recognises that the registration may be in electronic form. Whatever the format, it should 'ensure a secure audit trail' so as to 'prevent unauthorised access to or modification of information'.

The register must be bound with numbered entries

The details relating to each prisoner should be sufficient to identify each prisoner. This is to ensure that people are only held in prison if there is a legitimate sanction for their detention, that they are not held for longer than the law allows and in order to guard against human rights violations such as 'disappearance', torture or ill-treatment, and extrajudicial killing. The register should be bound and the entries numbered so that it is not possible to delete or add entries out of sequence.

Registration of pre-trial prisoners

In the case of a person detained without sentence, the written legal sanction for detention should specify the date when the person will next appear before a legal authority.

Advising family and lawyers

All persons received into a prison should be given the opportunity as soon as possible to inform their legal representative and their families of their whereabouts. This facility should be provided whenever a prisoner is transferred to another prison or place of detention. The rights of pre-trial prisoners are dealt with in chapter 16 of this handbook. Special care should be taken to ensure that young prisoners can make contact with their families; see chapter 17 of this handbook. Additional consideration should be given to prisoners who have responsibility for old, young or ill members of their families; this may often be the case for women prisoners.

The framework

The state's obligations

Deprivation of liberty is the punishment

There are certain basic physical requirements that must be met if the state is to comply with its obligation to respect the prisoner's human dignity and fulfil its duty of care. These include adequate provision of accommodation, hygienic conditions, clothing and bedding, food, drink and exercise. When a judicial authority sends someone to prison, the international standards are clear that the punishment imposed should be solely deprivation of liberty. Imprisonment must not include risk of physical or emotional abuse by staff or by other prisoners. It must not include risk of serious illness or even death because of the physical conditions or the lack of proper care. Prisoners must not be subjected to living conditions which are in themselves inhuman and degrading.

Use of scarce resources

At a more pragmatic level, the shortage of public funds is likely to be an additional reason for the state to make sure that prison is used only for the most dangerous criminals and is not used as a way of removing marginalised individuals from society.

The health risks

Imprisonment may mean that a large number of individuals are kept together in a very restricted environment with little or no freedom of movement. This raises particular concerns. In the first place there may be a serious risk to health. For example people suffering from a highly infectious disease such as tuberculosis may be in such close proximity and in such ill ventilated conditions that their fellow prisoners are at great risk of contracting the disease. People deprived of the opportunity to wash themselves or their clothing may catch skin diseases or parasites and, for lack of space, individual bedding or beds, pass on their affliction to others. A prisoner in a cold climate who does not have warm clothing may suffer hypothermia. A prisoner deprived of exercise and access to sunlight and fresh air may suffer serious loss of muscle tone and vitamin deficiency. A prisoner deprived of sufficient quantities of food and/or liquid is likely to suffer serious damage to health.

Daily life

What the international instruments say

Nelson Mandela Rules, Rules 12 - 23

Rule 12

1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.
2. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the prison.

Rule 13

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

Rule 14

In all places where prisoners are required to live or work:

- (a) The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
- (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

Rule 15

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

Rule 16

Adequate bathing and shower installations shall be provided so that every prisoner can, and may be required to, have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

Rule 17

All parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Rule 18

1. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
2. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be able to shave regularly.

Rule 19

1. Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating.
2. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.
3. In exceptional circumstances, whenever a prisoner is removed outside the prison for an authorized purpose, he or she shall be allowed to wear his or her own clothing or other inconspicuous clothing.

Rule 20

If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the prison to ensure that it shall be clean and fit for use.

Rule 21

Every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Rule 22

1. Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
2. Drinking water shall be available to every prisoner whenever he or she needs it.

Rule 23

1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided.

Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment, Principle 6:

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

* The term “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rule 5:

The accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating

European Prison Rules, Rule 18.1:

The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

Putting it into practice

Living space

The accommodation in which prisoners live must meet certain basic standards. The international standards make clear that prisoners should have enough space to live in, with access to enough air and light to keep healthy.

Overcrowding

One of the major problems in many jurisdictions is the level of overcrowding. This is often worst for remand and pre-trial prisoners. Overcrowding can take different forms. In some cases it may mean that cells which were built for one person are used for multiple occupation. In the worst situations this can mean up to twelve or fifteen individuals in cells which are hardly eight square metres. In other circumstances it can involve up to a hundred individuals crammed into a larger room.

“ The competent authority shall determine the maximum capacity of each place of deprivation of liberty according to international standards related to living conditions. Such information, as well as the actual ratio of occupation of each institution or center shall be public, accessible and regularly updated.

The occupation of an institution over its maximum capacity shall be prohibited by law. In cases where such overcrowding results in human rights violations, it shall be considered cruel, inhuman or degrading treatment or punishment. The law shall establish remedies intended to immediately address any situation of overcrowding. The competent judicial authorities shall adopt adequate measures in the absence of an effective legal regulation.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XVII, 2008

Generally speaking, the international instruments do not specify a minimum floor or cubic area for each prisoner. In recent years the Council of Europe Committee for the Prevention of Torture and Other Forms of Inhuman and Degrading Treatment has been moving towards doing so. In addition, the ICRC has developed recommended specifications for prisoner accommodation.¹³

Time spent in cell or living space

An important consideration when trying to decide how much space each prisoner should have for living accommodation is the amount of time which is to be spent in that space within a twenty four hour period. A smaller space is less damaging if it is to be used only for sleeping and if the prisoner is to be out in other space during the day, involved in other activities. Overcrowding is obviously worst when the prisoners have to spend almost all the time in these cells or rooms, coming out as a group only for a short period of exercise or singly when they have to be interviewed or have a visitor. This is what happens in some jurisdictions, especially in prisons which hold predominantly pre-trial prisoners or those who are serving short sentences.

Using all available space

Even in prisons with an extremely high level of overcrowding there are likely to be spaces which are under used. Although the rooms which hold prisoners may be badly overcrowded, there will probably be adjacent rooms which are used only rarely. In some prisons there are extensive and broad corridors which could be used to allow groups of prisoners to come out of the cells throughout the day to be involved in different forms of activities. In such circumstances it will often be possible to arrange a wide variety of educational, craft or work activities.

Using all available resources

One justification for keeping prisoners locked in their living space is that there are not sufficient staff to supervise them otherwise. That argument needs to be examined closely on operational grounds. There will usually be sufficient staff to allow groups of prisoners out in rotation. It may also be possible for some prisoners to help other prisoners in education, by teaching literacy for example, or in craft activity.

Single or communal cells

Attitudes to privacy and solitude vary across cultures. In Western Europe and North America, for example, prisoners usually prefer to sleep in single accommodation. This norm is reflected in the European Prison Rules. In other cultures being in a single room may be regarded as a form of segregation or punishment and there may be a preference for prisoners to live in proportionately sized communal rooms. If the latter is the case, it may be necessary to develop appropriate criteria for allocating prisoners to each room so that weaker prisoners are not placed at the mercy of stronger ones.

Clothing for prisoners

International standards place an obligation on the state to provide clothing which will keep the prisoner warm or cool, as necessary for his or her health, and forbid clothing prisoners in a degrading or humiliating way. They also place an obligation on the state to maintain clothing in a clean and hygienic condition or to provide the means for prisoners to do so.

Prison uniforms

In many countries prisoners are obliged to wear a uniform provided by the prison. This is normally justified by arguments based on security and equality. Except possibly in the case of some prisoners of demonstrably high security or escape risk, there is no obvious reason why uniform clothing should be the norm. Some jurisdictions do not have sufficient resources to provide official clothing for prisoners and expect them to provide their own. In other systems prisoners who do not present a risk of escape are permitted to wear their own clothing. In many countries women prisoners are allowed to wear civilian clothes. The opportunity to wear something familiar from a world outside and which reinforces a sense of individual identity will be valued by prisoners.

Prison uniform should not be part of a punitive framework nor should it set out to humiliate the wearer. For this reason prison administrations have discarded the unnecessary practice of requiring prisoners to wear uniform with arrows or stripes.

Each prisoner should have access to laundry facilities so that all clothes, especially those worn close to the skin, can be washed regularly. This may be done communally or by the prisoner individually. The special needs of women prisoners in this respect need to be recognised, as described in chapter 18 of this handbook.

Bedding

The nature of the bed and bedding may vary according to local tradition. In many countries it is the norm to sleep on a raised bed. In other countries, particularly those in warmer regions, it may be the custom to lay out bedding or mats directly on the ground. Arrangements for prisoners should follow the local norm. The essential point is that all prisoners should have their own bed or bed mat, clean bedding and their own sleeping space.

In a number of countries levels of overcrowding are so bad that prisoners have to sleep in shifts, sharing sleeping spaces or beds on a rota basis. This arrangement is not acceptable. If overcrowding reaches such levels, the prison administration should make sure that the governmental bodies responsible for sending people to prison are made aware of the situation in prisons and of the consequences of sending people there.

Toilet and washing facilities

Since the movement of people who are in prison is often severely restricted, it is important that they should have regular access to sanitary facilities. Prisoners should have unrestricted access to toilet facilities and to clean water. There should also be adequate facilities to allow regular bathing or showering. These matters are especially important when prisoners are kept for long periods in overcrowded living accommodation. The arrangements which are in place should not humiliate prisoners, for example, by obliging them to shower in public.

As well as meeting the right of all people to keep themselves clean and to maintain their self-respect, access to proper sanitation is essential in prisons as a means of reducing the possible spread of illness among prisoners and staff. Sanitary arrangements must be accessible, clean and private enough to ensure the dignity and self-respect of the prisoner.

The special needs of women prisoners in respect of sanitary provision need to be provided for with respect for their dignity. Women should not have to ask for such necessities from male staff.

Food and drink

One of the most basic obligations of care is that prison administrations should provide all prisoners with sufficient food and drink to ensure that they do not suffer from hunger or an illness associated with under-nourishment.

In situations where there is a shortage of food the prison administration should explore all possibilities of using available land within or belonging to prisons for cultivation and of arranging for prisoners to undertake this work.

“ The South African Department of Correctional Services (DCS) is aiming towards self-sufficiency through full utilisation of its 40,000 hectares of correctional centre farm land.

Over the... years 2011 to 2013, almost 30 million kilograms of vegetables, fruit and meat were produced by inmates at correctional centre farms and abattoirs. During the same period, 5,578,133 loaves of bread were produced at its six bakeries. At the Boksburg Correctional Centre Bakery only, 22 offenders produce 2,000 loaves of bread daily which feeds 5,000 offenders.¹⁴

South African Government website,
“More inmates to be trained in agriculture activities”, 2014

Meals should be provided at regularly spaced intervals throughout each 24 hour period. In many countries it is not acceptable to have the last meal of the day served in mid-afternoon with no more food provided until the following morning.

Arrangements should also be made for prisoners to eat their meals in circumstances which are appropriate. They should be given individual utensils and the opportunity to keep these clean. They should not normally have to eat in the same room where they sleep. If this is necessary, a special area should be provided for eating.

It is essential that prisoners should have regular access to clean water. Such water supplies should be separate from any provided for sanitary needs.

Exercise in the open air

Many prisoners, in particular pre-trial prisoners, spend the majority of their days indoors in conditions of relatively close confinement, with limited access to light and fresh air. In these circumstances it is essential for both physical and mental health that they should be given an adequate amount of time each day in the open air and should have the opportunity to walk about or to take other exercise.

The minimum recommended time in the fresh air is one hour each day. During this period prisoners should be able to walk about in relatively large areas and should also, if at all possible, be able to see natural growth and vegetation. The practice in some countries of placing large numbers of prisoners into small walled yards, which are in effect cells without roofs, for an hour each day does not satisfy the obligation to give the opportunity to exercise in the open air.

The right to exercise in the open air applies to all prisoners, including those who are under any kind of segregation or punishment.

The duty of care

In countries where the standard of living for the general population is very low it is sometimes argued that prisoners do not deserve to be held in decent and humane conditions. If men and women who are not in prison have to struggle to survive, if they do not have enough food for themselves or their children, why should anyone worry about the conditions in which those who have broken the law are held? That is a difficult question to answer, but it can be answered. Put simply, if the state takes on itself the right to deprive someone of liberty, for whatever reason, it must also take on itself the obligation to make sure that that person is treated in a decent and humane manner. The fact that non-imprisoned citizens find it difficult to live decently can never be used as a justification by the state for failing to treat those who are in its care decently. This principle goes to the heart of the democratic society, in which the organs of the state have to be seen as examples to all citizens in respect of the way they treat all citizens.

What the international instruments say

Nelson Mandela Rules, Rule 35:

1. **The physician or competent public health body shall regularly inspect and advise the prison director on:**
 - (a) **The quantity, quality, preparation and service of food;**
 - (b) **The hygiene and cleanliness of the institution and the prisoners;**
 - (c) **The sanitation, temperature, lighting and ventilation of the prison;**
 - (d) **The suitability and cleanliness of the prisoners' clothing and bedding;**
 - (e) **The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.**

Putting it into practice

The role of healthcare professionals

Healthcare professionals are not only responsible for the provision of healthcare to prisoners. In their wider role, healthcare professionals take responsibility for overseeing the health implications of the prison environment and ensuring that shortcomings that could be detrimental to health are brought to the attention of those in charge of the prison.

Admission is a time of vulnerability

Many other aspects of the prison regime can contribute to a climate that respects human dignity and are dealt with in later chapters of this handbook. The procedures followed when the prisoner first arrives at the prison can be particularly important because it is often a time when the prisoner is especially fearful and disorientated. Admission procedures are also dealt with in chapter 4 as some aspects of admission are particularly relevant to preventing torture and ill-treatment.

A medical examination is essential

As soon as possible after a person is admitted to prison he or she should be offered a medical examination by a properly qualified medical officer. Any necessary medical treatment should be offered. All of this should be free of charge.

“ The CPT has repeatedly stressed the importance of medical screening of newly-arrived prisoners, especially in establishments which constitute points of entry to the prison system. Such screening is essential, in particular to prevent suicide and the spread of transmissible diseases (such as tuberculosis, hepatitis B/C, HIV). Prison health-care services can also make a significant contribution to the prevention of ill-treatment during the period immediately prior to imprisonment, namely when persons are in the custody of law enforcement agencies, through the systematic and timely recording of injuries and, when appropriate, the provision of information to the relevant authorities.¹⁵

European Committee for the Prevention of Torture, 26th General Report, 2017

The role of a qualified nurse

In some prisons it may be difficult to arrange for a doctor to examine all prisoners immediately after admission. It may be that there is no resident doctor or it may be that the volume of admissions is so large that the doctor cannot possibly give everyone a full clinical examination immediately, especially if the prisoners arrive in the evening. In such circumstances arrangements should be made for a qualified nurse to give all prisoners a preliminary interview. The doctor will see only those who are obviously unwell or those prisoners who are referred to him or her by the nurse. Under this arrangement the doctor will give all new prisoners a full medical examination the day after admission.

The right of prisoners to have access to healthcare, the standards governing the quality of that care and other related matters are dealt with in chapter 6 of this handbook.

Women need special protection

Given the high proportion of women prisoners who will have suffered sexual abuse, staff working in the admission area of women's prisons should receive additional training so that they are aware of the sensitive issues involved.

“ Strip searching practices in prison are unnecessary, revealing negligible contraband and are re-traumatising for women. Routine strip searching in conjunction with other strict security measures has been held by the European Court of Human Rights to amount to inhuman or degrading treatment. It is particularly degrading and re-traumatising for imprisoned women, who as a population have a high prevalence of victimisation and sexual abuse. Strip searches perpetuate cycles of control, submission and humiliation – similar to the function of violent and abusive behaviour in the family.¹⁶

Submission from Australian NGO Flat Out to the Royal Commission into Family Violence, May 2015

Body-searching

It is common practice that on first admission to prison prisoners are given a full body search. Such searches should be carried out by people of the same sex and in a manner consistent with the dignity of the person being searched. The issue of searching is dealt with more comprehensively in chapter 7 of this handbook.

“ 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.¹⁷

United Nations Human Rights Council, The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation (Article 17) General Comment, 2001

Information for prisoners

Life in prison should start and carry on within a framework of justice and fairness, in a way that minimises the prisoners' feelings of powerlessness and makes explicit to them that they remain citizens with rights and obligations. This is likely to be particularly important to those coming into prison for the first time. As soon as possible after the first point of admission arrangements should be made to ensure that all prisoners are made aware of the regulations of the prison, what is expected of them and what they can expect of the prison staff. If possible they should be given a personal copy of the prison regulations.

Provision for those who cannot read

Provision needs to be made to ensure that those who do not speak the local language, who are illiterate or disabled, can still receive and understand this important information. This can be done in a variety of ways: by having someone read and explain the rules, by making sure that there is someone who talks the language of the prisoner, in some countries by use of videos. It is especially important that prisoners should be made aware of their right to make a request or a complaint, as described in chapter 13 of this handbook.

Handling large numbers of arriving prisoners

The way that staff in a prison admission area carry out their work may vary according to the number of prisoners who are admitted or released on a single day. In prisons for long term prisoners there may only be a handful of prisoners admitted or released in a month. In this case staff will not be under great pressure and will be able to devote a reasonable amount of time to dealing with each prisoner. In large urban prisons, which deal primarily with prisoners who are pre-trial or awaiting sentence or who are serving short sentences, there may be tens or even hundreds of prisoners passing through the admission area each day, often within a few hours. In the latter situation staff need to be well supported and supervised by management so that essential elements of the admission process are maintained.

Training for staff working in the admission area

The admission area can be very intimidating for new arrivals to prison. The receiving staff need to be specially trained to recognise how to exercise the difficult balance between firm control, which makes clear to the person that the prison is a well organised place, and an understanding of the stress which the prisoner is likely to be feeling as he or she moves into this strange new world. Not all staff are suited for this type of work. Those who work in the admission area should be specially selected and should be given specific training to enable them to carry out their work with sensitivity and with confidence.

The framework

The right to good health

Those who are imprisoned retain their fundamental right to enjoy good health, both physical and mental, and they retain their entitlement to a standard of medical care which is at least the equivalent of that provided in the wider community. The International Covenant on Economic, Social and Cultural Rights (Article 12) establishes:

“ the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Prisoners have additional safeguards

Alongside these fundamental rights of all human persons, prisoners have additional safeguards as a result of their status. When a state deprives people of their liberty it takes on a responsibility to look after their health in terms both of the conditions under which it detains them and of the individual treatment which may be necessary as a result of those conditions.

Minimising the risks

Good health is important to everyone. It affects how people behave and their ability to function as members of the community. It has a particular significance in the closed community of a prison. By its nature imprisonment can have a damaging effect on both the physical and mental wellbeing of prisoners. Prison administrations have a responsibility, therefore, not simply to provide medical care but also to establish conditions which promote the wellbeing of both prisoners and prison staff. Prisoners should not leave prison in a worse condition than when they entered. This requirement applies to all aspects of prison life, but especially to healthcare.

Prisoners bring health problems

Prisoners often arrive in prison with pre-existing health problems which may have been caused by neglect, abuse or the prisoner's previous lifestyle. Prisoners often come from the poorest sections of society and their health problems will reflect this. They will bring with them untreated conditions, addictions and also mental health problems. These prisoners will need particular support, as will those many others whose mental health may be significantly and adversely affected by the fact of imprisonment.

“ Overcrowded prisons with infected inmates and with poor hygiene and sanitation are a dominant threat in the field of communicable diseases in the region. Prison health must be a priority.

Statement from the heads of government at the
4th Baltic Sea States Summit on the Threat of Communicable Diseases
Issued at St. Petersburg, 10 June 2002

Communicable diseases prevalent

In many countries, a large percentage of those in prison are infected with transmissible diseases, such as tuberculosis, hepatitis and HIV/AIDS. Prison administrations have a responsibility to those who come into prison – prisoners especially, but also staff and visitors – to ensure that they are not exposed to risks of infection. A failure to manage these conditions will mean that they become community health problems as a result of contact between the prison and wider society, through staff and visitors, and as a result of the eventual release of prisoners.

Old-age prisoners

In some jurisdictions the increasing use of long or indeterminate sentences is leading to a growth in age-related medical problems in the prison population. Some prison systems now face dealing with prisoners who are physically infirm or suffering from dementia. This will place further

demands on prison administrations to ensure that they plan appropriate healthcare provision. The general issues concerning elderly prisoners are dealt with in chapter 19 of this handbook.

An obligation even in times of economic difficulty

A number of countries experience great difficulty in providing healthcare of a reasonable standard to the population at large. Even in these circumstances prisoners are entitled to the best possible healthcare arrangements and this should be provided free of charge. The European Committee for the Prevention of Torture (CPT) has stated that even in times of grave economic difficulty nothing can relieve the state of its responsibility to provide the necessities of life to those whom it has deprived of liberty. The CPT has also made clear that the necessities of life include sufficient and appropriate medical supplies.¹⁸

The right to healthcare

What the international instruments say

Prisoners, whatever the nature of their offence, retain all those fundamental rights to which they are entitled as human persons, including the right to enjoy the highest attainable standards of physical and mental health. Specific international instruments set out more clearly what this implies in terms of the healthcare provision to be made by prison administrations.

Nelson Mandela Rules, Rule 13:

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

Nelson Mandela Rules, Rule 25:

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.
2. The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner.

Nelson Mandela Rules, Rule 27:

1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.
2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.

Nelson Mandela Rules, Rule 31:

The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality.

UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 1:

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standards as is afforded to those who are not imprisoned or detained.

Basic Principles for the Treatment of Prisoners, Principle 9:

Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24:

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Putting it into practice

Comparable care must be provided

Wherever possible prisoners should have full access to the medical facilities which are available to the public at large. In most jurisdictions this access is limited to specialist care while general medical care is provided within the individual prison or in specific prison medical facilities. Any medical treatment or nursing care provided by the prison administration should be at least comparable to what is available in the outside community.

General medical care

As a minimum, the prison administration should provide in each prison:

- initial medical screening on admission to the prison;
- regular out-patient consultations;
- emergency treatment;
- suitably equipped premises for consultation with and the treatment of prisoners;
- an adequate supply of appropriate medicines dispensed by qualified pharmacists;
- facilities for physiotherapy and post-treatment rehabilitation;
- any special diets which may be identified as medically necessary.

Prison administrations will need to ensure that access to general medical care is available at any time and without delay in cases of urgency.

“ The Inter-American Commission on Human Rights noted in its petition to the Inter-American Court of Human Rights that... there was evidence of more than 100 cases of inmates not receiving necessary medical assistance; the prison did not have a sufficient number of doctors or rehabilitation personnel... and there were areas in the prison where inmates with tuberculosis and leprosy were kept, but no measures had been taken to treat or isolate these inmates.¹⁹

International Human Rights Clinic, *Tuberculosis, Human Rights and the Law*, 2017

Links with the public health service

In all aspects of medical care prison authorities should seek to establish and maintain close links with health service providers outside the prison. This will not only allow for a continuity of treatment but will also enable prisoners and staff to benefit from wider developments in treatments, in professional standards and in training.

“ Delegates at the International Meeting on Prisons and Health in Moscow on 23 and 24 October 2003, representing senior staff from prison and public health services across Europe, wish to draw the attention of all countries in Europe to the essential need for close links or integration between public health services and prison health.²⁰

Moscow Declaration, World Health Organisation, 2003

There should be no charge for health care

It is an important principle of prison health care that all necessary medical care and treatment should be provided free of charge. This may require special attention in those jurisdictions where the free provision of medical care in civil society is limited. A particular problem can arise where there are increasing numbers of long term prisoners who may require expensive treatment for complex or terminal conditions. Prison administrations will need to ensure that they make suitable arrangements which are based on the needs of prisoners and that the required treatment is not restricted on the grounds that it is deemed to be too expensive merely because the patient is a prisoner.

Initial medical examination

The question of medical screening on first admission to prison was dealt with in chapter 5 of the handbook. There are several important reasons why prisoners should be offered a medical examination when they first arrive in prison:

- it enables medical staff to identify any pre-existing medical conditions and ensure that appropriate treatment is provided;
- it allows appropriate support to be provided to those who may be suffering the effects of the withdrawal of drugs;
- it will help to identify any injuries which may have been sustained during initial detention;
- it will allow trained staff to assess the mental state of the prisoner and provide appropriate support to those who may be vulnerable to self-harm.

It is not always possible to ensure that a doctor is able to carry out a medical examination of all prisoners as soon as they are admitted to prison. Prison administrations should ensure that each prisoner is at least seen by a suitably qualified nurse who can report any concerns to the medical officer.

As part of the admissions procedure prisoners should receive clear information on the arrangements for health care in the prison and the method of seeking a medical consultation.

Specialist facilities

In addition to the facilities for general medical, dental and psychiatric care, the prison administration should also ensure that it has suitable arrangements in place to provide specialist consultation and in-patient care. This will require a close link between the prison and the medical services in civil society since it is unlikely that prison health care services will themselves be able to make adequate arrangements for the full range of specialisms. In planning for specialist care particular attention will need to be given to the needs of vulnerable groups, especially women and older prisoners.

Access to specialist facilities may often require the transfer of the prisoner to another location. Prison administrations will need to ensure that arrangements for escorting prisoners are suitable and do not lead to interruptions and delays in treatment or additional anxiety for the prisoner. The conditions in which prisoners are transported should be appropriate to their medical condition.

When prisoners need hospital care

From time to time some prisoners will have medical problems which require to be dealt with in a hospital. There are several different ways of providing such a service. Many prison administrations have established prison hospitals which are able to deal with less acute cases requiring in-patient treatment. In other cases the problems of security have been addressed by establishing special prison units within civil hospitals. Often, however, prisoners may receive in-patient treatment in the normal facilities of a civil hospital. In such cases special consideration will need to be given to the appropriate security arrangements, especially for women in childbirth and for the terminally ill.

“ In her application to the European Court she complained under Article 3 of the Convention that she had been shackled to her bed during her stay in the maternity hospital and placed in a metal cage during court hearings before and after she gave birth... The Court considered it sufficiently established that the ... applicant had been subjected to continuous shackling in the maternity hospital. It recalled that the handcuffing or shackling of an ill or otherwise weak person was disproportionate to the requirements of security and implied an unjustifiable humiliation, whether or not intentional.²¹

European Court of Human Rights judgment in the case of
Korneykova and Korneykov v. Ukraine, 2016

A healthy environment

What the international instruments say

In addition to meeting the needs of those prisoners who are ill, prison administrations are also responsible for ensuring that the conditions of imprisonment do not undermine physical and mental well-being.

Nelson Mandela Rules, Rule 13:

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

Nelson Mandela Rules, Rule 15:

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

Nelson Mandela Rules, Rule 16:

Adequate bathing and shower installations shall be provided so that every prisoner can, and may be required to, have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

Nelson Mandela Rules, Rule 35:

1. The physician or competent public health body shall regularly inspect and advise the prison director on:
 - (a) The quantity, quality, preparation and service of food;
 - (b) The hygiene and cleanliness of the institution and the prisoners;
 - (c) The sanitation, temperature, lighting and ventilation of the prison;
 - (d) The suitability and cleanliness of the prisoners' clothing and bedding;
 - (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

Putting it into practice

The impact of the prison environment

There is an absolute obligation on the state to preserve and, if necessary, restore the health of those individuals for whom it takes responsibility by depriving them of their liberty. The conditions under which prisoners are detained will have a major impact on their health and well-being. In order to meet their responsibilities, therefore, prison administrations should ensure appropriate standards in all those areas which may affect the health and hygiene of

prisoners. The physical conditions of the accommodation, the food and the arrangements for hygiene and sanitation should all be designed in such a way as to help those who are unwell to recover and to prevent the spread of infection to the healthy.

Many jurisdictions face overwhelming problems, such as overcrowding, and an acute shortage of resources presents major obstacles to achieving healthy prison conditions. The amount of space available to each prisoner and access to natural light and fresh air will all have a significant impact on the spread of infectious diseases and on the mental state of prisoners.

“ The delegation observed that the national standard of at least 4m² of living space per prisoner was far from being met in most of the prisons visited; in particular at Chişinău and Soroca Prisons, the levels of overcrowding had reached disturbing proportions. Material conditions of detention in these two prisons were inadequate also in many other respects (e.g. poor, or even very poor, state of repair and hygiene; limited access to natural light; insalubrious sanitary facilities; infestation by vermin; worn-out and filthy mattresses; etc.) and, in the CPT’s view, could be considered as amounting to inhuman and degrading treatment. At Chişinău Prison, the situation was further exacerbated by the impoverished regime to which remand prisoners were subjected.²²

Report by the European Committee for the Prevention of Torture on a visit to Moldova in 2015

Transmissible diseases

Transmissible diseases have become a major problem for many prison administrations. In some countries in Eastern Europe and Central Asia in the late 1990s the incidence of tuberculosis reached epidemic proportions calling for exceptional measures. Infection with HIV/AIDS and hepatitis B and C are now widespread in prisons in many parts of the world. A number of administrations have addressed these problems through initial screening and treatment programmes, often in conjunction with international agencies and NGOs.

“ A Memorandum of Understanding has been signed with the Ministry of Law and Human Rights in Indonesia for active TB case-finding through annual screening and diagnosis in correctional facilities in five provinces. TB and HIV/AIDS were among the top ten causes of mortality and morbidity in prisons and detention centers in Indonesia in 2014. While the prison and pre-trial detention populations are relatively small, they constitute an important vulnerable group. The overcrowded situation (by 55%) and the inadequate administrative or management measures against TB infection control in the prisons contribute to the high TB burden in Indonesian prison settings.²³

KNCV Tuberculosis Foundation, TB screening and diagnosis in Indonesian prisons, 2016

Staff education in disease transmission

In those jurisdictions with a high incidence of transmissible disease prison administrations should establish a programme of education for staff in the transmission of disease and forms of protection so as to enable them to carry out their work normally. In some countries staff are routinely offered free inoculation against hepatitis.

Mental health conditions

The conditions of imprisonment will have a serious impact on the mental well-being of prisoners. Prison administrations should seek to reduce the extent of that impact and should also establish procedures to monitor its effects on individual prisoners. Steps should be taken to identify those prisoners who might be at risk of self-harm or suicide. Staff should be properly trained in recognising the indicators of potential self-harm.

Where prisoners are diagnosed as mentally ill they should not be held in prison but should be transferred to a suitably equipped psychiatric facility.

“ This case concerned the suicide in prison, by hanging, of a drug addict. The Court held that there had been a violation of Article 2 (right to life) of the Convention, finding that the French authorities had failed in their positive obligation to protect the applicants’ brother’s right to life. It observed in particular that it must have been clear to both the prison authorities and the medical staff that his state was critical, and placing him in a disciplinary cell had only made matters worse... The Court also held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicants’ brother’s placement in a disciplinary cell for two weeks was not compatible with the level of treatment required in respect of such a mentally disturbed person.²⁴

European Court of Human Rights judgment in the case of *Ketreb v. France*, 2012

Monitoring general prison conditions

International instruments place a special obligation on prison medical officers to use their professional expertise to inspect and report on all those conditions which may affect the health and hygiene of prisoners. Health care staff have an important role in establishing the concept that health care embraces not simply treatment but all aspects of creating a healthy environment and that this requires the co-operation of everyone in the prison. This will be particularly challenging where resources are limited.

Individual treatment

What the international instruments say

Individual prisoners are entitled to regular, confidential access to appropriate levels of medical consultation which is at least the equivalent to that available in civil society. Any medical judgements and treatments will be based on the needs of the individual prisoner and not on the needs of the administration.

Nelson Mandela Rules, Rule 31:

The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 26:

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

Putting it into practice

Access to medical consultation

Prison administrations must make appropriate arrangements to ensure that prisoners who are sick or who are concerned about their health have access each day to a suitably qualified medical officer. The conditions under which these consultations take place should be such as to respect the dignity of the prisoner and allow confidentiality to be maintained. Where security issues need to be considered it may be necessary to allow consultations with the medical officer to take place within sight but not within hearing of prison guards.

Privacy

The conditions under which prisoners are interviewed about their health should be the equivalent of those which apply in civil medical practice. Wherever possible they should take place in appropriately equipped consulting rooms. It is unacceptable for consultation to take place with groups of prisoners or in the presence of other prisoners or non-medical staff.

Confidentiality

The right to confidentiality also requires that prisoners should not have to submit their requests for access to the doctor to other prison staff. Under no circumstances should they be required to disclose their reasons for seeking a consultation. The arrangements for seeking a medical consultation should be made clear to prisoners on admission to the prison.

Medical records

The medical records of individual prisoners should remain under the control of the medical officer and should not be disclosed without the prior written authorisation of the prisoner. In some countries prison health care services come under the jurisdiction of civilian health care provision. In addition to the benefits of this discussed in the section on 'The right to healthcare' above, such arrangements also help to establish clearly that medical records are not part of general prison records.

Treatment

The treatment provided as a result of consultation and diagnosis should be that which is in the best interests of the individual prisoner. Decisions should not be based on the relative cost or convenience to the prison administration.

Pre- and post-sentence treatment

In addition to the management of those healthcare problems which present themselves in prison, medical officers also have a responsibility to ensure that they have arrangements in place to identify and respond to any pre-existing medical conditions. This again will require suitable common arrangements with the external medical authorities.

Terminally ill prisoners

In some countries arrangements exist whereby those prisoners who are terminally ill may be released early from their sentences. Any diagnosis made or advice offered by prison medical staff should be based on professional judgement and in the best interests of the prisoner. It will be for the prison authorities to consider and assess any risks posed by the early release of such prisoners.

“ A [US] federal judge ruled Thursday that former House speaker Salvatore F. DiMasi can leave prison early, citing his deteriorating medical condition after battling cancer and the higher-quality care he will be able to receive at home with his family. Citing “extraordinary and compelling reasons” to release DiMasi early, US District Judge Mark L. Wolf said he hoped his decision would focus attention on the issue of compassionate release for chronically ill federal prisoners.²⁵

Boston Globe, “DiMasi to be released within a week”, 17 November 2016

Disciplinary action for self-harm and attempted suicide

Punishment should not be the response to prisoners who mutilate themselves, inflict injuries on themselves intentionally or attempt suicide. Whilst the circumstances can vary from individual prisoners harming themselves or attempting suicide from distress or mental illness to groups of prisoners using self-mutilation as an extreme form of protest, a disciplinary response is inappropriate. Care and treatment for the individual or attention to the causes which led prisoners to such an extreme act as self-mutilation should be the response.

“ Last September, Christopher Trotchie used wet paper to cover up the camera in his [British Columbia] jail cell. Then he slashed his forearms. Mr. Trotchie, who suffers from mental-health issues and has a history of self-harm, lost a significant amount of blood, but survived.

His next week was not spent in hospital. He was placed in solitary confinement that same day. A lawsuit filed against the provincial government ... says a jail staff member adjudicated the case and ruled that Mr. Trotchie knew slashing himself would require a large number of emergency responders to come to his cell, and that this was a punishable offence.²⁶

The Globe and Mail, “Prisoner sues B.C. after being segregated as punishment for self-harm”, 13 May 2015

Health care personnel

What the international instruments say

Each prison should have available to it sufficient suitably qualified health care staff to meet the needs of the prison population.

Nelson Mandela Rules, Rule 25:

1. Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation.
2. The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner.

Nelson Mandela Rules, Rule 27 (2):

Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff.

Nelson Mandela Rules, Rule 32 (1):

The relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community, in particular:

- (a) The duty of protecting prisoners' physical and mental health and the prevention and treatment of disease on the basis of clinical grounds only;
- (b) Adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship;
- (c) The confidentiality of medical information, unless maintaining such confidentiality would result in a real and imminent threat to the patient or to others;
- (d) An absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation that may be detrimental to a prisoner's health, such as the removal of a prisoner's cells, body tissues or organs.

Nelson Mandela Rules, Rule 46:

1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.
2. Health-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.
3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.

Nelson Mandela Rules, Rule 78:

1. So far as possible, prison staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

Putting it into practice

Ethical code for health professionals working in prison settings

In 1979 the International Council of Prison Medical Services approved an ethical code known as the Oath of Athens, according to which they pledged:

“ ... in keeping with the spirit of the Oath of Hippocrates, that we shall endeavour to provide the best possible health care for those who are incarcerated in prisons for whatever reasons, without prejudice and within our respective professional ethics.

We recognize the right of the incarcerated individuals to receive the best possible health care.

We undertake:

- 1 To abstain from authorising or approving any physical punishment.
- 2 To abstain from participating in any form of torture.
- 3 Not to engage in any form of human experimentation amongst incarcerated individuals without their informed consent.
- 4 To respect the confidentiality of any information obtained in the course of our professional relationships with incarcerated persons.
- 5 That our medical judgements be based on the needs of our patients and take priority over any non-medical matters.

Support for health care staff

Prison administrations will need to ensure that medical staff working in prisons receive proper support and training both in the specific requirements of prison medicine and in more general developments. Qualified medical staff who are prepared to work in prisons are often in short supply. Prison administrations should ensure that their expertise is not diverted into inappropriate tasks by providing them with appropriate auxiliary and clerical support.

Support for prison nurses

The International Council of Nurses in 1998 produced a statement which says, among other things, that national nursing associations should provide access to confidential advice, counsel and support for prison nurses. [The Nurse's Role in the Care of Prisoners and Detainees, International Council of Nurses, 1998]

Equivalence of care

Prison administrations must ensure that prisoners have access to qualified medical staff who are sufficient in both number and expertise to meet their needs. This is often best arranged by establishing links with the health care provision for the general civilian population. All medical and health care staff should be suitably qualified to at least the same level as would be required for similar posts outside prison. Similarly their salaries and conditions of employment should be of an equivalent nature.

Prisoners as patients

The United Nations Principles of Medical Ethics place on all health personnel, and particularly physicians, a duty to provide prisoners with protection of their physical and mental health and treatment of disease. Their first priority, therefore, is the health of their patients and not the management of the prison. The Oath of Athens, quoted above, further makes it clear that medical judgements should be based on the needs of patients and take priority over any non-medical matters.

Medical staff working in prisons are not part of the disciplinary or administrative staff of the prison. In some jurisdictions where medical staff are employed directly by the prison administration they have a separate management structure which is independent of the individual prison.

“ Doctors may frequently be approached when the sanction considered is solitary confinement. Solitary confinement has clearly been shown to be detrimental to health. In cases where it is enforced, its use should be limited to the shortest time possible. Thus, doctors should not collude in moves to segregate or restrict the movement of prisoners except on purely medical grounds, and they should not certify a prisoner as being fit for solitary confinement or any other form of punishment.²⁷

World Health Organisation, Prisons and Health, 2014

There are a number of issues in which medical staff need to distinguish between the demands of the prison administration and the ethics of professional health care. A number of important examples and the appropriate medical response to them are listed below.

Documentation of torture

Nelson Mandela Rules, Rule 34:

If, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority. Proper procedural safeguards shall be followed in order not to expose the prisoner or associated persons to foreseeable risk of harm.

In 1999 a coalition of professional and human rights bodies and individuals developed a set of principles for the effective documentation of torture or ill treatment known as the Istanbul Protocol. [Principles on the Effective Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 1999]

Body searches

The Nelson Mandela Rules now make specific reference to body searches and the very limited role which healthcare staff may have in such a procedure in Rule 52. This rule is described in greater detail in chapter 7 in the section on searching procedures.

In 1993 the World Medical Association adopted a statement on body searches of prisoners which includes the provision 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. Where they have to be carried out, such searches should, therefore, be conducted by a physician other than the physician who provides medical care to the prisoner. [Statement on Body Searches of Prisoners, World Medical Association, 1993, editorially revised at the 170th Council Session, Divonne-les-Bains, France, May 2005, and revised by the 67th WMA General Assembly, Taipei, Taiwan, October 2016]

Hunger strikes

In 1991 and 1992 the World Medical Association adopted guidelines for doctors involved in the care of hunger strikers which stress the importance of consent and confidentiality in the relationship between the doctor and patient, and that decisions on intervention or non-intervention should be left with the individual doctor without interference from third parties whose primary interest is not the patient's welfare. [Declaration of Malta on Hunger Strikers, World Medical Association, 1991, 1992, revised by the WMA General Assembly, Pilanesberg, South Africa, October 2006. and further amended at the General Assembly, Chicago, USA, 2017]

Death penalty participation

In 1981 and again in 2000 the World Medical Association resolved that it was unethical for physicians to participate in capital punishment, in any way, or during any step of the execution process. [Resolution on Physician Participation in Capital Punishment, World Medical Association, 1981, 2000 amended by the WMA General Assembly, Seoul, Korea, October 2008]

Training for all staff

The nature of the prison community is such that, in addition to ensuring the availability of a full range of medical services, prison administrations should also recognise that all prison staff need to have an understanding of basic health matters. Very often when an incident occurs in a prison in which someone needs immediate first aid it will be non health care staff who will be first on the scene and will be required to administer immediate care. They should be properly trained to deliver this care.

Operating secure, safe and orderly prisons

The framework

Security and justice

In his speech at the official launch of the re-training and human rights project of the South African Department of Correctional Services, the former President of South Africa, Nelson Mandela, stressed the importance of both security and justice in the administration of prisons:

“Secure prisons are essential to making our justice system an effective weapon against crime. When prisoners – convicted or awaiting trial – are entrusted to your care, they must know and the public must know that they will remain there until they are legally discharged ...

The full contribution which our prisons can make towards a permanent reduction in the country's crime-rate lies also in the way in which they treat prisoners. We cannot emphasise enough the importance of both professionalism and respect for human rights.²⁸

Kroonstad, 25 June 1998

The right balance

One of the most important findings of the report produced by Lord Justice Woolf after a number of very serious riots in English prisons in 1990 was that the maintenance of a correct balance between security, control and justice is the key to an effectively managed prison.

“ (T)here are three requirements which must be met if the prison system is to be stable: they are security, control and justice.

For present purposes, “security” refers to the obligation of the Prison Service to prevent prisoners escaping. “Control” deals with the obligation of the Prison Service to prevent prisoners being disruptive. “Justice” refers to the obligation of the Prison Service to treat prisoners with humanity and fairness and to prepare them for their return to the community ...²⁹

Lord Justice Woolf, Prison Disturbances, April 1990 (The Woolf Report), 1991

A safe environment

The importance of achieving and maintaining that balance between security, control and justice must be understood by all prison managers. It is quite wrong to suggest that treating prisoners with humanity and fairness will lead to a reduction in security or control. On the contrary, the objective of preventing escapes and ensuring control can best be achieved within a well ordered environment which is safe for prisoners and staff,

- in which all members of the prison community perceive they are being treated with fairness and justice;
- in which prisoners have the opportunity to participate in constructive activities and to prepare themselves for release;
- the professional prison manager has to strive constantly to ensure that this balance is maintained.

Physical security

Aspects of physical security include the architecture of the prison buildings, the strength of the walls of those buildings, the bars on the windows, the doors of the accommodation units, the specifications of the perimeter wall and fences, watchtowers and so on. They also include the provision of physical aids to security such as locks, cameras, alarm systems, radios and such like.

In designing the physical aspects of security, a balance needs to be found between the best way of achieving the required security level and the need to respect the dignity of the individual. For example, it is possible to use architectural designs which meet the need for cell and dormitory windows to be secure while, at the same time, meeting the standards for access to natural light and fresh air. Physical aids to security such as cameras, monitoring and alarm systems by definition intrude on personal privacy. In making decisions about where they have to be placed, there needs to be a balance between legitimate security requirements and the obligation to respect individual privacy.

The safety of individual prisoners must also be borne in mind. The design of many prisons leads to the creation of places in which prisoners may congregate unobserved. This may be a source of potential threat both to the security of the prison and to the safety of individual prisoners. Prison administrations should develop procedures for identifying and managing these areas.

Procedural security

This relates to those procedures which have to be followed to prevent escape and to maintain good order. Some of the most important of these are procedures concerned with searching, both of physical spaces and of individuals. In each prison there should be a clearly understood set of procedures which describe in detail the circumstances in which searches should be carried out, the methods to be used and their frequency. These procedures must be designed to prevent escape and also to protect the dignity of prisoners and their visitors.

There should be procedures for regularly searching all places where prisoners live, work or congregate. These should include searches of living accommodation, such as cells and dormitories, to make sure that security features, including doors and locks, windows and grilles, have not been tampered with. Depending on the security category of the prisoner, his or her personal property should also be subject to search from time to time. Staff need to be specially trained to carry out these searches in such a way as to detect and prevent any escape attempt or secretion of contraband while at the same time respecting the dignity of prisoners and respect for their personal possessions. The procedure for such searches should allow the prisoner to be present whilst the search is carried out.

There should also be procedures which govern the regularity of checking prisoner numbers and how these checks are carried out. The same applies to arrangements for movements of prisoners from one area of the prison to another.

Dynamic security

While physical and procedural security arrangements are essential features of prison life, they are not of themselves sufficient. Security also depends on an alert staff who interact with prisoners, who have an awareness of what is going on in the prison and who make sure that prisoners are kept active in a positive way. This is often described as dynamic security. In the United States, prisons based on the principles of dynamic security are sometimes known as direct supervision jails. This kind of security is much more qualitative than static security measures. Where there is regular contact with prisoners, an alert staff member will be responsive to situations which are different from the norm and which may present a threat to security. Staff who are engaged with prisoners in these ways will be able to prevent escapes more effectively by being aware of what is happening in the prison community before an

incident occurs. The strength of dynamic security is that it is likely to be proactive in a way which recognises a threat to security at a very early stage. It will operate best where there is a professional and well-trained staff.

“ Direct supervision combines two key elements—the physical design of a jail and an inmate management strategy—to significantly reduce the problem inmate behavior commonly seen in jails. Direct supervision jails focus on actively managing inmate behavior to produce a jail that is safe and secure for inmates, staff, and visitors.³⁰

“Direct Supervision Jails,” from the website of the United States National Institute of Corrections

The need for a clear set of rules and regulations

All well ordered communities, including prisons, need to operate within a set of rules and regulations that are perceived by the members of the community to be fair and just. In prisons these regulations will be designed to ensure the safety of each individual, both staff and prisoner, and each group has a responsibility to observe those rules and regulations. Prisoners should receive reward for good behaviour as well as punishment for bad behaviour. Staff need to know that they also are expected to observe the rules at all times. A prison community will have a clearly defined system of hearings, discipline and sanctions for those who deviate from the agreed rules which is applied in a just and impartial manner.

A proper assessment of the appropriate level of security

Prison administrations have a duty to keep in custody those whom the judicial authorities have decided should lose their liberty. Prisoners do not like being in prison but the majority of them accept the reality of their situation; provided they are subject to appropriate security measures and fair treatment they will not try to escape or seriously disrupt the normal routine of the prison. On the other hand, a small number may well do everything in their power to try to escape. If they were to escape, some prisoners would be a danger to the community; others would not be a threat to the public. All of this means that the prison authorities should be able to assess the danger posed by each individual prisoner in order to make sure that each one is subject to the appropriate conditions of security, neither too high nor too low.

Excessive security and control can be dangerous

In prisons the world over there are situations where there is excessive security and control by the prison authorities at the expense of justice:

- oppressive security measures which exclude rehabilitative programmes;
- brutal methods of control;
- lack of justice in disciplinary hearings;
- unlawful punishments.

In prison systems in some countries, those managing prisons have lost control of their institutions and have allowed powerful groups of prisoners to exert an illegal system of control over both other prisoners and staff.

In both situations the well ordered community breaks down, leading to the possibility of violent and abusive behaviour by prisoners and staff, the likelihood of disorder, the possibility of escapes and an absence of constructive activities for prisoners.

Use of force as a last resort

Only in extreme circumstances, when there is a complete breakdown in order and all other interventions have failed, either individually or collectively, can use of force be justified as a legitimate method of restoring order. This must be the last resort. Because prisons are closed communities in which abuse of authority can easily occur in such circumstances, there has to be a specific and transparent set of procedures for use of force. This issue is also referred to in chapters 3 and 4.

The balance between security and social reintegration programmes

International instruments define the purpose of imprisonment as being to protect society against crime not simply by removing offenders from society but by trying to ensure, as far as is possible, their rehabilitation. In order for this to happen, prison administrations need to achieve an appropriate balance between security and those programmes which are designed to enable prisoners to reintegrate into society. This balance is more likely to be achieved if there is a clear set of procedures which define the appropriate level of security for the prison and for individual prisoners.

What the international instruments say

Nelson Mandela Rules, Rule 4:

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

Nelson Mandela Rules, Rule 47:

1. The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.
2. Other instruments of restraint shall only be used when authorized by law and in the following circumstances:
 - (a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;
 - (b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.

Nelson Mandela Rules, Rule 51:

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

Nelson Mandela Rules, Rule 52:

1. Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.
2. Body cavity searches shall be conducted only by qualified health-care professionals other than those primarily responsible for the care of the prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety.

Nelson Mandela Rules, Rule 76 (1):

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

- (a) Relevant national legislation, regulations and policies, as well as applicable international and regional instruments, the provisions of which must guide the work and interactions of prison staff with inmates;
- (b) Rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment;
- (c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation;
- (d) First aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.

Nelson Mandela Rules, Rule 89:

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

Nelson Mandela Rules, Rule 93:

1. The purposes of classification shall be:
 - (a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;
 - (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.
2. So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.

Basic Principles for the Treatment of Prisoners, Principle 4:

The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

European Prison Rules, Rule 68:

This rule adds the following conditions to SMR 33:

- 68.1 The use of chains and irons shall be prohibited.
- 68.2 Handcuffs, restraint jackets and other body restraints shall not be used except: a. if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or b. by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.

Putting it into practice

Security classification

The security measures to which prisoners are subject should be the minimum necessary to achieve their secure custody. There are at least three valid reasons for this approach:

- Staff are likely to be more aware of those prisoners who do require a high level of security if the number of these is restricted.
- The lower the level of security the more humane the treatment is likely to be.
- The third reason is a pragmatic one; security is expensive and the higher the level, the greater the cost. It makes financial sense not to have prisoners in a higher security category than is necessary.

On first admission, each prisoner should be assessed to determine:

- the risk that the prisoner might present to the community if he or she were to escape;
- the likelihood that the person will try to escape either on his or her own or with external assistance.

The prisoner should then be held in security conditions appropriate to that level of risk. The security classification should be kept under constant review throughout the length of the sentence.

Different levels of security

- Minimum security (sometimes called open conditions) should be used for those prisoners who present little or no risk to the community and who can be trusted not to try to escape. In these conditions the level of physical security will be low. Very often there will be no perimeter security. Internal security may be restricted to locking doors to the accommodation units at night. Prisoners who have been convicted of some non-violent offences may be suitable for these conditions as well as long term prisoners who are approaching their date of release.
- Medium security conditions are appropriate for the great majority of prisoners, who are not determined to escape but who cannot be trusted in minimum security conditions. Generally these conditions will involve a secure perimeter, such as a fence. All internal doors in the prison will usually be locked but prisoners may be trusted to move from one area of the prison to another without close supervision by staff.
- Maximum security conditions should mean that escape is virtually impossible and should only be used for the most dangerous prisoners. In these conditions there will be a high standard of physical security, both around the perimeter and inside the prison. The internal movement of prisoners will be closely supervised by staff, if necessary on a one to one basis. Only a small minority of prisoners in any system are likely to need this level of security. The proper management of this group of prisoners is dealt with in more detail in chapter 8 of the handbook.

Solitary confinement

Prolonged solitary confinement as a form of security classification should always be avoided. This matter is referred to in chapter 9.

Assessment of risk

Assessment of risk can help to identify those prisoners who present a threat to themselves, to staff, to other prisoners and to the wider community. Criteria for assessing security risk have been developed in many countries. Issues to be taken into account include:

- the threat to the public were the prisoner to escape;
- previous history of attempting to escape and access to external help;
- in the case of pre-trial prisoners, any potential threat to witnesses;
- the nature of the crime for which the prisoner was convicted;
- length of sentence, which usually reflects the nature of the crime;
- the potential for threat to other prisoners.

Security level for pre-trial prisoners

In many prison systems there is an assumption that all pre-trial prisoners must be held in high security conditions. This is not always the case and it should be possible to apply an assessment of security risk to prisoners in this group just as to those who have been sentenced.

Security classification to be decided by prison management

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

Regular review of security level

Security levels for individual prisoners should be reviewed at regular intervals as the sentence is served. It is generally the case that a person becomes less of a security risk as his or her sentence progresses. The prospect of progressing to a lower security category during the sentence can also act as an incentive for good behaviour.

Searching prisoners

Individual prisoners, particularly those subject to medium or maximum security restrictions, will also have to be personally searched on a regular basis to make sure that they are not carrying items which can be used in escape attempts or to injure other people or themselves, or items which are not allowed, such as illegal drugs. The intensity of such searches will vary according to circumstances. For example, when prisoners are moving in large numbers from their place of work back to their living accommodation it is normal to subject them to the sort of rub-down searches which are now common for all air travellers. On other occasions, especially if there is reason to believe that individual prisoners have something secreted about their person or when they are designated as high risk prisoners, it will be necessary to carry out what is known as a strip search. This involves requiring prisoners to remove all clothing and to show that they have nothing hidden about their person.

Searching procedures

There should be a detailed set of procedures which staff have to follow when carrying out personal searches. These procedures:

- should define the circumstances in which such searches are allowed;
- should ensure that prisoners are not humiliated by the searching process, for example, by having to be completely naked at any time;
- should stipulate that prisoners should be searched by staff of the same gender;
- should prohibit security staff from carrying out internal searches of a prisoner's body.

Nelson Mandela Rule 52 makes clear that intrusive searches should be undertaken only if absolutely necessary and should be conducted only by qualified health-care professionals other than those primarily responsible for the care of the prisoner or, at a minimum, by staff with appropriate training.

“ Bodily searches of persons deprived of liberty and visitors to places of deprivation of liberty shall be carried out under adequate sanitary conditions by qualified personnel of the same sex, and shall be compatible with human dignity and respect for fundamental rights. In line with the foregoing, 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.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XXI, 2008

Searching visitors

There should also be a clearly defined set of procedures for making sure that visitors to prisons do not attempt to breach reasonable security requirements. These may include the right to search visitors in person. Such procedures have to recognise that visitors are not themselves prisoners and that the obligation to protect the security of the prison has to be balanced against the right of visitors to their personal privacy. The procedures for searching visitors should be sensitive to the needs of children, women and other vulnerable groups.

“ In January 1997 a mother visited her son who was a prisoner at Leeds prison in England. Her other son, who suffered from cerebral palsy and some mental impairment, accompanied her. The two visitors were strip-searched ... The Court was not satisfied that the searches were proportionate in the manner in which they were carried out. The Court therefore found that the searches carried out on the applicants could not be regarded as “necessary in a democratic society” within the meaning of Article 8 (2).³¹

European Court of Human Rights Judgment in the case of
Wainwright v. The United Kingdom, 2006

Procedures for searching professional visitors, such as legal representatives, social workers and doctors should be agreed with the appropriate professional bodies to ensure a balance between security and the right of confidential professional access.

Searching staff

It is important to recognise that prison staff may also pose a threat to security by smuggling into the prison banned or illegal material. They too should be subject to appropriate searching procedures. Such arrangements can also make it less likely that staff will be put under pressure by prisoners and others to bring banned items into the prison.

Other security procedures

There are a variety of other security procedures which should be used as a matter of course. These will include:

- roll calls at specific times of the day;
- discharge arrangements which ensure that the correct prisoner is being released;
- selective monitoring of mail and telephone calls. This is dealt with more fully in chapter 11.

Prisoner informants

A number of prison administrations gather intelligence on planned breaches of control or security by using certain prisoners to give information anonymously about the other prisoners. This procedure has great dangers. If an informant is discovered, the other prisoners can vent their anger with extreme violence. Informants can give inaccurate information in order to victimise other prisoners or maintain their control over them. The very fact of the existence of an informant system or the suspicion of it can create a climate of tension, suspicion and violence in a prison. The development of a system where staff get to know prisoners as individuals, as described throughout this handbook, will lead to much more trustworthy information about security and control issues.

The use of physical restraints

Every prison system must have clear and transparent procedures for the use of physical restraints and key staff should be trained in their use. These procedures must be specific as to:

- the circumstances in which restraints may be used;
- who can authorise their use;
- how they are to be applied;
- who is to monitor that the prescribed procedures are being carried out correctly.

Use of physical restraints a last resort

Physical restraints such as handcuffs should only be applied in exceptional circumstances. They should not be used as an alternative to other physical measures of security. For example, it is never permissible to keep prisoners chained by the ankle or wrist to walls or to long iron bars, either individually or in groups, simply because the physical security of buildings is very weak.

Physical restraints should not be used as a matter of course when a prisoner is being transferred from one location to another, either within a prison or outside the prison. In each case, their use should be based on an individual assessment of the risk posed by the prisoner.

Restraints may have to be used as a last resort to control a violent prisoner who is threatening the safety of others. As soon as that person stops the violent behaviour the restraint must be removed. Only in exceptional circumstances should restraints be used to prevent a prisoner harming him or herself. Best practice suggests that this should rarely be necessary because there are alternative methods to prevent self injury.

Authorisation of use of physical restraints

The senior member of staff on duty must authorise the use of physical restraints and should ensure that they are used properly. The director of the prison must see any prisoner restrained because of violent behaviour or self injury as soon as possible and authorise the continuing use of restraints if necessary. A medical officer must see the prisoner as soon as possible. The decision and the procedure for each use of restraints must be closely monitored by a higher authority and, according to best practice, by an authorised independent monitor.

Security outside the prison

Either the prison authorities or another appropriate authority should be responsible for the custody of a prisoner when outside the perimeter of the prison, for example, on transfer to another prison, a court or a civilian hospital. When prisoners are to be handed over to the care of another escorting agency, there should be an agreed protocol between the prison authority and the escorting agency about the procedures to be followed. This should cover the standard of security in vehicles or other transport and the treatment of prisoners while under escort. Any outstanding medical issue should be brought to the attention of the escorting staff.

Special care needs to be exercised about the level of security to be used when a prisoner requires a period of in-patient care in hospital. Whatever the circumstances security must not interfere with medical treatment.

The nature of physical security required during these periods may vary according to the individual security risk but the principle should always be that the lowest possible security classification necessary for safe custody should be applied. The most common restraint when necessary in such circumstances is the handcuff.

Where a prisoner has been escorted to court with physical restraints, these should be removed before the court hearing unless the presiding judge or adjudicator authorises otherwise.

The balance between security and contact with the outside world

The need to hold prisoners in appropriate conditions of security needs to be balanced with their right to maintain contact with the outside world. However strong the security considerations, contact with the outside world in reasonable conditions must continue to be permitted. This is an important element in safeguarding the rights of the individual prisoner. It can also assist in the process of rehabilitation for individual prisoners. In addition, it is in the interest of the prison administration to encourage prisoners to have contact with the outside world because it can enhance stability within the prison. Chapter 11 deals more fully with contact with the outside world during imprisonment.

What the international instruments say

Nelson Mandela Rules, Rule 3:

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

Nelson Mandela Rules, Rule 58:

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:
 - (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
 - (b) By receiving visits.
2. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity

Nelson Mandela Rules, Rule 61:

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.
2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.
3. Prisoners should have access to effective legal aid.

Declaration on the Protection of All Persons from Enforced Disappearance, Article 7:

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Declaration on the Protection of All Persons from Enforced Disappearance, Article 10(2):

Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, Principle 18:

Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing of a law enforcement official.

Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, Principle 19:

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, Principle 29:

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.
2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4:

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention).

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Chapter III, Article 8, 2(c):

[The European Committee for the Prevention of Torture shall have] unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Chapter III, Article 8, 3:

The Committee may interview in private persons deprived of their liberty.

Putting it into practice

Right to contact the family and lawyers

The section in chapter 5 on admissions procedures referred to the need to inform family members and legal representatives when a person is deprived of his or her liberty. This is particularly important as a safeguard against what are known as enforced or administrative disappearances, where there may be no record of what has happened to a detained person. There are never any circumstances which justify a refusal by prison authorities to let family members or counsel know that a person is being detained and where he or she is being held. The only exception is when the person him or herself requests this.

All persons deprived of liberty have the right of access to legal counsel and to have this in private; that is, out of hearing of staff. The right of access to lawyers for pre-trial prisoners is dealt with in chapter 16.

Independent monitoring as an element of outside contact

Chapter 15 deals with independent monitoring and inspection of places of detention. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is one of the most developed examples of this form of inspection. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, under which the Committee was set up, confirms that its members have the right of unlimited access to people deprived of their liberty and to interview them in private, as does the Sub-Committee on Prevention set up under the Optional Protocol to the UN Convention Against Torture. This principle should also be extended to local independent monitoring bodies such as National Preventive Mechanisms.

The balance between control and a well-ordered community

By definition, imprisonment involves deprivation of liberty and, therefore, a reduction of freedom of movement. Prison authorities have an obligation to impose such security restrictions as are necessary to ensure that prisoners do not escape from lawful custody and also to ensure that prisons are safe places, where all concerned can go about their legitimate business without fear for their physical well-being. The level of control over the daily lives and movement of prisoners must not be more than is necessary to meet these requirements.

What the international instruments say

Nelson Mandela Rules, Rule 3:

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

Nelson Mandela Rules, Rule 5:

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

Nelson Mandela Rules, Rule 36:

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

Nelson Mandela Rules, Rule 40:

1. No prisoner shall be employed, in the service of the prison, in any disciplinary capacity.

Putting it into practice

No more restrictions than necessary

The task of prison authorities is to carry out the sentence of the court by depriving prisoners of their liberty. It is not their role to impose further restrictions on prisoners which will increase the suffering inherent in this punishment. On the contrary, they should do everything possible to minimise any differences between prison life and life at liberty. One reason for doing this, as discussed in chapter 10, is to increase the possibility that the prisoner will resettle into the civil society as a law abiding citizen after the sentence has been served. Staff also have to understand that this method of managing prisons can be an aid to security, safety and good order.

Prisoners should never be employed to control other prisoners

In a well managed prison all prisoners will be treated equally. Whenever possible they should be encouraged to become involved in constructive activities during their time in prison, as is explained in chapter 10. These may include helping in certain aspects of the daily running of the prison, such as working in the kitchen or on farms or maintenance. Prisoners who are skilled or well educated may also be encouraged to help other prisoners in these respects. However, it is never permissible to employ or to use prisoners to control other prisoners. This sometimes happens when there is a shortage of staff. Such prisoners are often given special treatment in terms of accommodation, food or other facilities, to encourage them to monitor or manage other prisoners. These arrangements are always open to abuse and should never be allowed.

*Firm but
legitimate
management
essential*

The challenge facing a professional prison administration is to ensure that its prisons are secure, safe and well-ordered but are not run in an oppressive or brutal manner. What is required is consistency of approach. The vast majority of prisoners will welcome firm and fair management by staff because if the staff are not in control of a prison the resulting vacuum will be filled by strong willed prisoners. Alternatively, if there is not firm management from the top, individual members of staff may well resort to delivering their own informal form of control. In either case life will become very unpleasant for the majority of prisoners.

*Emergency
procedures*

Planning in advance for emergencies is always preferable to responding in haste once they have occurred. Each prison should have a clear set of procedures to deal with all possible emergencies. These will include, but not be limited to, escape, riot, hostage taking, death, fire and evacuation.

When control and good order break down

The potential for a break down in good order exists even in the best managed prisons. It is always possible that an individual prisoner will attack staff or other prisoners as a result either of pre-planning or in a spontaneous outburst. Similarly a group of prisoners may decide that they are not prepared to observe the legitimate rules of the prison and will attempt a concerted revolt, either through a riot or by taking hostages. In every prison there should be a clear set of procedures for dealing with such incidents should they occur. Such procedures should be framed in the context of the international instruments.

What the international instruments say

Nelson Mandela Rules, Rule 82:

1. Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.
2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.
3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.

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

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 15:

Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order with the institution, or when personal safety is threatened.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 16:

Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 17:

The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Putting it into practice

Prevention is always better than reaction

The first message which staff must learn is that prevention is always better than cure. It is extremely rare that a major incident will occur without any advance warning. In almost all cases there will be some prior indication of a build up of tension at an individual or a group level. This is where the benefits of dynamic security will become apparent. On entering an accommodation block or a working area where tension is brewing an alert staff will immediately be conscious that something is wrong with the atmosphere. They will sense tension in the air. Since they will know their prisoners, they will be able to identify any who are unsettled or likely to threaten violence and deal with them in a way which prevents the onset of violence. It will also be more difficult for prisoners who wish to create trouble to stir up other prisoners if the general approach of staff has been fair and consistent. However, even where there is good dynamic security there may be an outburst of individual or collective violence.

Need for dialogue and negotiation

Good professional relationships between staff and prisoners are an essential element of dynamic security. Where good relationships exist they can be put to good effect in de-escalating potential incidents or in restoring good order through a process of dialogue and negotiation. Only when these methods fail or are considered inappropriate should physical methods of restoring order be considered.

Use of minimum force

All staff who deal directly with prisoners should be trained in techniques which enable them to bring prisoners under control using minimal force. They should not have to rely on simply overpowering troublesome prisoners by a show of superior physical force. On many occasions this will not be possible. Even when it is possible, the result may well be serious injury to both staff and prisoners. There are a variety of control and restraint techniques in which staff can be trained which will allow them to gain control without injuring either themselves or the prisoners involved. Management should be aware of what these are and should ensure that all staff are competent in the basic skills and that sufficient staff are trained in advanced techniques.

Weapons

Staff who work directly with prisoners may carry weapons, such as sticks or batons, for their own defence. Good practice implies that these weapons should not be carried in an ostentatious or threatening manner. A common practice is to carry a baton in a special trouser pocket, so that it is concealed but easily available. Larger batons should not be carried routinely but should be stored in strategic positions so that they are available to be issued quickly in an emergency. It is not good practice to allow staff who work directly with prisoners to carry firearms or similar weapons which may either be used inappropriately or may fall into the hands of prisoners.



Measures to combat violence and emergency situations

The personnel shall be forbidden to use firearms or other lethal weapons inside places of deprivation of liberty, except when strictly unavoidable in order to protect the lives of persons.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XXIII, 2008

Use of firearms

In some prison systems staff guarding the perimeter of the prison carry firearms. These staff should have clear instructions about the circumstances in which these weapons may be used. This must only be when there is immediate threat to life, either of the officer concerned or of someone else. It is not permissible to shoot a prisoner solely on the grounds that he or she is escaping. There must be additional exceptional circumstances which lead the marksman to conclude that the escaping prisoner presents an immediate threat to the life of another person and that he or she cannot be stopped by any other means. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are quite explicit on this point:

“ In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.³²

(Principle 9)

Prison administrations should establish clear guidelines and procedures for the use of any kind of force or firearms together with a training programme for staff who may be authorised to use them. The procedures should include formal arrangements for the investigation of any incident in which force or firearms are used.

A number of the issues mentioned above are also dealt with in chapter 4.

Management of high security prisoners

The framework

Humane treatment

In many prison systems there are likely to be a number of prisoners who will need to be held in conditions of high security. The management of these prisoners presents an important challenge to prison authorities, which have to achieve a balance between the threat that such prisoners would present to the public if they were to escape, the threat that they may pose to good order inside prisons, and the obligation that the state has to treat all prisoners in a decent and humane manner. It is sometimes said that the way in which a society treats its prisoners is a reflection of its deepest values. This principle applies particularly to the management of high security prisoners. This chapter applies material which is contained elsewhere in the handbook, particularly in chapter 7, to the management of high security prisoners.

Minimum number

The number of prisoners held under high security conditions should be kept to a minimum for a number of reasons. High security prisoners require to be kept under close supervision at all times and their freedom of movement and contact with other people is likely to be kept under close surveillance. When implemented in a proper manner, high security supervision will be very resource intensive in financial, technical and staffing terms. In addition, staff are more likely to be able to provide the appropriate level of intense supervision if the label of high security prisoner is not applied indiscriminately.

Individual assessment

There should be a clear, well defined system for identifying which prisoners require to be held in high security conditions. The degree of risk which they pose should be assessed individually on a continuing and regular basis. Other than in exceptional cases it is unlikely that either women or juvenile prisoners will require this level of security.

Only necessary restrictions

It is the responsibility of a prison system to detain all prisoners in conditions which are decent and humane, regardless of the crimes of which they have been convicted or accused. This obligation also applies to the treatment of high security prisoners and the restrictions which are imposed on these prisoners should be no more than are necessary to ensure that they are detained securely and safely.

The balance of security

Chapter 7 of this handbook describes the distinctions between physical, procedural and dynamic security and the fact that these should be complementary. This should be borne in mind when making arrangements for the management of high security prisoners. A system which uses the dynamic security which comes from staff interactions and intelligence is likely to be more effective than one which relies exclusively on very restrictive hardware and technology.

The most dangerous prisoners

A small number of prisoners may be so dangerous and disruptive that they have to be held apart from the general prison population, even in high security prisons. The management of these prisoners needs to be carefully structured in a way which observes the general principles of good prison management described throughout this handbook. Isolation and solitary confinement should only be used as a last resort and for short periods. There are generally other options even for the management of highly dangerous prisoners.

“ The Court nevertheless wished to emphasise that solitary confinement, even in cases entailing only relative isolation, could not be imposed on a prisoner indefinitely. Moreover, it was essential that the prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement. It would also be desirable for alternative solutions to solitary confinement to be sought for persons considered dangerous and for whom detention in an ordinary prison under the ordinary regime was considered inappropriate.³³

European Court of Human Rights Judgment
in the case of Sanchez v. France, 2005

“ 88....In the opinion of the Special Rapporteur, prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition.

89. The Special Rapporteur reiterates that solitary confinement should be used only in very exceptional circumstances, as a last resort, for as short a time as possible. He emphasizes that when solitary confinement is used in exceptional circumstances, minimum procedural safeguards must be followed. These safeguards reduce the chances that the use of solitary confinement will be arbitrary or excessive, as in the case of prolonged or indefinite confinement. They are all the more important in circumstances of detention where due process protections are often limited, as in administrative immigration detention. Minimum procedural safeguards should be interpreted in a manner that provides the greatest possible protection of the rights of detained individuals. In this context, the Special Rapporteur urges States to apply the following guiding principles and procedural safeguards.³⁴

United Nations General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General, 2011

Specially trained staff

Working with high security prisoners requires a special degree of professionalism and staff who work in this environment need to be given additional training and continuing support.

Conditions of detention

The conditions of detention for high security prisoners should be subject to the independent inspection described in chapter 15.

Reasons for high security

“ (One) of the first and most important steps in managing high profile and dangerous inmates is determining a definition of what they are, as the definitions and measures to deal with them can vary throughout different countries.³⁵

Nathee Chitsawang, Director General, Thailand Department of Corrections 2005

There are a number of reasons why a prisoner might need to be held in high security conditions. These include the following.

The risk to the public or society if there were to be an escape

Some individuals who are in prison present a continuing threat either to the state, to particular groups of persons or to individuals. For that reason, every possible step must be taken to ensure that they do not escape from legitimate custody. For these prisoners there must be a specific assessment of the nature of the threat which they as individuals would pose were they to escape. There needs to be an analysis of whether they have access to resources, either from outside or from inside the prison, which will assist them to escape. If they belong to an identified internal or external group, an evaluation needs to be made of the extent to which they should be allowed to mix with other prisoners. These matters are discussed in more detail later in this chapter.

The risk to good order in the prison

A small minority of prisoners may not accept the need for control and good order in prisons and will do everything in their power, either individually or in a group, to disrupt the good running of the prison. Special measures may need to be adopted to manage these prisoners. It is important that their number should be kept to an absolute minimum. From time to time the behaviour of some prisoners may present a problem for prison authorities. This can usually be dealt with through the normal disciplinary process and these prisoners can in due course be encouraged to obey normal rules and regulations without recourse to special high security conditions.

Distinction between these two groups

It is important to make a distinction between these two groups of prisoners. Those who would be a threat to the state or to individuals if they were to escape may be well behaved in the prison environment, observing all prison rules. Similarly, those who are disruptive may not be escape risks. It is generally good operational practice to keep the two groups apart. If they are placed together in the same high security unit, there will be a probability that they may encourage each other and may create a greater threat to the prison administration.

The nature of the offence or crime

There may sometimes be a tendency to place prisoners in high security units automatically on the grounds of the seriousness of the crime of which they have been convicted or are accused. This might apply, for example, to all those who have been convicted of murder. In some cases this may be a condition set by the courts as part of the sentence. In other cases prisoners are assigned to these conditions by the prison administration. International instruments are clear in stating that all restrictions should be limited to the minimum necessary in nature and duration. They should not be imposed automatically but should be based on individual assessment.

In recent years some prison administrations have constructed high security units in anticipation of having to use them. These are expensive to build and to maintain. There is, therefore, pressure to use them to capacity. These units should not be used without good reason.

Treatment of high security prisoners

What the international instruments say

Nelson Mandela Rules, Rule 3:

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

Nelson Mandela Rules, Rule 36:

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

Inter-American Convention to Prevent and Punish Torture, Article 5:

Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.

What the regional instruments say

Recommendation No.R (82) 17 of the Committee of Ministers of the Council of Europe to Member States concerning the Custody and Treatment of Dangerous Prisoners:

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe ... recommends the governments of member states:

1. to apply, as far as possible, ordinary prison regulations to dangerous prisoners;
2. to apply security measures only to the extent to which they are necessarily required;
3. to apply security measures in a way respectful of human dignity and rights;
4. to ensure that security measures take into account the varying requirements of different kinds of dangerousness;
5. to counteract, to the extent feasible, the possible adverse effects of reinforced security conditions;
6. to devote all necessary attention to the health problems which might result from reinforced security;
7. to provide education, vocational training, work and leisure-time occupations and other activities to the extent that security permits;
8. to have a system for regular review to ensure that time spent in reinforced security custody and level of security applied do not exceed what is required;
9. to ensure, when they exist, that reinforced security units have the appropriate number of places, staff and all necessary facilities;
10. to provide suitable training for all staff concerned with the custody and treatment of dangerous prisoners.

Putting it into practice

Minimum use of high security

Where large numbers of prisoners are assigned to high security facilities there is a danger that, for many, these conditions will be excessive and disproportionate to the potential threat which they pose. As a general rule prisoners should only be confined in high security conditions where their behaviour has shown them to pose such a threat to safety and security that the prison administration has no other choice. Any assignment to such conditions should be for as short a time as is possible and should be subject to continuous review of the individual prisoner's behaviour.

Prison systems which keep a smaller number of prisoners in high security conditions are likely to be safer for both prisoners and staff. Where the numbers are small, staff will be able to identify the prisoners who need to be kept in conditions of high security and to ensure they are properly supervised. If the number of prisoners in this group is too great then it may be that staff will not be able to provide close enough supervision of those that are most likely to attempt to escape or to provoke disorder.

The seriousness of the crime of which a prisoner has been convicted or of which he is accused will be one factor in making a decision about the need to hold him in high security conditions. However, it should not invariably be a deciding factor. For example, keeping all prisoners convicted of murder and serving life sentences under a very strict regime without any assessment of their risk is not good practice.

Individual assessment

There should be a clear, well defined system for identifying prisoners who need to be kept in high security conditions and for assessing their degree of risk on a continuing basis. Proper assessment of risk can help to identify those prisoners who present a serious threat to staff, to other prisoners and to the wider community. Criteria for assessing security risk are described in detail in chapter 7 and should also be applied in respect of high security. Assessments should be reviewed on a regular basis.

- “ 2.1. Prisoners are to be assigned a security category based on their individually assessed circumstances upon reception into custody.
- 2.2. Prisoners should be assigned the least restrictive classification level in accordance with their assessed risk, where their security risks and individual needs can be managed.
- 2.3. All prisoners excluding those classified minimum security, must have their security category reviewed by the Sentence Management Review Panel at least once in a six-month period.
- 2.4. Prisoners with a security category of minimum will be reviewed once in a twelve-month period.
- 2.5. Prisoners must be provided with written advice of decisions made regarding their classification; this must include advice regarding their right to appeal.³⁶

Tasmania Prison Service, Director's Standing Order,
Classification and Placement, December 2016

Physical aspects of high security

Reference was made in chapter 7 to the physical aspects of prison security. Special attention needs to be paid to these matters in the supervision of high security prisoners. In most jurisdictions the outer boundaries of prisons or units holding high security prisoners will be specially strengthened, often consisting of a double barrier, such as a wall and a fence. Inside the prison there will be secure barriers or gates between the various parts of the prison and the wall, doors and windows of the cells in which these prisoners are held will be specially strengthened. There may also be electronic security measures in various parts of the prison.

All of these security provisions can be installed in a manner which preserves a balance between legitimate security restrictions and the need to treat prisoners decently.

Dynamic aspects of high security

The principles of dynamic security which are described in chapter 7 apply especially in high security prisons. Staff will generally accompany these prisoners whenever they are outside their living accommodation or moving from one part of the prison to another. The supervision of these prisoners involves much more than a mere escort function. Staff should interact with them in as positive a manner as possible.

The use of physical restraints

Procedures for the use of physical restraints are described in chapter 7. It may well be necessary to use restraint more frequently for high security prisoners. Even in these cases, the general principles explained in chapter 7 remain valid, particularly that of individual assessment.

Special maximum security

In recent years there has been an increasing tendency in a number of jurisdictions to hold some prisoners in conditions of special maximum security for a variety of reasons.

- In some jurisdictions this may be a condition set by the courts as part of a sentence.
- In others the prison administration may automatically place prisoners in maximum security conditions because of the nature of their offence or the length of their sentence.
- In other jurisdictions prisoners are assigned to these conditions as a result of a security assessment carried out by the prison administration.

In recent years an idea has been propagated that there is a new type of prisoner who is so dangerous and such a threat to society that he or she will require to be held in conditions of special maximum security for a lengthy period of time, in some cases for his or her natural life.

This is a very dangerous assumption, especially when it is made by politicians or others who have little direct experience of the management of prisoners. Throughout the world there are many jurisdictions which have had experience of dealing over long periods of time with groups or individuals who are a real and continuing threat to the state. They have always been required to do so within the parameters of domestic and international law. Managing these prisoners decently and humanely is the greatest test of a professional prison system. This remains the case. Failure to do so is wrong in principle; it is wrong in terms of prison management; it is wrong in terms of what is required in a democratic state; and it is wrong as an example to other countries.

*Minimal use
of special
maximum
security*

- *The principle* The international and regional instruments are clear in stating that all restrictions should be limited to the minimum necessary.
- *The exception and not the norm* Holding prisoners in conditions of special maximum security should constitute the exception rather than the rule. The small number of prisoners who require to be held in these conditions are not typical of all long term prisoners, nor should the problems which they present be extended to encompass the much larger group of prisoners who are serving long prison sentences.
- *Good operational practice* By definition prisoners who are held in special maximum security conditions should be those who pose a real and immediate threat to public safety were they to escape or to the internal good order of the prison. Holding prisoners in such conditions is likely to be expensive in terms of resources, both financial and of staff. If their numbers are inflated unnecessarily, it is likely that staff will not be able to give them the close supervision that they require. If their number is kept to a minimum, staff will never lose sight of the potential danger they present. The placement of prisoners in such units should therefore be authorised at a high level and be frequently reviewed.

“ In the CPT’s view, there must be a clear legal basis for the placement of a prisoner in a high-security unit. It also goes without saying that any measure of segregation should not be imposed for longer than the risk which a particular prisoner presents makes necessary. This calls for regular reviews of the decision to impose the measure. Further, prisoners should as far as possible be kept fully informed of the reasons for the imposition of the measure and, if necessary, its renewal.³⁷

Report by the European Committee for the Prevention of Torture on a visit to Ireland in 2014

“ Riihimäki Prison’s High Security Unit has been operational since 1 August 2007... [All] prisoners interviewed by the delegation... stated that the review of their placement decisions had lacked transparency, and the whole placement and review procedure was perceived by them as inequitable. In particular, the prisoners alleged that there was no possibility in practice to provide any input into the reports on their behaviour and progress sent by the prison’s management to the [Criminal Sanctions Agency], and that they were not heard in person during the review process. Prisoners also complained that there was no effective or real possibility to appeal against the placement decision (and a decision to continue the placement), as no detailed grounds for the placement were communicated to them. It is noteworthy that the prison’s management was not in a position to provide a single example of a case where the placement decision would have been amended following an appeal by a prisoner.³⁸

Report by the European Committee for the Prevention of Torture on a visit to Finland in 2014

Management of prisoners in special maximum security conditions

The conditions for prisoners in this category vary between jurisdictions but are invariably very restrictive.

“ An issue every government has to face is whether to treat convicted terrorists as separate and qualitatively different from other inmates, or allow them to mix freely...

The lesson (from the UK) would seem to be that integration is better than segregation but there are costs as well...

The lesson (from Indonesia) is not that integration is wrong but that every case has to be considered separately.³⁹

International Crisis Group, “Deradicalisation” and Indonesian Prisons, 2007

- *Isolation or solitary confinement is not good practice* There are two practices which are generally used for the management of prisoners in maximum security conditions. The first is by placing them in isolated conditions, either on their own or with one or two other prisoners. Under this arrangement prisoners spend all day and night in their living accommodation. In the most extreme of these conditions prisoners have no access to any activity or external stimulation and have nothing at all to do. They may be allowed an hour of solitary recreation in an empty outdoor exercise cage. They are strip searched and handcuffed every time they leave their cell. In some jurisdictions prisoners can spend years in this kind of regime. This method of dealing with prisoners is not good practice and often arises from an absence of proper management techniques.
- *Separation in small units* A much more positive model is that of housing this type of prisoner in small units of up to ten prisoners, based on the premise that it is possible to provide a positive regime for maximum security prisoners by confining them to in small groups away from the general prison population rather than in individual segregation. The principle on which these units operate is that it should be possible for a professionally trained staff to develop a positive and active regime for even the most dangerous prisoners. The intention is that, within a secure perimeter, prisoners should be able to move relatively freely within the units and to have a normal prison routine. In such an environment prisoners will only be placed in isolation when all else fails and then only for a short period of time.

Staff who work with high security prisoners should be specially trained

There are special challenges in working with high security prisoners. The staff who work with them should be experienced and should be given special training. This should cover the following issues, among others:

- understanding of what high security conditions involve;
- definition of types of prisoners who may require to be held in high security conditions;
- assessment of which individuals need to be held in high security conditions;
- implementing a positive regime within high security conditions;
- assessment of intelligence and other information about high security prisoners;
- danger of conditioning of staff by prisoners;
- dealing with individual or group violence in a way which protects staff while using minimal force.

The way in which prison officials deal with the small group of the most dangerous prisoners, who refuse to conform to legitimate expectations, is not only the greatest challenge to the professionalism of prison staff. The manner in which prison authorities respond on behalf of the rest of society to human beings who have little or no respect for other human beings is also a real test of everyone's humanity.

The conditions of detention should be subject to independent inspection

International instruments are clear in requiring that all prisons and places of detention should be subject to a system of inspection which is independent of the authority responsible for administering those prisons. They also give prisoners the right of full and confidential access to inspectors.

Nelson Mandela Rules, Rule 83:

1. There shall be a twofold system for regular inspections of prisons and penal services:
 - (a) Internal or administrative inspections conducted by the central prison administration;
 - (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.
2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 29:

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.
2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

An important type of inspection is that which is carried out by a body which is independent both of individual prisons and of the prison system. In some cases the staff of such an agency are appointed by the government. The most independent arrangement is when they are appointed by parliament and report back to it. It is particularly important that their remit should cover prisoners held in conditions of high security.

Independent inspections can also be a safeguard for prison staff. They are a means of dealing with any allegations of mistreatment of prisoners or improper behaviour by staff. Where these occur they should be acknowledged and the staff involved identified. This will also be a way of protecting staff against unjust allegations. Inspection is covered in detail in chapter 15 of this handbook.

Disciplinary procedures, sanctions and punishments

The framework

The rule of law must prevail in prison

It is important to acknowledge that the rule of law does not end at the prison gate. For example, a person who is assaulted in prison is just as entitled to the protection of the criminal law as is someone who is assaulted in a public place. It should be normal practice in any prison when a serious criminal act has or is thought to have taken place that a system of investigation similar to that which is used in civil society should operate. In some jurisdictions special judges or prosecutors are appointed to carry out this function in prisons. In others the civil prosecutor or police are informed and given the opportunity to investigate as if the offence had taken place outside the prison. It may be that an incident which is serious in the prison context will not be regarded as worthy of investigation by the criminal investigatory authorities. An example might be when a prisoner is found to be in possession of a small quantity of drugs for personal use or when there has been an assault in which no one is seriously injured. On the other hand, an assault in which a weapon is used or in which a bone or limb is broken would usually justify reference to the prosecutor or police. One way of dealing with these matters is that the prison authorities and the investigatory authorities should agree a policy concerning which incidents the prosecutor or police wish to be referred to them.

Need for a clear set of procedures to deal with offences against discipline

By their nature prisons are closed institutions in which large groups of people are held against their will in confined conditions. From time to time it is inevitable that some prisoners will break the rules and regulations of the prison in a variety of ways. This may be by attacking another person physically, by taking something which does not belong to them, by refusing to follow the daily routine, by disobeying a legitimate order, by attempting to smuggle into the prison items which are not allowed or in some other way. There has to be a clear set of procedures for dealing with such incidents.

Administrative discipline

This chapter of the Handbook is concerned with the procedure for dealing with breaches of prison discipline which are primarily administrative in nature and which are not to be referred to external investigatory or judicial agencies.

External standards

In cases where external authorities are involved, they should use the same criteria as if the accused were not already a prisoner.

The fairness of disciplinary procedures

What the international instruments say

Nelson Mandela Rules, Rule 37:

The following shall always be subject to authorization by law or by the regulation of the competent administrative authority:

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

Nelson Mandela Rules, Rule 40:

1. No prisoner shall be employed, in the service of the prison, in any disciplinary capacity.

Nelson Mandela Rules, Rule 41

1. Any allegation of a disciplinary offence by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay.
2. Prisoners shall be informed, without delay and in a language that they understand, of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defence.
3. Prisoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges. If the prisoners do not understand or speak the language used at a disciplinary hearing, they shall be assisted by a competent interpreter free of charge.
4. Prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them.
5. In the event that a breach of discipline is prosecuted as a crime, prisoners shall be entitled to all due process guarantees applicable to criminal proceedings, including unimpeded access to a legal adviser.

Nelson Mandela Rules, Rule 54:

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

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

Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, Principle 30:

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the adoption and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.
2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

European Prison Rules, Rule 57 (2):

National law shall determine:

- a. the acts or omissions by prisoners that constitute disciplinary offences;
- b. the procedures to be followed at disciplinary hearings;
- c. the types and duration of punishment that may be imposed;
- d. the authority competent to impose such punishment; and
- e. access to and the authority of the appellate process.

European Prison Rules, Rule 58:

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

- 60.1 Any punishment imposed after conviction of a disciplinary offence shall be in accordance with national law.
- 60.2 The severity of any punishment shall be proportionate to the offence.
- 60.3 Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.
- 60.4 Punishment shall not include a total prohibition on family contact.
- 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.
- 60.6 Instruments of restraint shall never be applied as a punishment.

Putting it into practice

Natural justice must be respected

As in all matters of administrative justice it is important that the principles of natural justice should be respected. The first of these is that all prisoners should know in advance what are the rules and regulations of the prison. This means that all prisons should have a set of regulations which clearly lists the acts or omissions which constitute a breach of prison discipline and which are liable to lead to formal disciplinary action. These regulations should have the status of a legal document. In many countries they will require parliamentary approval. The regulations should be publicised widely in the prison and a copy should be made available to every prisoner on first admission. The need to do this in general terms is referred to in chapter 5. Arrangements must be made to ensure that prisoners who cannot read are fully aware of these regulations.

Observing proper procedures

Any prisoner who is to be charged under a disciplinary proceeding has the right to know in advance the charge which is being faced and who has made the charge. Any such charge should be heard by the competent authority without undue delay. The prisoner him or herself should be given sufficient time to prepare a proper defence. The member of staff laying the charge may also need time to collect all available evidence. However, this should not be used as an opportunity to delay proceedings, particularly if the prisoner is held in isolation pending the hearing. In that case any unreasonable delay would amount to an informal form of punishment. This must also be borne in mind in those cases where prisoners are held in isolation pending investigation by an external authority.

A competent authority should hear the cases

The case should be heard before a competent authority. In some jurisdictions independent magistrates or specialist judges are appointed to hear prison disciplinary cases. The advantage of such an arrangement is that it brings judicial independence and a greater likelihood that proper procedures will be observed. In other jurisdictions, such as Turkey, there is a special board for disciplinary hearings. In England and Wales, these cases are heard either by the head of the prison, or, if they are more serious, by an 'Independent Adjudicator' who is a judge.

Where disciplinary hearings are conducted by members of the prison management it is important to ensure that they have received appropriate training and that they have not had any prior knowledge of the case which they are to hear.

Preparing a proper defence

In all cases accused prisoners should be present at their hearing. They should hear the evidence as it is presented and should be entitled to question the staff member who is presenting the case. If prisoners are not capable, for whatever reason, of defending themselves, they should be allowed to call another person to assist them. If the case is a complex one or the possible punishment severe, consideration should be given to providing prisoners with legal representation.

Right of appeal

If prisoners are found guilty of the charge, they should have the right of appeal to a higher authority.

Informal warnings

In some administrations it is customary to issue informal warnings for minor breaches of discipline before resorting to formal action. This can prove useful in alerting a prisoner to the fact that his or her behaviour is giving cause for concern. However, care must be taken to ensure that the use of such warnings is fair and consistent. It should not give rise to a system of unofficial sanctions.

Punishments should be just and proportionate

The clearly defined and published list of disciplinary offences should be accompanied by a complete list of potential punishments which may be imposed for any prisoner who commits one of these offences. As with the list of offences, the list of punishments should be set down in a legal document approved by the appropriate authority. They should always be just and proportionate to the offence in question.

What the international instruments say

Nelson Mandela Rules, Rule 39

1. No prisoner shall be sanctioned except in accordance with the terms of the law or regulation referred to in rule 37 and the principles of fairness and due process. A prisoner shall never be sanctioned twice for the same act or offence.
2. Prison administrations shall ensure proportionality between a disciplinary sanction and the offence for which it is established, and shall keep a proper record of all disciplinary sanctions imposed.
3. Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.

Nelson Mandela Rules, Rule 43:

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:
 - (a) Indefinite solitary confinement;
 - (b) Prolonged solitary confinement;
 - (c) Placement of a prisoner in a dark or constantly lit cell;
 - (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
 - (e) Collective punishment.
2. Instruments of restraint shall never be applied as a sanction for disciplinary offences.
3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

Nelson Mandela Rules, Rule 46:

1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.
2. Health-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.
3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.

European Prison Rules, Rule 60.3:

Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.

African Charter on Human and People's Rights, Article 7(2):

[p]unishment is personal and can be imposed only on the offender

American Convention on Human Rights, Article 5(3):

[p]unishment shall not be extended to any person other than the criminal.

Putting it into practice

Punishment always on an individual basis

A prisoner may only be punished after a formal disciplinary hearing conducted according to the procedures described above which results in a finding of guilt. Such hearings should be conducted on an individual basis. If, for example, there has been a mass refusal to obey a rule or an assault involving a number of prisoners, the case of each must be heard separately and punishments imposed on an individual basis.

Never punished twice for same offence

No prisoner should be punished twice for the same offence. This means that if the offence, for example an assault or an attempted escape, has been referred to an external court, this should not be followed by an internal disciplinary hearing.

Administrative punishments

Administrative punishments may include a formal recorded warning, exclusion from work, forfeiture of wages (where these are paid for prison work), restriction on involvement in recreational activities, restriction on use of certain personal possessions, restriction on movement in the prison. Punishments should not include any restriction on family contact, either by letter or by visit. Apart from any other consideration, this would be a punishment on the family or friends of the prisoner.

Restrictions on punishment

The punishment imposed by a disciplinary hearing should always be proportionate to the offence which has been committed. There are specific prohibitions against all forms of corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments. Nelson Mandela Rule 43 makes clear that corporal punishment or the reduction of a prisoner's diet or drinking water shall be prohibited.

No physical restraints as punishment

Instruments of physical restraint may never be applied as punishments. The circumstances in which such instruments may be used was covered in chapter 4.

Restricted role of the doctor

The involvement of doctors in certifying that prisoners are fit for a particular type of punishment is a sensitive one and is dealt with in chapter 6. The Nelson Mandela Rules 32, 33 and 34 provide that a medical officer should examine all prisoners who are to undergo punishment that may be prejudicial to their physical or mental health and should certify in writing that they are fit to sustain this. Taken in context, this rule is intended to ensure that no prisoner who is not fit to sustain such a punishment will be required to do so; it is not intended to imply medical approval for the punishment.

This Rule has to be balanced against the provision in 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:

3. It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

No unofficial punishments

It must be made very clear to staff that the only kind of punishments which may be imposed on prisoners are those which follow from a formal disciplinary hearing. It is not permissible for staff to have a separate informal system of punishments which bypasses the official procedures. Senior management must be especially vigilant in this regard.

Limitations on solitary confinement as a punishment

The international instruments make clear that solitary confinement is not an appropriate punishment other than in the most exceptional circumstances; whenever possible its use should be avoided and steps should be taken to abolish it. These instruments acknowledge the fact that, potentially, periods of solitary confinement are prejudicial to the mental health of the prisoner. The instruments are specific that indefinite solitary confinement and prolonged solitary confinement are prohibited.

What the international instruments say

Nelson Mandela Rules, Rule 43:

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

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

Nelson Mandela Rules, Rule 44:

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

Nelson Mandela Rules, Rule 45:

1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.
2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, 28 continues to apply.

Basic Principles for the Treatment of Prisoners, Principle 7:

Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

European Prison Rules, 60.3:

Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited.

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.

European Prison Rules, Rule 43.2, 3:

43.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

Putting it into practice

Sensory deprivation and dark cells prohibited

There are various forms of segregation. The most extreme occurs when an individual is held entirely on his or her own and is subject to sensory deprivation by lack of access to light, sound or fresh air in what are often called "dark cells". This form of isolation should never be imposed as a punishment. There should be a similar injunction against holding small groups of prisoners in such an environment.

“ In a judgment in 1982 the European Commission of Human Rights was quite clear about the consequences of such confinement:

...complete sensory isolation coupled with total social isolation, can destroy the personality and constitutes a form of treatment which cannot be justified by the requirements of security or any other reason.⁴⁰

European Commission for Human Rights, Judgment in the case of Kröcher and Möller v. Switzerland, 1982

Daily monitoring

Another form of solitary confinement occurs when a prisoner is held in a single cell with access to normal light and air and can hear prisoners moving in adjacent areas. This type of punishment should only be used in exceptional circumstances for short periods of time. In all such cases prisoners should be carefully monitored on a daily basis by a doctor to note any deterioration in their health; in that case the punishment should be ended.

Dangers of solitary confinement

The European Committee for the Prevention of Torture (CPT) pays particular attention to the use of solitary confinement, or any conditions similar to it. “Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.”⁴¹

The Constitution of the Republic of Ecuador prohibits the use of isolation as a disciplinary punishment.⁴²



The effects of solitary confinement

It has been convincingly documented on numerous occasions that solitary confinement may cause serious psychological and sometimes physiological ill effects. Research suggests that between one third and as many as 90 per cent of prisoners experience adverse symptoms in solitary confinement. 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.

From The Istanbul statement on the use and effects of solitary confinement, 2007

Solitary confinement and maximum security

Some jurisdictions make increasing use of administrative solitary confinement for prolonged or indefinite periods as part of a special maximum security regime. This is not in line with international standards and the dangers of this procedure are covered more fully in chapter 8.

Constructive activities and social reintegration

Preventing deterioration

The framework

Depriving a human being of liberty is a very severe punishment. Of itself imprisonment is a severe deprivation of rights and thus it is only to be imposed by a judicial authority in clearly defined circumstances and when there is no other reasonable alternative. This handbook has already made clear that the prison authorities should not seek to increase the punishment of the court by treating prisoners inhumanely or with unjustified severity. On the contrary, they should do all that they can to prevent the physical and mental deterioration of those in their care.

Providing opportunities to change and develop

It is not sufficient for prison authorities merely to treat prisoners with humanity and decency. They must also provide the prisoners in their care with opportunities to change and develop. This requires considerable skill and commitment on the part of staff. Most prisons are filled with people from the margins of society. Many of them come from extreme poverty, and disrupted families; a high proportion will have been unemployed; levels of education are likely to be low; some will have lived on the streets and will have no legitimate social network. Changing the prospects in life of people with such disadvantages is no easy task.

The obligation to provide activities

Prisons should be places where there is a full programme of constructive activities which will help prisoners to improve their situation. At the very least the experience of prison should not leave prisoners in a worse condition than when they started the sentence but should help them to maintain and improve their health and intellectual and social functioning.

What the international instruments say

International Covenant on Civil and Political Rights, Article 10 (3):

The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

Nelson Mandela Rules Rule 91:

The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

Nelson Mandela Rules, Rule 92:

1. To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.
2. For every prisoner with a sentence of suitable length, the prison director shall receive, as soon as possible after his or her admission, full reports on all the matters referred to in paragraph 1 of this rule. Such reports shall always include a report by the physician or other qualified health-care professionals on the physical and mental condition of the prisoner.
3. The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Equipping prisoners for life after release

Putting it into practice

A rehabilitated prisoner is not one who learns to survive well in prison but one who succeeds in the world outside prison on release. If prison authorities are to give priority within their programme of activities in prison to what the International Covenant on Civil and Political Rights describes as the “reformation and social rehabilitation” of prisoners, they will need to base the activities in the prison on giving prisoners the resources and skills they need to live well outside prison. This means for example linking the work that prisoners do in prison to the work possibilities outside. They should be helped to get the skills and capacity to earn a living and support a family, bearing in mind the discrimination that ex-prisoners are likely to face when trying to find work.

During the time that men and women are in prison arrangements should be put in place to help them find somewhere to settle after they are released and to create some form of social structure which will help them to be re-accepted into society.

Partnering with civil society organisations

None of this will be easy to achieve, especially in circumstances where many jurisdictions face severe overcrowding, a shortage of trained prison staff and few opportunities to make links with the world outside the prison, as well as a hostile reception for prisoners from outside society when they leave. The principles set out in this chapter establish a goal towards which prison administrations should work within the limits of the resources available to them. They should also consider developing partnerships with civil society and educational organisations in the community in order to increase the opportunities available to prisoners.

“ Initiated in 2004, the Yellow Ribbon Project (YRP) supports ex-offenders in their reintegration back into society. Prior to rebuilding stable and crime-free lives, more than 9,000 ex-offenders face the challenge of overcoming societal discrimination every year.

Organised by the CARE Network, the YRP generates greater awareness of the need for second chances, inspires more Singaporeans to accept ex-offenders into their lives and encourages more to come forward to demonstrate support for the campaign.⁴³

From the website of the Singapore Yellow Ribbon Project

Recognising the prisoner as an individual

If the programme of activities in prison is to have its desired effect it will be important that each prisoner should be recognised as far as possible as an individual. It is not sufficient to expect all prisoners to undergo similar training or development; this will not be either efficient or effective. Some prisoners will be illiterate; others might have been teachers before they came to prison. Some prisoners will have to come to prison from a life on the street; others may come from a strong family background with work to return to. Therefore when rehabilitative activities for prisoners are being arranged and prisoners allocated to them the prisoner’s background will be an important deciding factor.

What the international instruments say

Nelson Mandela Rules, Rule 93:

1. The purposes of classification shall be:
 - (a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;
 - (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.
2. So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.

Nelson Mandela Rules, Rule 94:

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

Putting it into practice

*Encouraging
the individual
to develop*

Each person who comes to prison has had previous life experiences and almost all prisoners will one day be released. If a person is to benefit from his or her time in prison the experience should be linked to what is likely to come after release. The best way to do this is to prepare a plan as to how the prisoner can make use of the various facilities which are available within the prison system. Prisoners need to be given things to do which ensure that they are not idle and which also have a purpose. All the activities, whether they are agricultural, involve literacy teaching, or cultural and artistic programmes should be organised so as to contribute to an atmosphere where prisoners do not deteriorate but rather develop new aptitudes that will help them when they are released.

*Short
sentence
prisoners*

For prisoners who are serving short sentences there may be little time to embark on useful activities. In their case the main emphasis will be on preserving the links with their family and the outside world.

Work and skills training

Finding a way of earning a living is one of the most important elements of a prisoner's ability to reintegrate into society on release from prison. For many prisoners their time in prison may be the first opportunity that they have had to develop vocational skills and to do regular work. The main purpose of requiring prisoners to work is to prepare them for a normal working life on their release from prison, not to make money for the prison administration or to run factories for the benefit of other parts of the Government.

It should be remembered that employment is only one element of social rehabilitation. A full response will require opportunities to develop all the skills needed to return to society; differing societies will require differing skills. Other important initiatives to maintain links with the outside community are dealt with in chapter 11.

What the international instruments say

International Covenant on Civil and Political Rights, Article 8:

3. (a) No one shall be required to perform forced or compulsory labour.
- (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
- (c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detentions.

Nelson Mandela Rules, Rules 97-103:

Rule 97

1. Prison labour must not be of an afflictive nature.
2. Prisoners shall not be held in slavery or servitude.
3. No prisoner shall be required to work for the personal or private benefit of any prison staff.

Rule 98

1. So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
2. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
3. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, prisoners shall be able to choose the type of work they wish to perform.

Rule 99

1. The organization and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life.
2. The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the prison.

Rule 100

1. Preferably, institutional industries and farms should be operated directly by the prison administration and not by private contractors.
2. Where prisoners are employed in work not controlled by the prison administration, they shall always be under the supervision of prison staff. Unless the work is for other departments of the government, the full normal wages for such work shall be paid to the prison administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

Rule 101

1. The precautions laid down to protect the safety and health of free workers shall be equally observed in prisons.
2. Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workers.

Rule 102

1. The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workers.
2. The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of prisoners.

Rule 103

1. There shall be a system of equitable remuneration of the work of prisoners.
2. Under the system, prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
3. The system should also provide that a part of the earnings should be set aside by the prison administration so as to constitute a savings fund to be handed over to the prisoner on his or her release.

Basic Principles for the Treatment of Prisoners, Principle 8:

Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their integration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

Putting it into practice

The value of work

Prisoners should not have to spend their days in idleness or boredom. This is important for their own personal wellbeing and also for the smooth management of the prison: prisoners who are not kept occupied are more likely to become depressed and disruptive. This is linked to the concept of dynamic security, which is described in chapter 7 of this handbook. However, there is also a much more positive reason for providing prisoners with meaningful work. Some people become involved in criminal activities because they have no legitimate form of income, often because they cannot find employment. This may be because they have never experienced regular work, so have never learnt the discipline which is necessary to follow a regular regime each day. It may also be that they wish to work but do not have the skills and training which are necessary for regular employment.

Working conditions

There is a general prohibition against compulsory or forced labour. However, the international instruments make clear that work done by prisoners does not automatically fall into that category. Sentenced prisoners can be obliged to work provided certain safeguards are observed. These are:

- that the work should have a purpose;
- that the work should help them to acquire skills which will be useful to them after they are released;
- that prisoners should be paid for the work which they do;
- that the conditions of work should be broadly similar to those in any civilian workplace, particularly in respect of health and safety requirements;
- that the hours of work are not excessive and leave time for other activities.

Developing a routine

Prison work can have two main aims. The first is the simple one of encouraging prisoners to become involved in a regular routine which involves getting up, going to a place of work and spending several hours each day working alongside other people in an organised manner. However, this is not sufficient in itself. There is little point in forcing prisoners to go each day to a workshop where the work is monotonous and not likely to be of any use to other people. The worst example of this was the system in the 19th century, called the crank or the treadmill, in which prisoners were required to turn great cylinders of sand for many hours each day for no purpose at all. There are many modern equivalents of this type of meaningless work.

Developing skills

The other aim of work is to give prisoners the confidence and skills to carry out work which has a purpose, where they feel that they are learning in a way that will make it much more likely that they will find employment after their sentence has been completed. This means that prison work should be linked to training aimed at providing prisoners with work skills which will enable them to gain qualifications to work in traditional employment such as building, engineering, administration or farming. It may also be possible to include training in new skills such as computer work. This vocational training is especially important for younger prisoners. In designing these programmes it is particularly important to be aware of the type of employment opportunities which may be available in the local community to which the prisoner will return.

Women prisoners

The special needs of women prisoners are dealt with in chapter 18. It is important that they should have access to a full range of work opportunities while in prison. They should not be restricted to activities such as sewing or handicrafts.

Ways of finding work

In many countries prison administrations find it very difficult to find sufficient work for prisoners. There are a variety of models for dealing with this problem.

In some jurisdictions other government ministries are required to offer certain types of work to the prison administration. This might be for internal government contracts. It might be work on behalf of external agencies, for example, making car number plates.

- In many instances prison staff can be creative in finding purposeful work for prisoners. Selected prisoners can, for example, learn useful skills by working with prison staff in maintaining and repairing prison buildings. Where the prison has land, prisoners work under supervision to cultivate it to provide food for themselves and others. Prisoners can also be involved in essential daily tasks such as kitchen work and cleaning.
- There are also many instances in which prisoners can help governmental and non-governmental organisations in their work with disadvantaged people, for example by making furniture for a homeless persons' hostel or toys for a children's home.
- Self-employment in one-person business or in small co-operatives can be a viable option for some prisoners on leaving prison. Prisoners can use and develop the skills they already have to make objects which can be sold on the open market. Such work can be carried on after release from prison and does not bring the ex-prisoner up against discrimination.
- In recent years there has been a growing tendency to involve private commercial and industrial companies in providing work for prisoners. Where this happens, the prison authorities must make sure that the prisoners are not used merely as a source of cheap labour or in order to undercut the wages of local workers. In these cases, prisoners should be paid the full rate for the work they do.

Payment for work

If the experience of work is to prepare prisoners for life after release and not merely to be seen by them as forced labour, it is important that they should receive some form of remuneration for the work which they do. This can be done in a variety of ways. One of the most creative methods is where prisoners are paid a wage equivalent to that which would be paid to a similar worker in civil society. They are then expected to pass on a proportion of the money to their families, in some cases to donate a proportion to some form of reparation for the offence which they committed and to save some for their release.

“ The Supreme Court... issued a notice to the Centre and state governments seeking their response to a Public Interest Litigation filed by a Bihar-based NGO Bandi Adhikar Andolan which sought its direction to fix wages for prison workers on a par with minimum wages and to provide eight hours work to all prisoners and under-trials who volunteer for such work. The petitioner alleged that denying reasonable wages to a prisoner for his work amounts to violation of their rights.

“This Court had directed in 1998 to fix the wages of the prisoners according to the Minimum Wages Act, 1948. In spite of the directions of this Court, the prisoners’ wages continue to be much below than the average minimum wage thus violating the constitutional rights of a prisoner,” the petition said.⁴⁴

Adapted from Times of India, “Centre, states get notice on jail wages”, 17 January 2015

In order to improve conditions of prison labor in Ukraine and bring it in line with the European standards, the Parliament of Ukraine adopted the law #1492-VIII amending art. 118 of the Penal Code as follows: “Convicted prisoners have right to work [...] on the basis of fix-term labor contracts between a prisoner and a prison administration [...]. The work of the prisoners shall be governed by general labor legislation save for special conditions, provided in this Code”

As a result, all working prisoners benefit from general labor conditions applied in the free society, such as a minimum level of salary, leave policy, working hours, holidays, etc.⁴⁵

Law of Ukraine #1492-VIII

Safe working conditions

It is important that the conditions in which prisoners work should be subject to the same laws on health, safety, industrial injury and occupational disease as is work among the general public. This means that the prison authorities should be aware of national legislation about health and safety at work and should make sure that it is observed in the prison setting. These safeguards should also apply to the length of time which prisoners have to spend in work. The hours should not be excessive and should leave time for prisoners to be involved in other activities.

Work for pre-trial prisoners

The considerations about work apply in the first place to prisoners who have been convicted. Different considerations apply in respect of prisoners who are awaiting trial. Since they have not been found guilty of any offence they should not be obliged to work. However, they can also suffer from the boredom of long periods of monotony and idleness, sometimes for years. Wherever possible, work should be available for them and they should be encouraged to take part. The circumstances of pre-trial prisoners are dealt with in chapter 16 of this handbook.

Education and cultural activities

Many people who are in prison have poor standards of education. A significant proportion lack basic skills of reading and writing.

This low educational level will have affected their lives before coming in to prison and may well have played a part in their committing a crime. It is an unfortunate reality that for some individuals the very fact of being in prison, of having to remain in one location for a fixed period of time, may be the first real opportunity that they have had of pursuing a course of proper education.

It is also important to provide opportunities for cultural activities alongside more formal education since this will provide a further context in which prisoners may develop their sense of self-worth. As the UN Special Rapporteur on the Right to Education points out, education in prisons is ‘much more than a tool for change, it is an imperative in its own right.’⁴⁶

What the international instruments say

Universal Declaration of Human Rights, Article 26:

- (1) Everyone has the right to education.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

Universal Declaration of Human Rights, Article 27:

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Nelson Mandela Rules, Rule 64:

Every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Nelson Mandela Rules, Rule 104:

1. Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterate prisoners and of young prisoners shall be compulsory and special attention shall be paid to it by the prison administration.
2. So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

Nelson Mandela Rules, Rule 105:

Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners.

Resolution 1990/20 of the UN Economic and Social Council refers to education in prisons in the following terms:

- (a) Education in prisons should aim at developing the whole person, bearing in mind the prisoner's social, economic and cultural background;
- (b) All prisoners should have access to education, including literacy programmes, basic education, vocational training, creative, religious and cultural activities, physical education and sports, social education, higher education and library facilities;
- (c) Every effort should be made to encourage prisoners to participate actively in all aspects of education;
- (d) All those involved in prison administration and management should facilitate and support education as much as possible;
- (e) Education should be an essential element in the prison regime; disincentives to prisoners who participate in approved formal educational programmes should be avoided;
- (f) Vocational education should aim at the greater development of the individual and be sensitive to trends in the labour market;
- (g) Creative and cultural activities should be given a significant role since they have a special potential for enabling prisoners to develop and express themselves;
- (h) Wherever possible, prisoners should be allowed to participate in education outside the prison;
- (i) Where education has to take place within the prison, the outside community should be involved as fully as possible;
- (j) The necessary funds, equipment and teaching staff should be made available to enable prisoners to receive appropriate education.

Basic Principles for the Treatment of Prisoners, Principle 6:

All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

The Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) underline the particular importance of education in juvenile custodial institutions and are dealt with in greater detail in chapter 17 of this handbook.

Putting it into practice

Importance of education

Education is not to be regarded as an optional extra to the list of activities for prisoners. Instead it is central to the whole concept of using the period in prison as an opportunity to help prisoners to re-order their lives in a positive manner. In the first place it should be focussed on basic skills so that everyone who is in prison for any length of time can be taught to read, write and make basic arithmetical calculations which will help them to survive in the modern world.

“ Primary or basic education shall be free for persons deprived of liberty, particularly for children, and for adults who have not received or completed the whole cycle of primary instruction.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XIII, 2008

Developing the whole person

Education should go much further than teaching these basic skills. Education in the fullest sense should be aimed at developing the whole person, taking account of prisoners' social, economic and cultural background. It should, therefore, include access to books, classes and cultural activities, such as music, drama and art. This form of activity should not be regarded as merely recreational but should be focussed on encouraging the prisoner to develop as a person.

A balanced programme

What is needed is a balanced programme of activities which include the industrial work and skills training described earlier in this chapter, education and cultural activities and physical education. All elements of this programme should be provided at some level in all prisons, although the exact balance may vary from one to another depending upon the age, abilities and needs of prisoners. Some prisoners, especially the younger ones, may need to have education during the day as if they were at school. For others it may be provided in the evening after a normal working day. In other situations prisoners may spend half of the day working and half on educational activities. This is not unusual when there is not enough work to keep all prisoners busy for a full day.

No loss of pay

The previous section of this chapter referred to the right of prisoners to be paid for doing work. It is important that prisoners should not be penalised in this respect for attending education. If prisoners lose payment by attending education classes this will be an important disincentive to them.

Using the talent of prisoners

Prisons are often places where there is a great deal of untapped potential among the prisoners. Some of them may be educated to a high level; some may even have been teachers before coming to prison. Consideration should be given to encouraging such prisoners to help with the education of less able prisoners under appropriate supervision.

Using community resources

Chapter 11 of this handbook deals with the importance of ensuring that prisoners have as much contact as possible with civil society. In this regard it is important that the prison authorities should, whenever possible, make use of community facilities, rather than creating parallel structures. A good example of this is the way that some prison systems make provision for teachers who normally work in local schools and colleges to work also in prisons. There are a variety of methods for achieving this. One is for the prison system to contract with the local education authorities to provide education for prisoners. This brings a degree of normality to prison education. It also ensures that prisoners are taught according to the educational content and methods used in civil society. It will also make it more possible that prisoners may continue with their education in the community after they are released.

Prison authorities can also invite local cultural groups to come into the prison to work alongside prisoners in appropriate activities. There is a tradition in some prisons of the prison building its relationship with the local community by inviting groups of people such as the elderly to come into the prison to be entertained by the prisoners and staff giving concerts and cultural entertainment.

Preparation for release

What the international instruments say

Nelson Mandela Rules, Rule 107:

From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family.

Nelson Mandela Rules, Rule 108:

1. Services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society shall ensure, so far as is possible and necessary, that released prisoners are provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.
2. The approved representatives of such agencies shall have all necessary access to the prison and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his or her sentence.
3. It is desirable that the activities of such agencies shall be centralized or coordinated as far as possible in order to secure the best use of their efforts.

Basic Principles for the Treatment of Prisoners, Principle 10:

With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

European Prison Rules, Rule 103.6:

103.6 There shall be a system of prison leave as an integral part of the overall regime for sentenced prisoners.

Putting it into practice

From the beginning of the sentence

Almost all prisoners will eventually be released back to civil society. It is important, especially for those who are serving relatively short sentences, that preparation for this release should begin right at the beginning of the time in prison. This is in their own interest and in that of civil society since a person who has a place to stay, the opportunity of earning a living and a social support structure will have greater incentives to live successfully outside.

Prisoners serving short sentences

In many jurisdictions the majority of prisoners are serving short sentences and will return to the community quite quickly. There is sometimes a temptation for prison authorities to overlook the rehabilitation of such prisoners since they will only be in prison for a short time. If this happens, there is a real danger that prisoners serving short sentences will quickly return to a life of crime and will return to prison again and again. The need for support in the community has to be given a high priority.

Prisoners serving long sentences

Special arrangements also need to be made to prepare prisoners who have served very long sentences for release because their support structures within the community may have broken down or disappeared while they have been in prison.

Partnering with external organisations

The prison authorities cannot prepare prisoners for release without the help of other agencies based in civil society. Governmental and non-governmental organisations which work with former prisoners after release should be encouraged to come into prison to build relationships with prisoners before they are released and to begin to plan their re-integration into society.

Different kinds of help

Nearly all prisoners will benefit from help to prepare them for life after release. For some this might involve helping them to improve their confidence and belief in themselves. For others, it might involve assistance in finding jobs, accommodation when they leave prison or providing them with sufficient money to enable them to travel to their home area. The longer a person has spent in custody the more important such programmes will be. General agencies which help unemployed people or homeless people could be involved in helping prisoners to prepare themselves for release. These might include probation and social services, religious groups and other non-governmental organisations.

Using special programmes

In many countries work is done to help people who have addictions which are often associated with criminality, such as excessive drinking or gambling or dependence upon drugs. Where such programmes already exist in society, prison authorities should introduce these programmes to the prison setting instead of creating new ones just for prisoners. In recent years there has been an increase in programmes aimed at specific types of prisoners, such as sex offenders, or programmes to help those convicted of violent offences to control their anger and violence.

Short term release

Preparation for release often includes the opportunity for prisoners to leave prison on a daily basis before their actual release date. This may be used to give them the opportunity to attend a training course or to obtain new work skills, sometimes in a workplace where they can continue to work after release.

Sensitive preparation is often needed for prisoners, especially those who have served long sentences, who are returning home. This preparation may be essential not only for the prisoner but also for other members of the family who have become unused to having their imprisoned family member in the immediate family circle. One method of achieving this is to allow the prisoner to return home regularly for a few days at a time as the end of the sentence approaches.

Respecting victims

There is a need to respect the feelings of people who have been the victims of crime. In cases which attracted a high public profile, for example, in small communities, or where there was violence against an individual victim or his or her family, it may be necessary to advise them when a prisoner comes to his or her release date. Such cases need to be dealt with in a very sensitive manner. In some cases it may not be possible for a prisoner to return to the area in which the crime was committed. In such instances alternative arrangements have to be made in order to respect the needs of the victim and of the former prisoner. Some prisoners, such as those who have completed long sentences or those who are still considered to be a danger to the public, might be given conditional release or parole, which means that they will be subject to formal supervision in the community.

Contact with the outside world

The framework

The right to family life

People who are sent to prison lose the right to free movement but retain other rights as human beings. One of the most important of these is the right to contact with their families. As well as being a right for the prisoner, it is equally a right for the family members who are not in prison. They retain the right of contact with their father or mother, son or daughter, brother or sister who has been sent to prison. Prison administrations have a responsibility to ensure that these relationships can be maintained and developed. Provision for all levels of communications with immediate family members should be based on this principle. It follows that the loss or restriction of family visits should not be used as a punishment under any circumstances.

The main international human rights instruments are very specific about universal rights in respect of these issues:

Universal Declaration of Human Rights, Article 12:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...

International Covenant on Civil and Political Rights, Article 23:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

These rights apply also to prisoners. In 1979 the European Court of Human Rights ruled that prisoners have the right to marry whilst in prison.⁴⁷

The expectation should be that the best possible arrangements should be made to allow contact between prisoners and their families to be maintained. This expectation arises not only from the assertion of the right to family life in the international human rights instruments but also from Article 10 of the ICCPR

“ All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Ensuring the best possible access to family must be part of a system that treats prisoners with humanity.

Nearness to home

Placing importance on the maintenance of contact with family places some requirements on prison authorities. First of all, this has implications for the organisation of the prison system and is an argument for the prisoner's home area being a major determining factor in deciding which prison prisoners should be sent to. This has cultural implications for the prisoner and it also means that it will be easier for families to travel to visit their family member. Given that many prisoners come from marginalised and impoverished backgrounds, the cost involved in travelling long distances may mean that it will not be possible for families to visit if the prison is a long distance from the area where the family live. In countries where prisoners are dependent on family members to bring in clothes, food, medicines and other necessities, the prisoners' nearness to home is of particular importance.

Home leave

Efforts also need to be made to establish and develop a system of allowing prisoners to visit their families at home for short periods. If there is no threat to the security or safety of the public or to other family members, prisoners should be allowed home visits under temporary release provisions. These home visits are especially appropriate for prisoners who are serving short sentences and also for those serving long sentences who are coming near to their date of release. It needs to be recognised that there will be cases where it would be very unwise to allow prisoners to leave prison for a short period to visit their families before the end of their sentence. Decisions of this nature should be based on the sort of careful individual assessment of risk described in chapter 5 of this handbook.

Family visits

Family members and friends should be able to come to visit prisoners in prison. These visits should take place in conditions which are as natural as the prison environment will permit. As much privacy as possible should be allowed. It should never be forgotten that visits, especially with close family members, are not to be regarded as privileges but rather as a basic human right. Any restriction on their frequency or on the conditions in which they take place needs to be justified in each case. The presumption should be to maximise visiting and to allow the most favourable conditions possible.

Women and their children

Women prisoners need particular recognition because in most societies women take prime responsibility for childcare and imprisoned mothers are often separated from their children. Thus, when mothers are imprisoned they will normally be very anxious about the arrangements which have been made for their children's welfare. Their children will also be upset and disoriented. Both for the welfare of mother and child and for the smooth running of the prison, prison staff should make every effort to assist them and to ensure that special arrangements can be made for the bonds between mothers and children to be maintained. This matter is referred to in greater detail in chapter 18 of this handbook.

Juveniles and their parents

The vulnerable status of juveniles and young prisoners also requires that attention be paid to how to preserve any relationships which could provide support, physical or moral, and stimulus. Visits with parents are especially important. This matter is also dealt with in chapter 17 of the handbook.

Treatment of visitors

The way that families and other visitors are treated on arrival at a prison is often a good measure of how well the prison is managed. It is also of great importance to the prisoner and, therefore, can have a positive or negative impact on security and stability within the prison.

Letters and telephones

Forms of contact other than family visits are also important. Prisoners should be able to send and receive correspondence as freely as possible and where feasible to make and to receive telephone calls.

Access to reading, material, television and radio

Prisoners should also be able to keep up to date with events which are taking place in civil society, both in the communities from which they have come and in the wider world. This is a way of reducing the abnormality of the prison experience and also of making sure that the prisoner does not become completely detached from the community to which he or she will return on release. For these reasons prisoners should have access to books, newspapers, magazines, radio and television wherever possible.

Foreign prisoners

Increasingly in many jurisdictions there is a large number of prisoners who are foreign nationals. All of the above considerations apply also to them. Prison authorities should recognise the need to make special arrangements to make sure that this group of prisoners does not lose contact with their families and their own culture. This matter is dealt with in more detail in the next chapter of this handbook.

Visits, letters, telephones

What the international instruments say

Nelson Mandela Rules, Rule 58:

1. Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:
 - (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and
 - (b) By receiving visits.
2. Where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.

Nelson Mandela Rules, Rule 59:

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

Nelson Mandela Rules, Rule 106:

Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both.

Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, Principle 18:

Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing of a law enforcement official.

Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, Principle 19:

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, Principle 20:

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

Putting it into practice

Maintaining family and personal links through visits

If prison authorities are to respect the universal human right to family life and wish to encourage prisoners to recognise the obligations which they still have to spouses, parents and children, arrangements should be made for a form of visit which recognises the need for families to visit the member who is in prison for reasonable periods with a degree of privacy which does not weaken legitimate security requirements. The family visits described below come closest to accommodating this need.

Family visits

In a number of jurisdictions there are arrangements for what are often called family visits or long visits. These can take different forms. In Eastern Europe and Central Asia many prisons and colonies have a group of small apartments within the perimeter of the prison where visitors can live for periods of up to 72 hours with the family member who is in prison. A typical arrangement might include a common kitchen, social area and toilet/washing facilities for up to six family groups together with a number of small units with one or two bedrooms for each group. Prisoners who are eligible can have visits in these units up to four times a year. There will often be three or four visitors at a time; they may include a wife/husband or partner, a

parent, grandparent, children or siblings. In Canada and some prison systems in the United States of America similar facilities are provided, often with a form of mobile home, surrounded by a wooden fence for privacy, which is located within the prison perimeter. The prisoners involved are required to show themselves at set times each day for security checks. Visits such as these cannot be described as normal family life but they do create an environment in which family members can reinforce their links with the member who is in prison.

“ In the Open Prisons of Rajasthan, the prisoners stay with their families. They earn a living to support themselves and for doing so they are allowed to go outside during the day. Living with the family provides the inmate with emotional and social support and earning a livelihood, re-instills a sense of self worth in them.⁴⁸

The Open Prisons of Rajasthan, 2018

Conjugal visits

The family visits described above are different from the conjugal visits which are permitted in some West European jurisdictions, including Denmark, Sweden, the Netherlands and Spain. These allow prisoners to be visited by one person, usually a spouse or a long term partner, for a period of up to three hours. The couple spend the visit in private in a small unit which contains a bed and a shower with other sanitary facilities. A much less formal version of these visits occurs in many Latin American prisons where the norm is that at the weekend there are family visits for male prisoners. The same applies to women prisoners in some places but not all. Such visits normally take place in the cell areas, and often sheets and blankets are hung on ropes to create some private space.

Public visits

It will not be possible in practical terms to allow private family visits for all prisoners at all times. In some countries prison visits take place in large rooms specially dedicated to the purpose. These rooms should be arranged in such a way as to balance legitimate security needs against the need to maintain family contact. The norm should be that prisoners and their visitors can talk directly to each other without any physical barrier. This may be across a table or a desk. The prisoner should not be prevented from touching his or her visitors unless there are specific grounds for prohibiting this. This is especially important when the visitor is a child who has come to visit his or her parent. In some countries visits are limited to 15 minutes conversation between prisoner and visitor standing each side of a wall talking through a barred grille. In such prisons there is often scope for improving the conditions of visits at no great cost by using some part of the prison grounds as a visiting area and providing benches and a roof covering.

“ ...the Court notes that the visits were held in the presence of a prison officer who listened to the conversations. The applicant was separated from the visitors by a glass partition. Accordingly, the manner of conducting the family visits, which was also rigidly regulated by law without any individualisation procedures, did not allow any privacy and excluded any physical contact between the applicant and his visitors. The manner in which the meetings were held affected different aspects of the applicant's family life in so far as different types of relations between the applicant and each visitor were involved. Moreover, the presence of the prison officer affected the intimacy of the applicant's communication with the family members. The Court does not find any evidence to show that such far-reaching restrictions were necessary in the applicant's case.⁴⁹

European Court of Human Rights Judgment in the case of Trosin v. Ukraine, 2012

Visiting arrangements for pre-trial prisoners

The right to contact with family and friends applies to prisoners who are awaiting trial as well as to those who have been convicted. There will be instances in which there is real concern that a prisoner who is awaiting trial may seek to influence potential witnesses in the case or to pass information about the case to third parties. For these reasons, restrictions will have to be placed on the arrangements made for visits. Each case needs to be decided on the basis of

the evidence available. The prison authorities should not accede to requests from investigating police or prosecuting authorities to restrict the condition of visits for pre-trial prisoners simply as a means of putting pressure on them to confess their guilt. This matter is referred to in greater detail in chapter 16 of this handbook.

Searching visitors

It needs to be recognised that in a prison environment there will always be a danger that some visitors will try to smuggle illicit articles to the prisoner being visited, including drugs or weapons. Reasonable security arrangements need to be enforced to prevent this happening. It may be necessary, for example, to search prisoners before and after visits have taken place. It may also be necessary to search visitors before they go into the visit area. It is possible to make arrangements which meet all security needs while at the same time being sensitive to the need to respect the privacy of visitors.

The implications of this issue are referred to in chapter 7 of this handbook.

Closed or non-contact visits

Even after all reasonable precautions have been taken, a small number of prisoners and visitors will still do everything they can to breach security. In these cases it may be necessary to have a physical barrier between the prisoner and the visitor; these are often described as closed or non-contact visits. A typical arrangement will be a panel of strengthened glass to prevent contact and a telephone arrangement to allow speech. If these restrictions are to be applied to a prisoner for any length of time it will be inevitable that normal relationships will be put under increasing strain. For that reason these restrictions should be applied only when absolutely necessary. They should not be applied automatically to groups of prisoners, such as all of those awaiting trial or those in high security prisons. In each case there should be a form of individual assessment of risk, as described in chapter 7 of the handbook, which should be based on security considerations and should not be used as a form of punishment or deterrence. The need for these restrictions in each case should be reviewed at regular intervals.

Video conferencing

In a number of jurisdictions there are now arrangements to enable prisoners to speak to their families through video links. This is useful as an additional facility where the prisoner is held in custody a long way from home or where members of the prisoner's family have difficulty in travelling to the prison. The use of such technology must not become a substitute for direct contact between the prisoner and his or her family.

“ The televisit system is an alternative to family members visiting prisoners who are detained in institutions far from their home. Visits are conducted through video conferences that are expected to reduce expenses and time of family members. They only need to go to the nearest prison where this facility is available to visit the prisoner via the televisit system.

This system was established to facilitate and encourage visits by family members and indirectly fosters family ties and reduces the stress of the inmates as they serve their sentences. This facility is provided without any charge to the family or the prisoner.⁵⁰

From Malaysian Prison Department website

Volunteer visiting

For a variety of reasons there may be many prisoners who do not have family or friends to visit them. This may be because of the circumstances in which they were living before imprisonment or because they have been disowned as a result of the nature of their offence. In such cases the prison authorities should consider establishing a system for volunteers from the local community to visit these prisoners on a regular basis to help them to maintain contact with outside society.

Benefits to the prison

All of the arguments considered so far have related to the rights of prisoners and their families to be allowed to maintain relationships which are as normal as possible. It is also in the operational interests of prison administrators to ensure that this happens. Prisoners who are able to maintain good contact with their families will have a greater incentive to observe the normal rules and regulations of prison life. They are also likely to be able to resolve practical and other domestic problems which cause them anxiety. Staff will also learn about aspects of the prisoner's behaviour, life and character beyond the confines of the prison which will help them to treat each prisoner as an individual. In short, good visiting facilities are likely to help the prison function well in many different ways.

Letters

There are other forms of communication with family and close friends in addition to visits. One of the most important of these is by letter. In many jurisdictions prisoners are allowed to send a minimum number of letters at state expense while paying the postage on any additional ones which they wish to send. There is generally no operational need to place any restriction on the number of incoming letters which a prisoner may receive.

Monitoring or reading prisoners' correspondence

There was a tradition in some prisons until fairly recently that all correspondence from and to prisoners had to be censored by staff. There were two main justifications for this. The first was that prisoners might discuss escape plans or other threats to security with their correspondents. The second was that this was a useful way for staff to intercept any bad news, for example about a death or the break up of a marriage. It is now generally held that there is no operational justification on security grounds for monitoring all mail. It is extremely unlikely, for example, that a prisoner who is contemplating escape would be foolish enough to refer to this in a letter. At the same time, it is accepted that prisoners have the same right as other people to receive family news, good or bad, directly. For those prisoners who have been assessed as a high security risk it may be necessary to monitor incoming and outgoing correspondence and also to have a list of approved correspondents. For other prisoners it should not be necessary to monitor correspondence on a continuous basis. In most cases random or sample reading is likely to be sufficient.

Checking for forbidden contents

The authorities have a right to make sure that incoming correspondence does not contain any material which is forbidden such as weapons or drugs. Good practice in some countries is that all incoming correspondence is opened in the presence of the prisoner to which it is addressed. The member of staff checks that the envelope does not contain anything that is forbidden and then hands the letter to the prisoner without reading it.

Telephone calls

In many prison systems it is now possible for prisoners to make or to receive telephone calls. Logistical arrangements differ from country to country. In some cases the person receiving the call from the prisoner has to agree to meet the cost of the call. This can be a very expensive arrangement since such calls are normally charged at a higher rate than normal calls. In other prison systems prisoners can purchase special telephone cards, which sometimes will only permit calls to be made to approved telephone numbers. Telephone conversations become especially important when the prisoner is being held many miles from home and it is difficult for his or her family to visit.

Monitoring and recording calls

As with letters, there will be a need to maintain a balance between the right to privacy of the prisoner and his or her family on one hand and the legitimate needs of security on the other. Given the immediacy of communication by telephone, the prison authorities need to be sure that prisoners are not using telephone calls to arrange illegal activities, such as bringing goods into the prison or arranging escape attempts. In some countries this is done by recording all calls and retaining the taped record for a specific period of time. The only telephone calls which are listened to by staff as they are made are those by or to prisoners who have been assessed as presenting a high degree of risk.

“ ... prison authorities should be alert to the fact that modern technology offers new ways of communicating electronically. As these develop, new techniques of controlling them are emerging too and it may be possible to use them in ways that do not threaten safety or security.⁵¹

Commentary on Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, 2006

Some prison administrations allow prisoners to have access to other forms of communication including electronic mail.

“ A prisoner may, for a special reason, be granted permission to maintain contacts with the outside world by using electronic communication, telecommunications or other such technical connection unless the contacts endanger the security of the prison.⁵²

Finnish Imprisonment Act 2005 (amended 2015)

For some prisoners, especially foreign nationals, this may be the only reliable and inexpensive method of maintaining contact with their families.

Contact with legal and professional advisers

In addition to access to family and friends, prisoners often require access to lawyers, and other professional persons, including members of non-governmental organisations and human rights monitors. Visits and communication with such persons are in a category of their own. This is especially important for pre-trial prisoners and those convicted prisoners who are still involved in the judicial process. In such cases the prison authorities must consider very carefully the justification for any proposed restriction on access which might prejudice a prisoner's defence or appeal. Good grounds for such restrictions are likely to be very few.

In making arrangements for visits by professional advisers privacy will be an important consideration. It is expected, for example, that such visits will take place out of the hearing of staff. There also has to be special sensitivity about searching official correspondence and materials carried by or sent in by such visitors. Some of these issues are dealt with in chapter 16 of this handbook.

Access to reading material, television and radio

What the international instruments say

Nelson Mandela Rules, Rule 63:

Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the prison administration.

Putting it into practice

Regular access to external information

In addition to maintaining contact with family and friends, prisoners should be able to keep up to date with events in the wider world. For this reason they should have regular access to newspapers, to radio and to television. There is no operational reason, other than in exceptional circumstances, to censor access to the media. Neither should there be any moral censorship beyond that which is the norm in the country.

The internet

Prison administrations will need to give careful consideration to providing access to the internet. This can be an important source of information on the outside world but may also provide an opportunity for inappropriate activity.

A world beyond the prison

Access to a range of external information is important in helping prisoners to realise that there is still a world beyond the prison walls and fences to which they will one day return. Awareness of what is happening in the outside world can also help prisoners to behave in a more normal manner while living in the closed world of the prison. For long-term prisoners access to television, in particular, will enable them to maintain some contact with the very rapid changes which may be taking place in society outside the prison.

Increasing numbers of foreign nationals

In prison systems in all regions of the world there are large numbers of foreign national prisoners. With increased geographical mobility the number is increasing in many countries. The term ‘foreign national prisoners’ covers a wide range of people. It applies to those who come from their home country and are then convicted and imprisoned in another country. It can apply to those who have had a long relationship with the country in which they are imprisoned and may be permanently resident but do not have citizenship of that country. It may apply to those who are imprisoned not under criminal law but for immigration reasons. There are additional problems when an individual is stateless. The situation of those detained as irregular migrants is not covered specifically in this handbook although the human rights framework applies to all people who are deprived of their liberty.

Particular difficulties faced by foreign nationals

All the rights set out in this volume apply equally to prisoners who are non-nationals of the country in which they are detained. The international human rights framework however also recognises the particular difficulties of foreign prisoners and requires that measures are taken to prevent discrimination and to meet their particular needs.

- “ 39.1. Staff involved in the admission of foreign prisoners shall be appropriately trained to deal with them.
- 39.2. Persons who work with foreign prisoners shall be trained to respect cultural diversity and to understand the particular problems faced by such prisoners.
- 39.3. Such training may include learning languages spoken most often by foreign prisoners.
- 39.4. Training programmes shall be evaluated and revised regularly to ensure they reflect changing populations and social circumstances.
- 39.5. Persons who deal with foreign suspects and offenders shall be kept informed of current national law and practices and international and regional human rights law and standards relating to their treatment, including this recommendation.
- Specialisation**
40. Appropriately trained specialists shall be appointed to engage in work with foreign prisoners and to liaise with the relevant agencies, professionals and associations on matters related to such prisoners.⁵³

Council of Europe Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners

Right to consular help

Being imprisoned in a foreign country can give rise to a number of problems for the detained person that cannot be resolved by the prison administration, and prison administrations must ensure they respect foreign prisoners’ right to receive help from their home country’s diplomatic representatives as set out in the Vienna Convention on Consular Relations. When they are imprisoned in a country where they have no diplomatic representative they must be allowed to communicate with those diplomatic representatives that represent their home country.

Transfer treaties

A number of countries are party to transfer treaties which permit prisoners to serve their sentence in their home country. Where such treaties are in operation prison administrations should make every effort to assist prisoners wishing to exercise their rights under these treaties.

What the international instruments say

Vienna Convention on Consular Relations, Article 36:

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
 - (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
 - (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded to the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;
 - (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.
2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

Nelson Mandela Rules, Rule 62:

1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

Putting it into practice

The role of consular officials

This contact with consular officials should be confidential. Consular officers have the right to arrange legal representation for their nationals. Foreign prisoners have the right to refuse contact with consular officials if they wish. Foreign prisoners may not wish to contact their consular representatives because they prefer to keep the information about their imprisonment from their families, or they may not have much faith in the service provided by their consular officials.

Foreign prisoners who are refugees should be helped to communicate with the relevant international organisation that deals with refugees.

“ ... Persons deprived of liberty in a Member State of the Organization of American States of which they are not nationals, shall be informed, without delay, and in any case before they make any statement to the competent authorities, of their right to consular or diplomatic assistance, and to request that consular or diplomatic authorities be notified of their deprivation of liberty immediately. Furthermore, they shall have the right to communicate with their diplomatic and consular authorities freely and in private.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle V, 2008

Discrimination on the grounds of nationality is not permitted

Cultural and social isolation

The way foreign prisoners are treated by the prison administrations should not be discriminatory in any way. Foreign prisoners may well experience language difficulties and social and cultural isolation that will require the prison authorities to take special measures to help them. The fact that they are foreign should not be used as reason to restrict their access to the facilities and programmes that are generally provided to prisoners.

What the international instruments say

Nelson Mandela Rules, Rule 2:

1. The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.
2. In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.

Putting it into practice

Language needs

If they cannot communicate with the authorities and cannot understand what is happening around them foreign prisoners will be severely disadvantaged. The prison administration should therefore ensure they have access to interpreters and that as far as possible the main documents that a prisoner needs to understand are available in the languages that foreign prisoners can read. It is particularly important that material setting out prisoners' rights, the system of detention and how to complain and appeal against decisions made by the authorities are available to foreign detainees in a language they can understand. Whenever possible such prisoners should be allowed access to news media, including newspapers and journals, in their own language.

Admission procedures

Admission to prison in a strange country can be particularly difficult and bewildering for a foreign national prisoner. Prison administrations have approached this problem in various ways, for example by inviting fellow nationals from the prisoner's home country to assist with induction, by arranging a special briefing session or producing a video in a range of foreign languages.

Allocation

Foreign prisoners can be isolated from the mainstream of the prisoners by their language and their culture. In some countries foreign prisoners from the same language background or country are housed in the same prison or part of the prison together so that they can provide support for each other. If this is done for humanitarian reasons it can be an acceptable solution but if it leads to foreign prisoners being given worse conditions and facilities then it is not acceptable.

Equal access to facilities and services

Foreign national prisoners should not be discriminated against because they are not nationals of the country where they are being held. They should not be required to pay for their healthcare in prison on the grounds that they have not contributed to the country's insurance scheme. Where the country operates a system of prison leave foreign nationals should not be denied prison leave solely because they have no home to go to. NGOs and civil society organisations may provide hostels and shelters for them whilst they are on home leave. They should not be denied access to re-integrative activities because they are likely to be deported at the end of their sentence and therefore their re-integration is not an issue for the country where they are imprisoned.

Contact with families

For many of these prisoners there will be little or no possibility of receiving visits from family or friends. The prison authorities should make special arrangements to allow them to maintain contact with their families. This may be by permitting additional letters with free postage or providing access to electronic communications.

“ A large number of inmates held at Monsanto Prison were foreign nationals (22 out of the 56 inmates). Some of them stated that the Director agreed to prolong by half an hour – sometimes even by an hour – weekly visits when the visitor had travelled a long distance. The CPT welcomes this practice as it considers that there is a need for a certain flexibility when applying the rules on visits to prisoners whose families are unable to visit on a regular basis (due to cost or distance). The possibility to accumulate visits, to grant them additional telephone time or to use modern technology in facilitating communication (i.e. through Voice over Internet Protocol or Skype) would further help these prisoners to maintain contacts with their families.⁵⁴

Report by the European Committee for the Prevention of Torture on a visit to Portugal in 2013

Where prison rules require that incoming and outgoing mail is checked translators should be found who can read the languages of the prisoners. Such prisoners should be able to make periodic telephone calls to their families at the expense of the administration.

They should not automatically be sent to a prison in the most remote part of the country because it is assumed they will not receive any visits from their family. If families can travel from another country to visit their family member in prison these visits are likely to be less frequent than for local prisoners. In these cases the prison authorities should take into account the distance the visitors have travelled. For example whole day visits can be permitted or visits spread out over several consecutive days.

Staff training

Some specialised training in diversity will be needed to assist staff and to ensure that discriminatory attitudes do not prevail. The employment of some personnel who speak the languages of the prisoners is useful or some language training could be provided.

Women foreign prisoners

Some countries have in their prisons a group of women prisoners, often women from poor circumstances, who have been persuaded to smuggle drugs from another country. Such women are often given long prison sentences and may suffer particularly because of separation from young children. Special arrangements to meet the needs of these women and help them to maintain contact with their children should be made.

Civil society organisations

Civil society organisations, especially those linked to the community from which foreign prisoners come, are particularly relevant in helping the prison administration to meet its obligation to treat prisoners humanely. Where family visits are impossible, nationals from the prisoner's home country can visit the prisoners and help to alleviate the isolation. Such organisations can also help to provide reading material in the prisoner's language. In many cases contact with the prisoner's diplomatic representative may be difficult or infrequent. The prison authorities should also consider whether there are other foreign nationals in the local community who could provide a voluntary visiting service which would enable such prisoners to maintain some contact with their own culture.

The framework

Fair and just prison management

It is essential that all prison systems should be administered in a manner which is fair and just and which is perceived by everyone involved to be so. The prison is a community with rules and regulations which apply in different ways to everyone concerned, staff, prisoners and visitors. Since it has a hierarchical structure it is especially important that its regulations should be understood and followed by everyone, not solely by prisoners.

Clear procedures for requests and complaints

If there is a clear set of procedures to ensure that decisions are made properly there will be less need for complicated arrangements to deal with the consequences of poor decision making. Since prisoners are expected to obey the rules of the prison, and eventually those of the outside society to which they are to return, it is important that rules should be implemented fairly and equitably. From time to time prisoners are likely to perceive an element of unfairness in the way they are treated, either individually or in a group. This will happen even in the best managed prisons. It is important that there should be a set of procedures which allow prisoners to make special requests and to register any complaints which they have. These procedures should be clearly laid out in a way that can be understood both by prisoners and by the staff who deal directly with the prisoners.

Raising complaints at different levels

In the first instance prisoners should be able to raise any issue which concerns them with the staff who are their immediate supervisors. If the matter cannot be resolved at that level, there should be an opportunity to raise the request or complaint with the authorities who are in charge of the prison. If the matter still cannot be resolved, the prisoner should have the right of access to a superior authority outside the prison. Many prison administrations also provide a parallel external system through which requests and complaints may be pursued. These may include local monitoring bodies, ombudsmen and local and national politicians.

No victimisation of those who complain

There are implications in a prison where those who are complaining live under the control of those about whom many of their complaints are made. In such circumstances it can often not be in the prisoners' interests to raise complaints however justified they might be. It should always be clear that the prisoner will not be punished for raising complaints and procedures should be in place to prevent such victimisation.

Complaints by family or representatives

If prisoners are not in a position to raise complaints personally, it should be open to their family or representative to raise the issue on their behalf.

What the international instruments say

International Covenant on Civil and Political Rights, Article 2:

Each State party to the present Covenant undertakes:

- (a) to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) to ensure that the competent authority shall enforce such remedies when granted.

Nelson Mandela Rules, Rule 56:

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

Nelson Mandela Rules, Rule 57:

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

- (1) A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial power.
- (2) In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
- (3) Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.
- (4) Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

Putting it into practice

Understandable procedures

The objective of good prison management should be, as far as possible, to prevent the causes of serious complaints from arising in the first place. One way of achieving this is by having and adhering to a very clear set of procedures covering all aspects of the daily life of the prison. The obligation to provide these procedures and to make them available was dealt with in chapter 5 of this handbook. These procedures should be written in simple language which can be understood by all and should be made available to all prisoners and staff. They should form part of the information pack which is made available to a prisoner on arrival at each prison. Where resources are scarce the rules and regulations should be put on posters and fixed to a wall in a prominent place. Prisoners who are not literate should have the rules read and explained to them.

Information on the methods of complaint

These procedures should contain a description of how a prisoner can go about making a request about his or her treatment and also should describe the avenues of complaint which are available to prisoners, beginning at the local level and going on to the most senior level in the prison and, if need be, beyond the prison.

Removing deterrents to making complaints

No procedures should be in place which might deter prisoners from raising legitimate complaints and grievances. The disciplinary code should not contain any regulations that make it difficult for prisoners to complain, for example, by punishing them for making allegations against staff which then turn out to be unfounded.

Preventing victimisation

A major deterrent to prisoners making complaints is their knowledge that prison staff have the power to exact retaliation. It should be made clear that prisoners will not be punished or suffer in any way as a result of making a complaint and procedures should be in place to ensure prisoners are not victimised for complaining. If necessary, prisoners should be able to make a complaint in confidence. Eventually the person complained of will need to know that the complaint has been made and at that stage senior staff should be vigilant to ensure that no retaliatory action is taken. Prison staff need to be confident that if they are accused they will have the chance to defend themselves according to the principles of natural justice.

“ Prisoners were, in principle, entitled to submit complaints to the prison director, the Central Prison Administration, the supervisory prosecutor and the Ombudsman. However, as was the case during the previous visits, there was a widespread lack of trust among prisoners in the existing complaints system, especially concerning the confidentiality of the complaints sent to outside bodies. Many prisoners interviewed by the delegation felt that filing a complaint would aggravate their situation; more specifically, some of them claimed that they would not make use of this possibility because they feared retaliation from staff. In addition, some allegations were received that complaints sent to competent outside bodies were not responded to.⁵⁵

Report by the European Committee for the Prevention of Torture on a visit to Latvia in 2011

Resolving requests and complaints

Many complaints are likely to be about issues concerning daily routine or treatment. Matters which will be of little importance to people in normal civil society can take on great significance in the highly disciplined world of the prison, in which there are likely to be regulations affecting almost every aspect of daily life. One of the main objectives of the prison administration in this area should be to prevent a simple request developing into a complaint, or a complaint developing into a formal grievance, or a grievance developing into an appeal to a higher body.

Resolving grievances informally

The best way of achieving this is to encourage good personal relationships between first line staff and the prisoners they deal with directly on a daily basis. This subject was dealt with in detail in chapter 3 of this handbook. If such relationships exist, the prisoner will be more likely to go directly to the staff member involved to make a request or complaint in the expectation that the issue will be dealt with in a fair and speedy manner. A well-trained member of staff will know which matters he or she can deal with directly and which will have to be referred to a more senior level. The staff member will be able to explain the process to the prisoner. One of the most important features of good practice in this respect is that the prisoner should be given a response as soon as is reasonably possible. If the response is negative it is particularly important to provide an explanation. In such a case the prisoner will be more likely to accept the answer which is given, even when it is negative, and so the request will not turn into a complaint.

A formal procedure

It will not be possible to resolve all requests and complaints in this informal manner. In addition, each prison system needs to have a formal procedure for dealing with requests and complaints which cannot be resolved informally between individuals. On each working day the prison director or a senior member of staff designated by the director should consider all such approaches from prisoners. Wherever possible the prisoner should be allowed to make the request or complaint in person. If the volume of requests makes this impossible, arrangements should be made for it to be submitted in writing. Regardless of whether the request is submitted orally or in writing the prison should make a formal written record of the request and of the response to it.

Speed is important

Requests and complaints should be dealt with as quickly as possible. The general procedure should indicate how many days it will normally take to give a response. If the request is a complicated one which cannot be resolved in the normal time, the prisoner should be told how long it will take.

Taking complaints to the next level

If the director of the prison rejects the request or complaint, or if the complaint is being made against the director, the prisoner should be able to make a written application to a more senior person in the prison administration, usually at regional or national headquarters. In the interests of justice and fairness it is important that a complaint being made against an individual member of staff should not have to be channelled through that person. For this reason, there should be a procedure which allows prisoners to submit confidential requests and complaints to higher authority.

“ Persons deprived of liberty shall have the right of individual and collective petition and the right to a response before judicial, administrative, or other authorities. This right may be exercised by third parties or organizations, in accordance with the law.

This right comprises, amongst others, the right to lodge petitions, claims, or complaints before the competent authorities, and to receive a prompt response within a reasonable time. It also comprises the right to opportunely request and receive information concerning their procedural status and the remaining time of deprivation of liberty, if applicable.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle VII, 2008

Complaining to independent outside bodies

Arrangements for making requests or complaints to independent inspectors and others outside the prison system are dealt with in chapter 4 of this handbook. Prison administrators should not prevent or discourage prisoners from making complaints to external judicial authorities or independent inspectors. Providing prisoners with such external avenues of complaint can help to reduce potential tension.

“ In South Africa prisoners have the statutory right to complain directly to the Independent Prisons Visitors who are appointed by the Inspecting Judge of Prisons through a public nomination and consultation process with community organizations. During 2007, the Independent Prisons Visitors received and recorded a total of 158,362 complaints from prisoners.⁵⁶

Judicial Inspectorate of Prisons, Annual Report, 2008

Allegations of torture

While all requests and complaints should be dealt with as speedily as possible, some require to be handled with greater urgency than others. For example, it is of prime importance that any allegation of torture or inhuman treatment should be dealt with immediately in a manner which inspires confidence on the part of the person making the complaint. A procedure should exist to make sure that any allegation of this nature goes immediately to the head of the prison or, if the allegation is made against that person, to a superior external body. This matter is dealt with in chapter 4.

Allegations of criminal activity

Similarly, there should be a clear procedure for handling any complaint which includes an allegation of criminal behaviour on the part of either a member of staff or another prisoner. Such allegations should normally be referred to the agency in civil society which is responsible for investigating or prosecuting criminal acts. This agency can then decide whether it should pursue the matter as a criminal investigation or refer it back to the prison authorities for administrative action.

Complaining about the legal process

Prisoners may also raise issues to do with their detention, their sentence or their release date. Requests of this nature should be passed to the appropriate legal authority.

Appeals against disciplinary decisions

Prisoners may also wish to complain about disciplinary decisions which have been taken against them when they feel that the proper procedures were not followed in their case or that they were punished unjustly. As described in chapter 9 of this handbook, there should be a procedure to allow such an approach to a higher authority.

*Complaints
are important
to prisoners*

The vast majority of requests and complaints by prisoners are likely to be concerned with administrative matters. Many of them may be relatively unimportant in objective terms but each will be of great importance to the prisoner concerned. They may be concerned with food, with lost property, with delays in correspondence, about problems with visits or about the attitude of staff. Very often all that the prisoner asks for is an acknowledgement that something has gone wrong and that an apology should be offered. If the prisoner sees that such complaints are dealt with honestly and frankly there will be less likelihood of a continuing sense of grievance.

*Group
complaints*

The procedures described thus far have been concerned with requests and complaints raised by individual prisoners. Prison administrations will also need to be sensitive to any cultures or traditions where concerns are raised through a group or family leader rather than individually.

The framework

Treating all prisoners fairly

Traditionally prison authorities have based their policies on the view that prisoners are a homogeneous group and everyone can be treated in the same way. This has meant that prison policy and practice has been shaped as if all prisoners were adult men from the main ethnic, cultural and religious grouping in the country.

Recognising differences

This approach rarely reflects the reality. Within any prison system there will be prisoners from a variety of backgrounds and with differences which may include differences of race, ethnicity, social origin, culture, religion, sexual orientation, language or nationality. Prison rules and regulations need to take account of the different requirements which prisoners may have on any or all of these grounds. Furthermore, there should be no discrimination against any prisoners on any of the above grounds.

Danger of discrimination

In many countries there are special concerns about discrimination against minority groups, whether by race, ethnicity, religion, sexual orientation or any other characteristic. The dangers of discrimination become much greater in the closed conditions of a prison. Prison administrations have a responsibility to ensure that they prevent the development of sub-groups that discriminate against minorities, both within their staff and within the prison population. This may require additional vigilance on any occasion when tensions are heightened in the community outside the prison.

Duty to combat discrimination

Many of the prejudices which exist in society against minority groups are reflected in the world of the prison. This is no surprise since prisons to a great extent mirror the values of the society in which they exist. Prison authorities have a duty to ensure that there is no discrimination against any minority group of prisoners or staff or any religious group. This includes institutional discrimination which is within the structure of the organisation as well as discrimination which is practised by individuals.

Respecting freedom of thought, conscience and religion

The right to freedom of religious belief and to observe the requirements of that religion is a universal human right and applies to all prisoners as well as to free persons. Prison authorities have a duty to respect prisoners' right to observe their religion.

What the international instruments say

Universal Declaration of Human Rights, Article 2:

Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Universal Declaration of Human Rights, Article 18:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

International Covenant on Civil and Political Rights, Article 27:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

International Convention on the Elimination of All Forms of Racial Discrimination, Article 5:

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.

Nelson Mandela Rules, Rule 62:

1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

Nelson Mandela Rules, Rule 65:

3. Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his or her attitude shall be fully respected.

Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Principle 5 (1):

These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

Putting it into practice

Monitoring discrimination

There are a variety of ways of measuring whether discrimination is taking place, for example, in the allocation of jobs which are prized by prisoners. These include working in the kitchen or in the prison library where there is one. Prison management should check whether any minority groups are under-represented or even excluded from these prized jobs. The same checks should be applied to access to education. Which prisoners get the best living accommodation should also be kept under review. The frequency of disciplinary action taken against prisoners, broken down by the different groups, is also an important measure.

Reinforcing non-discrimination

One way of reinforcing the fact that discrimination is not acceptable is to have public statements about the policy of non-discrimination in prominent display around the prison.

“ Under no circumstances shall persons deprived of liberty be discriminated against for reasons of race, ethnic origin, nationality, color, sex, age, language, religion, political or other opinion, national or social origin, economic status, birth, physical, mental, or sensory disability, gender, sexual orientation, or any other social condition. Therefore, any distinction, exclusion, or restriction that is either designed to or has the effect of undermining or impeding the recognition, enjoyment, or exercise of the internationally recognized rights of persons deprived of liberty, shall be prohibited.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle II, 2008

Staff from minority groups

An important method of reducing discrimination can be to recruit staff from different minority groups to work in prisons with a chance to progress to the more senior levels. Reference is made to this in chapter 3 of this handbook. During their training and throughout their service all staff should be given help in how to work positively with different groups of prisoners.

Taking positive action

Equality of treatment involves more than ensuring that there is no discrimination. It also means taking positive action to make sure that the special needs of minority groups are met. This can mean providing special diets for some prisoners on religious, cultural or other grounds. Such a provision may not involve any additional cost; it may simply mean better organisation.

Social reintegration

In running programmes for social reintegration it is important to recognise the specific community to which the prisoner will return.

Formal consultation

Chapter 3 of the handbook referred to the need to encourage groups from the local civil society to visit prisons on a regular basis. These groups should include representatives of minority groups in the community.

In a number of administrations it has been found helpful to consult, on a formal basis, with representatives of minority groups on the potential impact of proposed regulations or to appoint advisers who will help shape appropriate policy.

Religion

What the international instruments say

Universal Declaration of Human Rights, Article 18:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

International Covenant on Civil and Political Rights, Article 18 (1):

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Nelson Mandela Rules, Rule 65:

1. If the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.
2. A qualified representative appointed or approved under paragraph 1 of this rule shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times.
3. Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his or her attitude shall be fully respected.

Nelson Mandela Rules, Rule 66:

So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination.

European Prison Rules, Rule 29:

- 29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.
- 29.3 Prisoners may not be compelled to practise a religion or belief, to attend religious services or meetings, to take part in religious practices or to accept a visit from a representative of any religion or belief.

Putting it into practice

Religious observance

Deprivation of liberty must not include deprivation of the right to observe the requirements of one's religion. The prison authorities should ensure that:

- Prisoners have the opportunity to pray, to read religious texts and to meet other requirements of their religion, such as clothing or washing, as often as their religion requires.
- Prisoners of the same religion should have the opportunity to gather as a group for religious services on religious holy days.
- Prisoners should have the opportunity to be visited by qualified representatives of their religion for private prayers and group services.

All recognised religions to be included

These provisions should apply to all recognised religious groups and should not be restricted to the main religions in any country. Special attention should be paid to the religious needs of prisoners from minority groups. They should always be able to observe the tenets of their religion in terms of such matters as personal or communal prayers, hygiene and clothing requirements.

Freedom to subscribe to no religion

It is also important to ensure that prisoners who do not adhere to any religious group or who do not wish to practice a religion should not be obliged to do so. Prisoners should not receive additional privileges or be allowed to live in better conditions because of their religious affiliation or practice.

Visits from religious representatives

Prison regulations should include the right of qualified religious representatives to visit prisons regularly to meet prisoners. Facilities should be provided to all prisoners who wish to observe their religious duties. This may include the right to pray in private at specified times of the day or night, to carry out various washing practices, to wear particular items of clothing or to fast at certain times.

Prisons must be open to public scrutiny

The framework

All prisons are places where men and women are detained against their will. The potential for abuse is always present. Therefore they must be institutions which are managed in a way which is fair and just. All institutions which are managed by or on behalf of the state should be subject to public scrutiny. This is especially important in the case of prisons because of their coercive nature.



States should:

Establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights.⁵⁷

African Commission on Human and Peoples' Rights, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), 2002

External inspection is essential

This handbook describes in detail what is involved in good prison management. However, even in the best managed prisons, questions will be asked from time to time about what is going on and complaints will be made. Since ordinary members of civil society cannot easily discover for themselves what goes on behind the high walls and fences of a prison, there has to be a system of inspection which checks that everything is as it should be.

The value of outside scrutiny

Inspection procedures protect the rights of prisoners and their families. They are meant to ensure that proper procedures exist and that they are observed by staff at all times. Inspections should cover all the aspects of prison life which are dealt with in this handbook.

Outside scrutiny is a safeguard for prison staff

It is equally important to recognise that inspections can also be a safeguard for prison staff. They are a means of dealing with any allegations of mistreatment of prisoners or improper behaviour by staff. Where these occur they should be acknowledged and the staff involved identified. This will also be a way of protecting staff against unjust allegations. However, inspections are not only about failures. It is just as important that they should identify good practice which can be used elsewhere as a model. They can also give credit to staff who are doing their work in a professional manner.

Civil society involvement is a form of scrutiny

Inspection can take several forms. There is an important level of informal scrutiny which exists in a prison where there is regular contact between the prison and community agencies. In situations where members of civil society come into prison on a regular basis there will be less likelihood of impropriety on the part of the prison administration and a greater likelihood that people in the community will understand what goes inside their prisons. The people coming into prison regularly from civil society may be teachers from local schools, health care workers from local hospitals, members of religious and cultural groups. Their activities are described

elsewhere in this handbook. They are not inspectors in the strict sense of that term but their presence can amount to a type of informal inspection. They are also valuable because they also bring a different perspective from that of prison professionals.

Independent monitoring

Some prison administrations have developed a more formal role for members of the local community through systems of independent monitoring. These local monitoring bodies take on responsibility for more formal scrutiny of the work of the prison and for reporting back to the prison authorities and, in some cases, to the local community. Such systems can provide an effective means of preserving and promoting human rights and of preventing abuse. They also provide formal links between prisons and the society on whose behalf prisons are run.

“Relatives of detainees, merchants, religious figures and lawyers are among the volunteers working in the Community Councils (*conselhos da comunidade*), which represent society in the monitoring of the prison system and in the resocialization of convicts. These Councils must be created in each district, at the initiative of the judge responsible for criminal execution, with a composition of at least one representative of the commercial or industrial association, a lawyer appointed by the Brazilian Bar Association (OAB), a public defender selected by the general public defender and a social worker chosen by the Sectional Office of the National Council of Social Workers. In addition, participation is open to relatives of prisoners and representatives of other social segments. All counselors work voluntarily, without compensation.

The Community Councils have a legal duty to visit, at least monthly, the penal establishments existing in the district; interview prisoners; submit monthly reports to the execution court and the Penitentiary Council, and to obtain material and human resources for better assistance to the inmate or inmate, in coordination with the direction of the respective prison establishment.⁵⁸

From the Brazilian Conselho Nacional de Justiça website

Administrative inspections

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

Independent inspections

An important type of inspection is that which is carried out by a body which is independent both of individual prisons and of the prison system. In some cases the staff of such an agency are appointed by the government. The most independent arrangement is when they are appointed by parliament and report back to parliament. In some instances they will carry out a regular programme of inspections. In others they will undertake these on an ad hoc basis. They will inspect the daily operation of prisons and from time to time they will carry out an inspection in the wake of a serious incident.

The most comprehensive form of inspection is when all of the above types exist side by side and complement each other in their activities.

International inspection mechanisms

The Optional Protocol to the UN Convention against Torture (OPCAT)

The framework of monitoring and inspection of places holding people detained by the state was taken to another level by the coming into force in 2006 of the Optional Protocol to the UN Convention against Torture and the creation of the UN Sub-committee on the Prevention of Torture. The Optional Protocol is a worldwide system with two elements. First every ratifying state has to designate an inspection body to become that country's National Preventive Mechanism. Secondly the Optional Protocol allows the UN Sub-committee on the Prevention of Torture to visit places of detention in those countries that have ratified.

The Special Rapporteur on Torture appointed by the United Nations has developed an important role in commenting on abuses affecting people deprived of their liberty. In recent years the Rapporteur's influence has been increased by the habit of visiting prisons and commenting publicly on what is found.

“ International law requires that States guarantee the effective protection of persons at risk of torture and ill-treatment, in particular persons deprived of their liberty who are under the complete control of the detaining authorities. Indeed, arrest and deprivation of liberty are inherently associated with a risk of intimidation, torture and other ill-treatment, and experience shows that this risk is especially high in the very early stages of custody and detention... Procedural safeguards have been developed to counter the risk of torture and other cruel, inhuman or degrading treatment or punishment, and their implementation is key to eradicating such abuse in practice.⁵⁹

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 February 2017

International Committee of the Red Cross

The ICRC's visits to detention traditionally focused on people held in connection with armed conflict and other situations of violence but wherever it can, it also visits people detained for other reasons, in both criminal and administrative detention, if doing so could improve their treatment and the conditions under which they are being held. The ICRC's work includes visiting detainees under the jurisdiction of international courts and tribunals, common law detainees, and migrants.⁶⁰

In an international armed conflict, the 1949 Geneva Conventions give the ICRC the right to visit detainees – both prisoners of war and civilians protected by the Fourth Geneva Convention. The Conventions also entitle them to receive information about these people and to carry out humanitarian activities.

In a non-international armed conflict, there is no treaty explicitly giving the ICRC the right to visit detainees. However, article 3 common to the Geneva Conventions states that the ICRC can offer its services to the authorities, in its capacity as an impartial humanitarian organization, and they regularly visit people held in connection with non-international armed conflicts. The practice is recognised internationally, in particular via numerous resolutions of the International Conference of the Red Cross and Red Crescent and by both States and non-State groups involved in such conflicts.

In other situations of violence, ICRC acts on the basis of its right of initiative, conferred by the Statutes of the International Red Cross and Red Crescent Movement. In such contexts, they have to negotiate for authorisation to visit detainees, just as they do during non-international armed conflicts.

At a regional level the Special Rapporteur on Prisons and Conditions of Detention in Africa, who is appointed by the African Commission on Human and Peoples' Rights, carries out inspections of prison systems in Africa and publishes reports detailing both problems found and good practices seen.

The Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is the most long-standing example of an inter-governmental inspection mechanism. It exerts considerable influence on the improvement of conditions of detention and imprisonment in the countries, stretching from the Atlantic to the Pacific Ocean, which form part of the Council of Europe.

Some jurisdictions allow formal rights of access to their prisons to both national and international human rights NGOs.

What the international instruments say

International instruments are clear in requiring that all prisons and places of detention should be subject to a system of inspection which is independent of the authority responsible for administering those prisons. They also give prisoners the right of full and confidential access to inspectors.

United Nations Convention Against Torture, Article 16(1):

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General principles, Article 1:

The objective of the present Protocol is to establish a system of regular visits...to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 3

... the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Nelson Mandela Rules, Rule 83:

- 1. There shall be a twofold system for regular inspections of prisons and penal services:**
 - (a) Internal or administrative inspections conducted by the central prison administration;**
 - (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.**
- 2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.**

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.
2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

Putting it into practice

National Preventive Mechanisms

Governments which have ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must put in place within one year of ratification arrangements for inspection of all places of detention so as to prevent torture and other forms of cruel, inhuman or degrading treatment. These arrangements must ensure there are bodies in place which:

- are independent;
- have a clear authority in law;
- are adequately resourced;
- have free and unfettered access to places of detention;
- may make recommendations.

Civil society involvement can prevent abuses

Other chapters of this handbook describe the benefits of having a good working relationship between prisons and local civil society, as part of which respected members of civil society will regularly come into prison to take part in various activities. An added benefit of such an arrangement is that it can act as an informal type of independent monitoring of all that goes on in the prison. The visitors will interact with staff and come into regular contact with prisoners in a way which will enable them to observe problems and spot signs of abuse. Their presence should be an encouragement to good inter-personal relations. The presence of civil society representatives can be preventive, stopping abuses before they occur. Formal inspection procedures will often only identify failures after they have occurred. The comments of these visitors on what they see in prison will have an added importance in that they will be based on their experience and expectations of society outside the prison. As a result they may be in a position to question and challenge established prison procedures.

“ Some recent good practice has emerged out of Kenya with a collaboration between the Kenya Prison Service (KPS) and the Raul Wallenberg Institute where KPS human rights officers and Prison Managers are trained and mentored to conduct full internal audits of prisons against the Nelson Mandela Rules. The approach uses action planning initiatives by the local prison authorities (following the audit) to improve conditions and compliance with the Rules.⁶¹ ”

The more formal types of inspectors, who are described next, should always make sure that they consult these regular visitors to the prison whenever they are carrying out formal inspections.

Formal monitoring

Some administrations have well-established arrangements for formal monitoring of prisons by bodies composed of members of the community. Other administrations have recently introduced or are beginning to consider similar arrangements, some in response to their ratification of OPCAT. The best such arrangements are those in which independent members of civil society are appointed to monitor all aspects of life in prison and to report publicly on their findings. In order to be effective, lay monitors should have unrestricted access to all areas of a prison and should be responsible to the public, through parliament for example, rather than to the prison administration.

“ The Board of Visitors of Detained Persons was established in 2007. It submits reports and makes recommendations to the Minister of Justice concerning the material conditions of the correctional facility; the educational and integration programmes as well as on medical and psychological care. Staff of the Board visit detention centres once a month, monitor the detention conditions; receive complaints from detainees and conduct interviews with the Centre’s authorities. A psychiatrist regularly accompanies the Board members during their visits.⁶²

UN Human Rights Council, Report of the Working Group on Arbitrary Detention on its follow-up mission to Malta, 2016

Monitoring serious incidents is an important task

In England and Wales there is a requirement that lay monitors must be summoned to attend and observe any serious incident in prison. This serves the dual purpose of helping to protect prisoners from abuse and safeguarding staff against unjust allegations.

Most prison systems have administrative inspections

Within most prison administrations there is some form of internal inspection process. The individuals who carry out this work are usually senior members of the prison administration who are knowledgeable about prisons and prison management. They are likely to be based in a team which works within the central prison administration and has no immediate link to individual prisons. They may inspect all prisons within a region. Alternatively they may work as teams on a functional basis, for example, inspecting all prisons for women or for juveniles.

Checking adherence to government procedures

In some prison systems these teams act as auditors rather than inspectors. Their main function is to check that proper procedures are in place and that administrative instructions are being observed and there is no malpractice or corruption. In practical terms there should be a clear distinction between the role of an auditor and that of an inspector. An auditor usually concentrates on how things are being done whereas an inspector will concentrate on what is being done and what are its results. It is possible for a prison to satisfy government inspectors that the procedures are being properly followed yet it could still be a badly managed prison in the terms set out in this handbook. Prison auditors have an important management role to play but they should be in addition to independent inspectors, not replace them.

Internal inspectors should have unrestricted access

An internal inspection team should have unlimited access to all places and people within prisons and places of detention. They may have a programme of inspections which are announced in advance but they should also carry out ad hoc inspections on an unannounced basis and outside normal working hours. They should usually report directly to the head of the national prison administration.

Identifying good practice is important

The role of formal audit and inspection is not simply to identify unacceptable practices. These processes also have an important part to play in identifying and disseminating good practice.

Independent inspection is vital for good prison management

In addition to internal inspection procedures there should also be a form of inspection which is entirely independent of the prison system. One possible arrangement is that the inspectors are appointed by the government. This is not entirely satisfactory since it is the government which is ultimately responsible for the management of the prison system. The best way of guaranteeing independence is if the inspector is appointed in some way through a parliamentary process, for example as an ombudsman. If the inspector then reports his or her findings directly to parliament, there is less likelihood of any administrative interference in his or her reports.

“ The purpose of the Inspector of Custodial Services is to provide independent scrutiny of the conditions, treatment and outcomes for adults and young people in custody, and to promote excellence in staff professional practice.

The Inspector has jurisdiction over all correctional facilities, including publicly and privately-run correctional centres and juvenile justice centres, court custody centres, police cells managed by Corrective Services NSW, transitional centres, inmate/detainee transport, and custodial residential facilities. The Inspector is able to examine correctional and juvenile justice facilities at any time and make recommendations about issues of concern.

Inspections may be instigated by the Inspector or at the request of the Minister for Corrections or a Parliamentary Joint Committee or any public authority or public official.

Administration of the office of the Inspector resides within the Department of Justice. The Inspector reports to Parliament and is subject to oversight by the Parliamentary Committee on the Ombudsman, the Police Integrity Commission, and the Crime Commission.⁶³

From the website of the New South Wales Government

Judicial oversight

In some countries, such as France and Spain, judges are given the responsibility of ensuring that prisons are managed according to the law and that prisoners are treated humanely. This arrangement should ensure independence since judges will not be a part of the prison system but it is important that these penitentiary judges are able to give priority to the work of inspecting prisons.

“ Competent, independent, and impartial judges and tribunals shall be in charge of the periodic control of legality of acts of the public administration that affect, or could affect the rights, guarantees, or benefits to which persons deprived of liberty are entitled, as well as the periodic control of conditions of deprivation of liberty and supervision of the execution of, or compliance with, punishments.

Member States of the Organization of American States shall ensure the necessary resources to permit the establishment and effectiveness of judicial bodies of control and supervision of punishments, and shall provide the necessary resources for them to function adequately.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle VI, 2008

The public standing of the independent inspector

The status of the independent prisons inspectors will be enhanced by public awareness of their role, so the appointment of persons with public credibility as prison inspectors is important. If the inspector comes from a non-prison profession, and is for example a judge, at least some members of the inspection staff should have direct knowledge of prisons and prison administration. There should also be specialist inspectors in subjects such as health care and mental health, education, buildings and minority issues.

Inspectors have a role after serious incidents

In addition to their normal programme of inspections, independent inspection teams should also have the right to carry out inspections following any serious incident or riot. In cases such as this they should have access to all available evidence and should be able to interview everyone who was involved, staff and prisoners.

Other forms of inspection

In addition to the specialist prison inspection unit, some jurisdictions also place a responsibility on other government or central agencies to inspect certain aspects of a prison's life. These may include agencies such as the Human Rights Commission or Auditor General. There may also be formal links between inspection and agencies which investigate complaints from prisoners as well as inspectors of education, of health and of safety.

Reporting and responding to inspections

Independent inspectors should publish all parts of their reports on prisons except those that are related to confidential security information or details of individual persons. The effectiveness of any system of inspection, formal or informal, will be undermined if inspectors do not submit reports on their findings or if such reports are ignored.

All forms of inspection should specify a clear reporting procedure with appropriate arrangements for matters which may require urgent attention.

The individual prison, the prison administration and the government should also undertake to respond promptly and fully to the reports which they receive. It is useful if reports and the responses to them are made public, subject to legitimate security considerations.

The publication of reports, for example by the African Special Rapporteur and the Council of Europe's Committee for the Prevention of Torture has had an important secondary effect in helping to eliminate unacceptable practice and disseminate good practice in other prisons and administrations.

Pre-trial prisoners and all others under detention without sentence

The framework

Some definitions

In many countries a large proportion, sometimes even a majority, of people in prison or jail have not yet been convicted. They may be under investigation, a decision may not have been made about whether their case should go to trial or they may be simply awaiting trial.

Different jurisdictions have different legal terms to describe such persons. They may be referred to as being under investigation, under trial, awaiting trial or on remand. For ease of reference this handbook describes all such persons as being pre-trial.

- In some jurisdictions the word prisoner is used only to refer to people who have been convicted. Those who are not yet convicted or who are in prison for some other reason may be referred to as detainees. Again for ease of reference, in this handbook the phrase prisoner is used to refer to everyone who is in any form of detention authorised by a legal authority.
- Finally, some jurisdictions use the word prison only for places which hold convicted prisoners. The places which hold those who have not yet been convicted are referred to as detention houses or jails. In this handbook the word prison is used to describe every place holding a person in legal detention.

The presumption of innocence

The most important principle in the management of pre-trial prisoners is the fact that they must always be presumed to be innocent. Unlike convicted prisoners they are not being held in prison as a punishment. Prison administrations must ensure that their unconvicted status is reflected in their treatment and management.

The problems of pre-trial detention

Not only must pre-trial prisoners be presumed to be innocent while awaiting trial. In many cases they will also be found to be innocent once their cases come to trial. In addition, the judicial process in many countries is such that cases are often slow to come before the court so that even those who are found guilty may serve a much longer period of pre-trial detention than the sentence which they eventually receive. All of this may contribute to a legitimate sense of grievance which may affect the behaviour of many pre-trial prisoners and which should be borne in mind by prison administrations.

“ As the Inter-American Court has ruled, the principle of presumption of innocence also gives rise to “the obligation of the State not to restrict the liberty of a detained person beyond the limits strictly necessary to ensure that he will not impede the efficient development of an investigation and that he will not evade justice. Preventive detention is, therefore, a precautionary rather than a punitive measure.”

Therein lies the importance of the criterion of reasonableness in the enforcement of this measure. Keeping a person incarcerated for longer than is reasonable for meeting the goals sought with detention would equate, in practice, to anticipating the sentence. In addition, Art. 7.5 of the Convention itself “imposes temporal limits on the duration of pre-trial detention and, consequently, on the State’s power to protect the purpose of the proceedings by using this type of precautionary measure.”⁶⁴

From Inter-American Commission On Human Rights,
Report On The Use Of Pretrial Detention In The Americas, 2013

Too many pre-trial prisoners

In many jurisdictions the slowness of the judicial system and the resultant large numbers of pre-trial prisoners are major factors in prison overcrowding. Poverty is also a significant element in this since many prisoners may be unable to afford the high costs of release on bail. In various parts of the world pre-trial prisoners make up more than half the prison population with rates in excess of 70% in countries as far apart as Paraguay, Bangladesh, Benin and Yemen. The Philippines has 74% of its prisoners in pre-trial detention (5th highest in the world) and as a result has a 436% occupancy rate (2nd highest in world).⁶⁵

Often these figures refer only to those detained under the prison administration and do not include those in police cells or other forms of detention.

“ In many European countries, the persistent problem of overcrowding in prisons, with all its related challenges, has to be ascribed to a large extent to the high proportion among the total prison population of remand prisoners (i.e. prisoners who are detained by court order and are still awaiting their trial or have not been convicted by a final judgment). However, this is not the only reason why the CPT pays close attention to remand prisoners during its visits. In the CPT’s experience, remand prisoners in particular are all too often held in dilapidated and overcrowded cells and are frequently subjected to an impoverished regime. In a number of visit reports, the CPT has taken the view that the conditions of detention of remand prisoners in the establishments visited were totally unacceptable and could easily be considered to be inhuman and degrading. Moreover, remand prisoners are frequently subjected to various types of restrictions (in particular as regards contacts with the outside world), and, in a number of countries, certain remand prisoners are held in solitary confinement by court order (sometimes for prolonged periods).⁶⁶

European Committee for the Prevention of Torture,
Remand detention: Extract from the 26th General Report, 2017

Separating investigative and prison authorities

There should be a clear separation of functions between the agencies which are responsible for investigating crimes, which are usually the police and the prosecuting authority, and the prison administration which is responsible for detaining accused persons on the order of a judicial authority. The fact that an accused person is detained may assist the investigating authorities in their work but the conditions of imprisonment should never be an element of the investigation. In other words, it is not permissible to hold pre-trial prisoners in very restricted conditions simply in order to encourage them to co-operate with investigators or to confess to their guilt. The investigating or prosecuting authority should not be able to influence the prison authorities as to how they treat prisoners who are awaiting trial.

“ Law enforcement officers and officials from other investigative bodies are obliged to respect and protect the inherent dignity and physical and mental integrity of all persons, including suspects, witnesses and victims. Nevertheless, the use of torture, other ill-treatment, coercion and intimidation against persons in custody and during interviews continues unabated in most if not all regions of the world. This is so not only despite the universal and absolute prohibition of such practices, but also despite scientific and historical evidence that abusive and coercive techniques elicit unreliable information and have adverse operational, institutional and public safety consequences.⁶⁷

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2017

What the international instruments say

Universal Declaration of Human Rights, Article 11:

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

International Covenant on Civil and Political Rights, Article 9:

1. Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Nelson Mandela Rules, Rule 111:

1. Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as “untried prisoners” hereinafter in these rules.
2. Unconvicted prisoners are presumed to be innocent and shall be treated as such.
3. Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit from a special regime which is described in the following rules in its essential requirements only.

Putting it into practice

Special situation of pre-trial prisoners

Prison rules and regulations are directed primarily at the management of convicted prisoners. Pre-trial prisoners are to be presumed to be innocent and, therefore, should not be subject to the same rules and regulations as convicted prisoners. Chapter 5 of this handbook deals with admission procedures. These procedures are particularly important since the first experience of imprisonment for the majority of prisoners will be as pre-trial prisoners. For this group of prisoners the first few days in prison can be a specially confusing time; the admissions procedures need to take this into account and the staff responsible for administering them need to be aware of this.

Prison authorities provide an important safeguard against arbitrary detention. They need to establish clear procedures to make sure that there is a properly authorised warrant or legal document for the detention of everyone who is admitted to custody. This is particularly important in the case of all pre-trial prisoners, who are entitled to know the legal authority for their detention and when they will next appear before a judicial authority. The authorities will also need to ensure that prisoners are presented to the courts promptly and at the proper time.



11. Safeguards on pre-trial detention orders

- a. Judicial authorities shall only order pre-trial detention:
 - i. On grounds that are clearly established by law and which are consistent with international standards, and not motivated by discrimination of any kind such as on the basis of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status; and
 - ii. If there are reasonable grounds to believe that the accused has been involved in the commission of a criminal offence that carries a custodial sentence, and there is a danger that he or she will abscond, commit further serious offences or if there is a danger that the release of the accused will not be in the interests of justice.
- b. If pre-trial detention is ordered, judicial authorities shall ensure that the least restrictive conditions are imposed that will reasonably ensure the appearance of the accused in all court proceedings and protect victims, witnesses, the community and any other person.
- c. Judicial authorities shall clearly demonstrate in the reasons for their decisions that they have considered alternatives before making a pre-trial detention order.
- d. Judicial authorities shall provide written reasons for decisions to order pre-trial detention. This should include clear demonstration that alternatives to pre-trial detention were considered.
- e. Persons subject to pre-trial detention orders shall have the right to challenge the lawfulness of their detention at any time and to seek immediate release in the case of unlawful or arbitrary detention, and compensation and/or other remedies as set out in Part 8 of these Guidelines.
- f. At all hearings to determine the legality of an initial detention order, or of an order extending or renewing pre-trial detention, detainees have the right to be present, the right to the assistance of a lawyer or other legal service provider, the right to access all relevant documents, the right to be heard, and the right to reasonable accommodation to ensure equal enjoyment of rights by persons with disabilities.
- g. The burden of proof on the lawfulness of initial detention orders, and the lawfulness and necessity of extended or continued pre-trial detention, lies with the State.⁶⁸

Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines), 2014

Monitoring time spent in pre-trial detention

The status of prisoners who are awaiting trial usually means that the length of their detention will be subject to decisions taken by agencies other than the prison authorities. Some jurisdictions have time limits within which prisoners must either be brought to trial or released. As part of the process of ensuring the continuing legitimacy of the detention order prison authorities will want to monitor these arrangements. It will be particularly important for prison authorities to maintain accurate records so that pre-trial prisoners are not lost within the judicial system.

“ The Supreme Court [of India] in its order in *Re-Inhuman Conditions in 1382 Prisons* dated 24 April 2015, directed the National Legal Services Authority (NALSA), the Ministry of Home Affairs and State Legal Services Authorities (SLSAs) to ensure that Undertrial Review Committees (UTRCs) were formed in every district of the country, and met every quarter. This order also directed the UTRCs to review cases where undertrials granted bail were not released because they were not able to furnish sureties.

In a subsequent order in the same case on 5 February 2016, the Court ordered that an e-prisons application be designed so that all essential prison information could be centrally aggregated. The Ministry of Home Affairs filed an affidavit on 22 January 2016 in this writ petition, stating that a detailed evaluation of the software for the e-prisons project had been completed and guidelines had also been circulated to all the states for their proposals, and for exercising their option for selecting the appropriate software. However there appears to have been little progress on prison management software since this hearing.⁶⁹

Amnesty International, *Justice Under Trial: A study of Pre-trial detention in India*, 2017

“ 12. Reviews of pre-trial detention orders

- a. Regular review of pre-trial detention orders shall be provided for in national law. Judicial authorities and detaining authorities shall ensure that all pre-trial detention orders are subject to regular review.
- b. In making a pre-trial detention order, or in extending or renewing pre-trial detention, judicial authorities shall ensure that they have thoroughly considered the need for continued pre-trial detention and shall give consideration to the following issues:
 - i. Assess whether sufficient legal reasons exist for the arrest or detention and order release if they do not exist.
 - ii. Assess whether the investigating authorities are exercising due diligence in bringing the case to trial.
 - iii. If the individual is suspected of a criminal offence, assess whether in the circumstances of the case of the individual, the detention pending trial is necessary and proportionate. In such assessment, among other things, responsibilities as primary caretakers should be taken into consideration.
 - iv. Enquire about and take means necessary to safeguard the well-being of the detainee.
- c. Judicial authorities shall provide written reasons for orders to extend or renew pre-trial detention.⁷⁰

Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines), 2014

Legal advice

All pre-trial prisoners should have access to proper legal representation. People who are first admitted to prison are often confused and uncertain about their situation and their surroundings. They are entitled to independent legal advice.

A separate set of rules

Prison staff need to be aware of the legal distinction between pre-trial and convicted prisoners. There has to be a separate set of rules for the management of pre-trial prisoners.

The right to legal representation

What the international instruments say

Nelson Mandela Rules, Rule 61:

1. Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.
2. In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.
3. Prisoners should have access to effective legal aid.

Nelson Mandela Rules, Rule 120:

1. The entitlements and modalities governing the access of an untried prisoner to his or her legal adviser or legal aid provider for the purpose of his or her defence shall be governed by the same principles as outlined in rule 61.
2. An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider.

Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 17:

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after the arrest and shall be provided with reasonable facilities for exercising it.
2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 18:

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.
4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing of a law enforcement official.
5. Communication between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 23:

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.
2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

Basic Principles on the Role of Lawyers, Principle 7:

Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not more than forty-eight hours from the time of their arrest or detention..

Basic Principles on the Role of Lawyers, Principle 8:

All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Putting it into practice

Role of prisons in ensuring legal representation

At a very early stage newly admitted prisoners should be told about their rights in respect of legal representation, especially if they are awaiting trial. Some of them will already have a lawyer. In that case, their concern will be about access: when, where and under what circumstances they may have contact with their lawyers. Many other prisoners will not yet have arranged legal representation. In that case they should be allowed to contact a lawyer as soon as possible in order to discuss their legal position and to begin to prepare their defence. The proper authorities should make sure that arrangements are in place so that prisoners who have no financial resources can still have adequate legal representation.

“ The Paralegal Advisory Service (PAS) involves the use of non-lawyers – paralegals – in the criminal justice system. The Service started in Malawi in 2000 and has been adopted in Benin (2002), Kenya (2004), Uganda (2005), and Niger (2006). In 2007, the PAS constituted itself as the PAS Institute (PASI). It has continued to support the introduction of paralegal advisory services not only across Africa (South Sudan, Nigeria, Sierra Leone and Somaliland) but crossing cultures and continents to Bangladesh where over 400 paralegals trained and mentored by PASI are operating in over half of the country.

The schemes in each country share a number of common features. They train paralegals or non-lawyers in criminal law and procedure and add practical skills (which include: interviewing, information management, theatre skills [role playing]) that enable these paralegals:

- to teach legal literacy to prisoners and so empower them to apply the law when they appear in court
- to provide those in conflict with the law with appropriate legal advice and assistance
- to link up the criminal justice system by improving communication, cooperation and coordination between the agencies, by for example, convening monthly meetings of local justice actors (known as case management or court user or case coordination committees) or coordinating with the magistracy and prosecution to review remand/awaiting trial cases in the prison and release those held unlawfully or unnecessarily.

In this way paralegals have been successful in reducing remand caseloads and pushing cases through the system more quickly. They continue to function in the countries mentioned and have not been refused access or closed down in any of them.⁷¹

Paralegal Advisory Service Institute, 2018

Privacy of legal correspondence

The prison authorities should not interfere in any way in the communication between prisoners and their legal representatives. Written correspondence between a prisoner and his or her lawyer should not be subject to censorship. In a number of jurisdictions such correspondence is marked on the envelope and, therefore, incoming correspondence is passed directly to the prisoner without being opened; outgoing correspondence is sealed by the prisoner. If the prison authorities have legitimate reason to suspect that this arrangement is being abused, they may open incoming correspondence in the presence of the prisoner to check that it contains nothing which is forbidden; similarly, outgoing correspondence may be checked in the presence of the prisoner before being sealed. In no circumstances should the correspondence be read by the authorities.

Privacy of meetings with legal representatives

Discussions between a prisoner and his or her legal representative should never be overheard by the prison authority. It is reasonable that such visits should take place within sight of prison staff, for example, with the staff being able to see the visit through a glass panel but this should not allow them to hear what is being discussed or to see the legal papers.

The management of pre-trial prisoners

What the international instruments say

International Covenant on Civil and Political Rights, Article 10:

- 2.(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
- 2.(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

Nelson Mandela Rules, Rule 111-118:

Rule 111

3. Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit from a special regime which is described in the following rules in its essential requirements only.

Rule 112

1. Untried prisoners shall be kept separate from convicted prisoners.

Rule 113

Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

Rule 114

Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

Rule 115

An untried prisoner shall be allowed to wear his or her own clothing if it is clean and suitable. If he or she wears prison dress, it shall be different from that supplied to convicted prisoners.

Rule 116

An untried prisoner shall always be offered the opportunity to work, but shall not be required to work. If he or she chooses to work, he or she shall be paid for it.

Rule 117

An untried prisoner shall be allowed to procure at his or her own expense or at the expense of a third party such books, newspapers, writing material and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

Rule 118

An untried prisoner shall be allowed to be visited and treated by his or her own doctor or dentist if there are reasonable grounds for the application and he or she is able to pay any expenses incurred.

Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Principle 8:

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

Putting it into practice

Different status for pre-trial prisoners

Prisons are usually managed in a way which best suits the prison authorities. One consequence of this may be that everyone in detention is treated in a similar manner, whether they be male or female, adult or juvenile, convicted or pre-trial. This may be to the advantage of the prison administration; it does not meet the requirements of justice. Pre-trial prisoners have not been convicted of any offence and should not be managed as if they were convicted. The judicial authority has merely required that they should be deprived of their liberty, not that they should be subjected to any additional punishment.

Separated from convicted prisoners

Pre-trial prisoners should be held in accommodation separate from prisoners who have been convicted. In many jurisdictions the immediate consequence of such separation is that the conditions for pre-trial prisoners are much worse than those for convicted prisoners. Their conditions are the most overcrowded; they have the worst accommodation and are given least access to the facilities of the prison. This should not be the case. The fact that they remain innocent in the eyes of the judicial system means that their conditions of detention should be at least as good as those for convicted prisoners.

What the prison should provide

The separate regulations for pre-trial prisoners should cover such practical issues as when they may wear their own clothes, access to food, books and other materials and visiting arrangements. They cannot be required to work but should be given the opportunity to do so.

In cases where pre-trial prisoners are held in prison for lengthy or indeterminate periods it will be especially important to ensure that they are given full access to the prison's facilities and the opportunity to work if they so choose.

Security levels should not be pre-determined

All prisoners, whether convicted or awaiting trial, need to be held in conditions which meet their appropriate security needs. In many jurisdictions convicted prisoners are allocated to specific security categories but pre-trial prisoners are all treated as if they needed to be kept in high security conditions. This is not always the case. Pre-trial prisoners should also be subjected to an assessment of the risk which they present. There may not be any justification for holding those who are awaiting trial on relatively minor crimes in the same conditions as those who have been charged with very serious crimes.

Other prisoners under detention without sentence

What the international instruments say

Nelson Mandela Rules, Rule 121:

In countries where the law permits imprisonment for debt, or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

Nelson Mandela Rules, Rule 122:

Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights,²⁹ persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C, of these rules. Relevant provisions of part II, section A, of these rules shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

Putting it into practice

Administrative prisoners are not convicted

Prison is primarily a place of detention for people who have been convicted of or accused of a criminal offence. In some countries persons may be detained because they are facing a civil charge or for other administrative reasons. Where this happens, such persons should be treated in the same manner as other prisoners who have not been convicted. This will affect the conditions in which they are held and also the access which they have to legal representatives and other official persons.

Migrants and asylum seekers

In some countries persons are detained because they have entered a country illegally or sometimes because they are seeking asylum. Such persons should not be detained alongside persons who are accused of or who have been convicted of criminal offences. If they are delivered to the custody of the prison authorities, they should not be treated in the same way as persons who have been convicted or accused of criminal offences.

Other categories of detention

Foreign national prisoners are sometimes held after the expiration of their sentences because they have no money to pay their fare home, their home country will not accept their return or there is no safe country to return them to. Such prisoners have served their sentence and their conditions of detention should take that into account. These matters are dealt with in more detail in chapter 12.

Juvenile and young prisoners

Some definitions

The framework

The minimum age of criminal responsibility describes the age at which acts committed by children can be prosecuted under the criminal law. This age varies greatly between countries. Equally, there are differing definitions in law of the age at which a child may be imprisoned in the prison system. Also within prisons there are differences in the age at which juveniles may be held in the same prisons as adults.

The position in international law

International law is quite clear about who is to be regarded as a child:

UN Convention on the Rights of the Child, Article 1:

... a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

International human rights instruments on criminal justice apply the same definition of juvenile:

UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11:

(a) A juvenile is every person under the age of 18.

The UN Committee on the Rights of the Child has said that a minimum age of criminal responsibility below the age of 12 years is considered not to be internationally acceptable.⁷²

Those under 18 should not be in prison

In some countries no one who is under the age of 18 years is detained in prison service custody. This arrangement is to be encouraged. Where such young people need to be detained, they should be held in the custody of a welfare agency rather than one which is part of the criminal justice system.



The strength of the Belgian system lies in the safeguards guaranteed to children and the specialised youth protection system established to care and protect children. In addition, children cannot be held liable for their actions under the age of 18 years, with the exception of the deferral system where the child is transferred to an adult court due to the seriousness of the crime (only for children above 16 years old).⁷³

European Commission, Study on children's involvement in judicial proceedings: Contextual overview for the criminal justice phase: Belgium, 2013

Prison for juveniles a last resort

The principles described in this handbook apply to all prisoners. In addition there are special considerations to be taken into account in respect of the management of juvenile and young prisoners. Prisons should be used to hold individuals who have committed very serious crimes or who are a threat to society. Very few juveniles fall into these categories. Those that do should be held in prison only when there is absolutely no available alternative. Evidence from a number of countries shows that the earlier a young person is dealt with in the criminal justice system the greater the danger that he or she will become involved in further criminality.

Legality of detention of juveniles

Two recent trends in various parts of the world are adding to the numbers of young people in prison. In some countries concerns over juvenile delinquency have led to harsher sentencing while in others detention without charge is seen as part of the solution to growing numbers of 'street children'. In some jurisdictions children are held in prison when they are below the age where it is legally legitimate to do so. Chapter 4 of this handbook dealt with the responsibility of prison administrations to ensure that all persons presented to them for detention are the subject of a properly authorised warrant. This is especially important when dealing with children and juveniles together with other vulnerable groups.

Emphasis on the welfare of the juvenile

If a young person does have to be kept in prison special arrangements should be made to ensure that the coercive elements of prison life are kept to a minimum and that maximum use is made of the possibilities for training and personal development. A special effort needs to be made to help the young person to maintain and to develop family relationships.

Problem of absence of birth records

In a number of countries the absence of records may make it difficult to establish a person's precise age and there are reports of falsification of data in order to admit juveniles to adult prisons.⁷⁴

Young adults

Some jurisdictions make special arrangements for young adults who are in the care of the prison administration. In some countries young prisoners are kept separate from adult prisoners until they reach the age of 21 years. In Germany, people aged over 21 can also be treated under the juvenile justice system and sentenced to youth imprisonment, and only when the young person reaches the age of 24 does the sentence have to be served in an adult institution. This is done so as to give priority to their educational and developmental needs and to prevent the adverse influence of older and more sophisticated offenders.

What the international instruments say

Convention on the Rights of the Child, Article 37 (1):

State Parties shall ensure that:

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 13:

- (1) Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.
- (2) Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an education setting or home.
- (3) Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.
- (4) Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- (5) While in custody, juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 19:

- (1) The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 21:

- (1) Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorised persons.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 26:

- (1) The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.
- (2) Juveniles in institutions shall receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical – that they may require because of their age, sex, and personality and in the interest of their wholesome development.
- (3) Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- (4) Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.
- (6) Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalised juveniles, with a view to ensuring that they do not leave the institution at an education disadvantage.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 27:

- (1) The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.
- (2) Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 29:

- (1) Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11:

For the purpose of the Rules, the following definitions should apply:

- (a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;
- (b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rules 36 - 39

Rule 36

Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.

Rule 37

Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.

Rule 38

Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women's health care and have regular access to gynaecologists, similar to adult female prisoners.

Rule 39

Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Rule 65:

Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making.

Putting it into practice

Young people in prison

Prison staff are trained to protect society from adults who have been convicted or are awaiting trial for serious crimes. It should not be part of their task to take care of the small number of children and young people who have committed such terrible offences that they require to be deprived of their liberty. Such young people should be held in the care of welfare or social care agencies.

Vulnerable to abuse

Although this is the principle, the reality is that in many countries children and young people are committed to prison custody. When this happens the prison administration has an obligation to care for them in a manner which takes account of their age and special needs. There are two main reasons for this special treatment. The first is that children and young persons are more vulnerable than adults and need to be protected from violence or abuse by older prisoners or even by staff. The second reason is that such young persons are generally more likely to respond to positive influences, to training and to educational opportunities.

For these reasons any children or juveniles who are in the care of the prison administration should be held in separate institutions and not in prisons for adults.

Staff skills

Prison staff who work in institutions for young people need to be specially trained. Many of the skills which they need to use are quite different from those required of staff who work with adult prisoners. Many staff will prefer to work with adult prisoners and will regard work with long term prisoners who are difficult to manage as being the real prison work. Work with juveniles, on the other hand, is often seen as a soft option for members of staff who are less qualified or who cannot cope with the more demanding work with adult prisoners. This is a false perception. Work with younger prisoners demands a special set of skills. Staff have to be able to combine the requirements of security and good order with the obligation to help the young people, many of whom may be volatile and unpredictable, to mature and to develop personal skills which will allow them to succeed in life. The staff who are to work in institutions for juveniles should be specially selected and then given the appropriate skills to carry out their difficult work. They will also need support to deal with the physical and emotional demands which working with young offenders can bring.



A new training program underway for youth justice officers in the [Australian] Northern Territory aims to better educate those on the frontline of youth detention.

Last week the Royal Commission into the Protection and Detention of Children in the Northern Territory heard confronting evidence about the lack of training former youth justice officers (YJOs) received, and how it hampered their ability to de-escalate incidents before they turned violent.

A six-week training course for the 25 new recruits — including 11 women and 12 Indigenous officers — has been designed to prevent similar events from happening in future.⁷⁵

ABC News “Don Dale: New training for youth justice officers underway in the Northern Territory” 26 March 2017

Welfare and educational needs

There is a wide range of practice in the systems used to detain children and juveniles who are deprived of their liberty. Much of this practice reflects the specific welfare and educational needs of young people. It is important that the part of the prison administration which is responsible for children and juveniles should develop close organisational links with other official departments which deal with child welfare and education in civil society.

Close links to outside society

The regime in juvenile institutions should aim to minimise the coercive elements of imprisonment and should emphasise education and skills training. As far as possible this work should be linked with courses and programmes for young people in civil society. Teachers and other workers should come from local schools and colleges and certificates awarded to the young people should be awarded by local educational centres and not by the prison administration. Ideally, where security considerations permit, young people should be enabled to pursue their education outside the prison on the basis of day release.

Prison administrations should seek to establish links with the NGOs working with young people outside prison in order to extend the range of programmes available to young prisoners, particularly in physical, cultural and social activities.

Family links

A high priority should be given to maintaining and developing links between the young person and his or her family. Whenever possible young persons should be allowed to make short visits home in the course of their sentence. Families should be encouraged to visit the institution as often as is feasible and to maintain contact by letter and telephone.

The fact that young prisoners form a small minority in most jurisdictions will mean that they are often imprisoned a long way from home. The prison administration will need to give particular attention to ensuring that family visits can take place.

Special attention needs to be paid to the environment in which visits take place, affording as much privacy and informality as is possible. Families should also be encouraged to become involved in decisions about the treatment which their family member is given while in custody.

Release and reintegration

In many countries a significant proportion of young prisoners may have lost contact with their families before or as a result of their period of imprisonment. Prison administrations will need to ensure that they give particular attention to identifying those young people who may need additional support in re-establishing links with their families or for whom family links have irrevocably broken down. The main purpose should be to avoid returning the young persons to the social circumstances which contributed to their original offence. It will be important to enlist the help of the relevant governmental and non-governmental agencies in designing and delivering appropriate re-settlement programmes.

“ In Lipcani Penitentiary, a Probation Officer will visit the Penitentiary once a week to assess and prepare detainees for release. This process will commence six months before the detainee is scheduled to be released. Probation officers will work with social services to provide support to children who need assistance finding accommodation or employment. According to the prison staff, social services will mediate with a child’s family, or secure a child a place at an orphanage or a placement centre for adults. Probation will also place information and relevant contact details within the prison for the use of detainees. According to the staff at the facility in Lipcani, prior to the establishment of the Probation Service, detainees were not provided with aftercare services. Now, probation officers are aware of the needs of child detainees well before their release, and this has helped to ensure a continuity of services and support for children.⁷⁶

Coram Children’s Legal Centre, “Reform of the Juvenile Justice System in Moldova” project: Final evaluation, 2012

The framework

Women prisoners are a small minority

In any prison system the proportion of women in prison is generally between 2% and 10%. One consequence of this small proportion is that prisons and prison systems tend to be organised on the basis of the needs and requirements of the male prisoners. This applies to architecture, to security and to all other facilities. Any special provision for women prisoners is usually something which is added on to the normal male provision.

Offences committed by women

In a number of countries tough anti-drugs legislation has had a significant effect on the numbers of women in prison and, as a result, the rate of increase in the number of women prisoners, as for instance in the United States, is often much greater than that for men. In some countries this has also led to an increase in the numbers of foreign national prisoners who now form a disproportionately large percentage of women prisoners. In most countries women are less likely than men to be sentenced to prison for violent crimes and more likely to be convicted of crimes against property.

“ Worldwide statistics show that imprisonment for drug related offences is particularly high among women. For example, according to a recent comprehensive study, over 31,000 women across Europe and Central Asia are imprisoned for drug offences, representing 28 per cent of all women in prisons in these regions. In some countries, up to 70 per cent of female prisoners are incarcerated for drug offences. About one third of women prisoners in Canada, and 57 per cent in Thailand were convicted of drug related offences. Harsh drug laws are also driving a surge in the number of women imprisoned in Latin America.⁷⁷

Penal Reform International, *Global Prison Trends 2015*

Women prisoners have different problems

In reality the situation of women prisoners is very different from that of male prisoners and particular attention should be given to the situation of women. Women who are sent to prison will frequently have suffered physical or sexual abuse and they will often have a variety of untreated health problems. The consequences of imprisonment and its effect on their lives may be very different for women.

Family responsibilities

In most societies women have primary responsibility for the family, particularly when there are children involved. This means that when a woman is sent to prison the consequences for the family which is left behind can be very significant.

“ The penal code of Kyrgyzstan contains a provision allowing women who are pregnant or have children under 14 years old to receive suspended sentences until their children reach the age of 14. This law does not apply to women who are convicted of ‘grave’ offences, and only applies only to first-time offenders. In practice, however, case studies show that as long as a woman is “deemed to be taking good care of her children,” she will not be sent to prison.

Constitutional law in Colombia provides that women who are mothers of minor children or children with disabilities may receive house arrest instead of being required to serve a custodial sentence. In 2012 this benefit was extended to fathers who are heads of families when the mother is absent. This alternative cannot be applied in cases where the caregiver detainee is sentenced for crimes that are defined to be serious by this law.⁷⁸

International Report on the Conditions of Children of Incarcerated Parents:
A Survey of Prison Nurseries, 2017

When a father is sent to prison, the mother will frequently take on his family responsibilities as well as her own. When a mother is sent to prison, the father who is left with the family frequently finds it extremely difficult to take on all parental duties, especially if there is no wider family support. In many cases the mother may be the sole carer. All of this means that special provisions need to be made to ensure that women prisoners can maintain meaningful contact with their children. The matter of very small children requires particularly sensitive consideration.

Pregnant women

Pregnant women should not be sent to prison unless there is absolutely no alternative. If this has to happen, special arrangements need to be made for them while they are awaiting the birth of their child and also during their nursing period. There are particularly sensitive issues concerning the application of any security restrictions during the actual birth. The presumption should always be that no expectant mother will give birth inside a prison.

Prevention of abuse

The physical safety of women should be guaranteed while they are held in prison. For this reason they should always be held separately from male prisoners and they should never be supervised exclusively by male staff.

What the international instruments say

Universal Declaration of Human Rights, Article 2:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Civil and Political Rights, Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Convention on the Elimination of All Forms of Discrimination Against Women, Article 2:

States Parties condemn the discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end, undertake:

- (h) To embody the principle of equality of men and women in their national constitutions and other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (i) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (j) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (k) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (l) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (m) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (n) To repeal all national penal provisions which constitute discrimination against women.

United Nations Declaration on the Elimination of Violence against Women, Article 2:

Violence against women shall be understood to encompass, but not be limited to, the following:

- (c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

United Nations Declaration on the Elimination of Violence against Women, Article 4:

- (i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitise them to the needs of women.

Nelson Mandela Rules, Rule 11:

The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus: (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate.

Nelson Mandela Rules, Rule 28:

In women's prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

Nelson Mandela Rules, Rule 29:

1. A decision to allow a child to stay with his or her parent in prison shall be based on the best interests of the child concerned. Where children are allowed to remain in prison with a parent, provision shall be made for:
 - (a) Internal or external childcare facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent;
 - (b) Child-specific health-care services, including health screenings upon admission and ongoing monitoring of their development by specialists.
2. Children in prison with a parent shall never be treated as prisoners.

Nelson Mandela Rules, Rule 81:

1. In a prison for both men and women, the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.
2. No male staff member shall enter the part of the prison set aside for women unless accompanied by a woman staff member.
3. Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.

Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, Principle 5 (2):

Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be discriminatory.

African Charter on the Rights and Welfare of the Child, Article 30: Children of Imprisoned Mothers:

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:
 - (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
 - (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;
 - (c) establish special alternative institutions for holding such mothers;
 - (d) ensure that a mother shall not be imprisoned with her child;
 - (e) ensure that a death sentence shall not be imposed on such mothers;
 - (f) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)

In 2010 the United Nations approved these Rules recognising the varied and specific issues regarding women in prison. We have not reproduced these Rules here but they are now the international standard for the treatment of women in prison.

Putting it into practice

Staff need special training

It is important to recognise that the effects of imprisonment on women will often be very different from the effects on men. The domestic circumstances which they have left behind will usually be different since many women either are sole carers or have the primary caring role for their immediate family and others. In some cultures women who are imprisoned are also more likely to be abandoned by their families. Staff who work with women prisoners need to be aware of all these issues and to receive specific training for their role.

Women face discrimination

On average about 19 out of every 20 prisoners are men. This means that prisons tend to be managed from a male perspective. Usually this means that the procedures and programmes are designed for the needs of the majority male population and adapted (or sometimes not) to the needs of women. This results in discrimination against women in several respects.

“ The CEDAW’s General Recommendation No. 33 highlights that “women suffer from discrimination in criminal cases owing to: a) a lack of gender-sensitive non-custodial alternatives to detention, b) a failure to meet the specific needs of women in detention, and c) an absence of gender-sensitive monitoring and independent review mechanisms.” It recommends that states ensure that mechanisms are in place “to monitor places of detention; pay special attention to the situation of women prisoners; and apply international guidance and standards on the treatment of women in detention.”⁷⁹

From Joint shadow report on Thailand’s implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) for the review of Thailand’s sixth and seventh periodic reports, 2017

Accommodation

One of the first areas of discrimination is that of accommodation. Some prison systems have a small number of prisons used exclusively for women prisoners. In these circumstances many imprisoned women are held in accommodation which is far away from their families, making family contact much more difficult. This is of particular concern where women are the primary or sole carers for children or other dependent relatives.

An alternative is that women may be held in small units which are annexed to larger prisons for male prisoners. This may pose an increased risk to the safety of the women and may also result in the facilities available to them being determined by the needs of the larger number of male prisoners. Access to those facilities and time out of cell may be further restricted on security grounds.

Both of these arrangements have obvious drawbacks.

Security should not be stricter than necessary

One consequence of the limited availability of prison accommodation for women is that women prisoners may be held according to a security classification which is more strict than can be justified by the assessment of the risk which they pose. This effect may be worsened because these classification assessments are based on models of the typical male prisoner.

“ Overall, we found that Correctional Service Canada had not implemented an initial security classification process designed specifically for women offenders. Although Correctional Service Canada had examined options to improve security classification for women offenders, it continued to use the Custody Rating Scale, a tool developed more than 25 years ago based on a sample of male offenders. Correctional Service Canada also used this scale as its primary tool to refer women offenders to correctional programs, a use for which it was not intended. As a result, some women offenders risked being held at inappropriate security levels, and being required to take programs from which they could not benefit.⁸⁰

Reports of the Auditor General of Canada to the Parliament of Canada: Report 5 - Preparing Women Offenders for Release: Correctional Service Canada, 2017

Because of their smaller numbers or because of restricted accommodation, the access which women prisoners have to activities is often more limited than that available to men. For example, there may be fewer opportunities for education or skills training. Work opportunities may be restricted to that which is regarded as traditional work for women, such as sewing or cleaning. The prison administration should make sure that women have the same opportunities as male prisoners to benefit from education courses and skills training. The same applies to access to facilities for physical exercise and sports. If there is a shortage of facilities or of trained staff within prisons it may be possible to involve local agencies and non-governmental organisations in providing activities for women prisoners.

“ There is no integrated programme to engage women in work, education and vocational training as a rehabilitative strategy, although some opportunities have been made available. However, these are piecemeal, only made available in Juweida, and do not attract many participants. Although inmates, positively, are paid for work, they are not equitably remunerated; recreation options are limited and rarely used. The lack of meaningful activity or responsibility appears to have an acute impact on the morale of detainees.⁸¹

Danish Institute Against Torture, Conditions For Women In Detention In Jordan: Needs, vulnerabilities and good practices, 2015

“ UNODC has signed a new technical assistance project around vocational training with the Bolivian Prison Administration... The initiative, ‘Building Freedom’, will train some 50 female prisoners in the field of construction as well as look to strengthen their rights, self-esteem, entrepreneurial skills and decision-making capacities. Ensuring the successful and sustainable reintegration of female prison inmates, the work will help reduce the rate of recidivism among this particularly vulnerable group.

The project also offers a crucial shift in the types of rehabilitation programmes being offered: typically, training has been designed based on gender stereotypes, with male prisoners receiving skills in more profitable areas, such as accounting and mechanics, and females in less lucrative parts, such as the production of handicrafts.⁸²

UNODC and Bolivia launch innovative project for female prisoner vocational training in the field of construction, 2018

Wherever possible the activities which are made available to women prisoners should be designed for them rather than simply being adapted from programmes designed for men.

Family links

It is especially important that prisoners who are mothers should be given the opportunity to maintain links with their children left behind. Whenever possible women prisoners should be allowed to leave prison for short periods to be with their families. When the children visit the prison as much contact as possible should be allowed as well as privacy. Visits between mothers and children should always allow physical contact. They should never be closed or non-contact visits with some form of screen or physical barrier separating them. If possible the visits should last for a whole day. The longer family visiting arrangements described in chapter 11 of this handbook are particularly important for women prisoners. Any security arrangements for searching visitors should be carried out with the child's best interests in mind.

Prisoners' children should be born in hospital

Pregnant women should only be held in prison in the most extreme circumstances. If this is necessary, they should be provided with the same level of health care as is provided in civil society. When the time comes to give birth such women should whenever possible be transferred to a civilian hospital. This should ensure that professional medical care is available. For the baby this will avoid the stigma of having the prison recorded as the place of birth. In any case the birth certificate should give a non-prison address as the place of birth. Any security restrictions which are necessary during this period should be as discreet as possible. See chapter 6 on prisoners and health care for more on this.

Where pregnant women are held in prison the administration should ensure that full consideration is given to any cultural issues surrounding childbirth.

Mothers with infants

The matter of mothers in prison who have small infants is a very sensitive one. In a number of jurisdictions mothers are allowed to keep new born babies with them in prison. When this happens the mother and baby should be in a unit where they can live together on a continuous basis. Such units should have all the facilities which a nursing mother would normally require. This is preferable to keeping the baby in a separate nursery unit which the mother is only able to visit at certain times.

“ Honduran law provides that children of women prisoners have the right to be cared for by their mothers during their first two years of life in the least limiting conditions possible in the prison. To this end, the law mandates that child care centers be installed in modules nearby the mothers and food assistance and needed medication be provided.

Nicaraguan law provides that prisons must seek to have special units to provide women prisoners with pre- and postnatal care. Efforts must be made for the birth to take place outside the prison, in a health center. In cases where the child is born in prison, this circumstance must not be mentioned in the child's birth certificate.

In cases where the jail has no special facility for pre- and postnatal care, incarcerated mothers should be placed under a “family-life regimen” (convivencia familiar) conducive to breastfeeding until the child is six months old. This provision is applicable to women in prison where criminal law does not provide for a bail benefit. In the other cases, the family-life regimen is granted until the child reaches two years of age.⁸³

Library of Congress, Laws on Children Residing with Parents in Prison

Age of separation

The right age at which infants should be taken away from their imprisoned mothers is difficult to determine. Since the link between mother and child is all-important it is argued that the child should be able to stay with his or her mother as long as possible, perhaps the whole length of the sentence. A contrary argument is that prison is an abnormal environment which is bound to affect a child's development from a very early age. For that reason a child should not be allowed to remain in prison with his or her mother much beyond the age of a few months. In practice, some prison administrations allow mothers in prison to keep their babies with them until the age of 9 months, 18 months, up to four years or longer if the child has nowhere else to go.

Where else can children be placed?

If children cannot stay with their mother in prison the prison authorities have to take responsibility for making good alternative arrangements either with the family or with the authorities who care for children without parents. The decision as to appropriate arrangements should be that which is in the best interests of the child given all the circumstances. It is important, therefore, that this decision should be considered in partnership with other competent agencies and not by the prison administration alone. The mother should also have a voice in this decision making.

Children growing up in prison

During the period that an infant is in prison the environment in which he or she is kept should be made as normal as possible for both the child and the mother. The child's development must not be restricted simply because the mother is in prison. In addition, special arrangement should be made to support mother and infant when the time comes for release.

Other dependent relatives

Women are also more likely than men to be the sole or primary carer for dependent relatives other than children. Prison administrations will need to consider what arrangements are suitable in these circumstances.

Healthcare

Chapter 6 of this handbook referred to the health care needs of prisoners. Women prisoners have specific health needs which have to be recognised and attended to. Wherever possible they should be attended to by women nurses and doctors and specialists in women's health care matters should be available for consultation. In many cases concerns about their children will be a great cause of worry and stress for women prisoners which will have a significant impact on their mental well-being and make imprisonment psychologically more painful than it is for men. Healthcare arrangements available to women prisoners should reflect that.

“ Women and girls deprived of liberty shall be entitled to access to specialized medical care that corresponds to their physical and biological characteristics, and adequately meets their reproductive health needs. In particular, they shall have access to gynecological and pediatric care, before, during, and after giving birth, which shall not take place, as far as possible, inside the place of deprivation of liberty, but at hospitals or appropriate institutions. If a child is born in a place of deprivation of liberty, this fact shall not be mentioned in the birth certificate.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle X, 2008

Women and girls deprived of their liberty shall regularly be provided with those articles that are indispensable to the specific sanitary needs of their sex.

Principle XII

It shall be strictly forbidden to impose solitary confinement to pregnant women; mothers who are living with their children in the place of deprivation of liberty;

Principle XXII

Staffing women's prisons

Women prisoners are especially vulnerable in the closed environment of a prison and they should be protected from physical or sexual abuse by male members of staff at all times. The international instruments require that women prisoners should be supervised by women staff. If male staff are employed in a women's prison they should never be in sole control of the women. There should always be a female member of staff present.

“ The custody and surveillance of women deprived of liberty shall be performed exclusively by female personnel, although staff with other capacities or skills, such as doctors, teachers, or administrative personnel may be male.

Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XX, 2008

Searches

Chapter 7 of this handbook described procedures for searching prisoners. Staff should exercise special sensitivity when searching women prisoners. Male members of staff should never be involved in personal searches of women prisoners. The need to observe common decency, for example, by not requiring prisoner to strip completely naked in the course of a body search, applies especially in the case of women prisoners.

Preparation for release

The obligation of the prison administration to prepare prisoners for release back into civil society was dealt with in chapter 10 of this handbook. Particular consideration should be given to the needs of women who are about to be released. It may be that return to their families is impossible because they have been prisoners. The prison authorities should work closely with community support agencies and non governmental organisations to help former women prisoners to settle back into their communities. Training which gives them a skill to become self-supporting is particularly valuable for women in prison.

“ Clean Start’s vision is to restore hope, dignity, self-confidence and self-respect to girls and women as they leave prison, enabling them to break the cycle of poverty and imprisonment.

We equip women with life skills and employment training, supporting them to find sustainable livelihoods post release. Our aim is to transition vulnerable girls and women into education, vocational training, employment or entrepreneurship.⁸⁴

From the website of Clean Start Kenya

The framework

Increase in long-term prisoners

In many countries the majority of sentenced prisoners are serving relatively short terms of imprisonment. In some jurisdictions the average is a few months, in others a year or two. In recent years, however, there has been an increasing tendency for courts to pass much longer sentences. In many prison systems prisoners serving long sentences make up a comparatively small proportion of the total number of prisoners. Yet in organisational and managerial terms they consume a significant amount of the available resources.

“ In 1995 there were approximately 400 prisoners serving life imprisonment in South Africa and by 2016 there were in excess of 18,000, according to a spokesperson of the Department of Correctional Services (DCS). This is an increase of 4,400% and fast approaching a situation where one out of every five sentenced prisoners is serving life. This is globally the most rapid increase of lifers as a proportion of the total national sentenced population.⁸⁵

Daily Maverick, Rethinking life imprisonment, 2 March 2017

A definition

There is an immediate problem as soon as one attempts to define what is meant by a long term prisoner. In a number of prison systems, for example in some Scandinavian countries, anyone serving more than six months is classed as a long term prisoner. On the other hand in some prison systems a long term prisoner is someone serving more than ten years. In the United States there are many examples of prisoners who are serving sentences of hundreds of years, much more than a normal life span. For the purposes of its recommendation on the management of life sentence and other long term prisoners the Council of Europe regards a sentence of five years or more as a long sentence.

Effect of abolition of the death penalty

In some jurisdictions the definition of long term imprisonment is closely linked with the abolition of the death penalty. In a number of countries over the last forty or so years, the consequence of abolition of the death penalty has been the introduction of sentences of life imprisonment, particularly for those who have been convicted of murder. This new category of long term prisoner has brought a whole new set of dilemmas to prison administrations. This dilemma is currently seen in its starkest form in some countries of Eastern Europe, where new arrangements have been introduced for the management of such prisoners. In some cases prisoners who would previously have faced the death penalty now serve a minimum of 25 years in prison, with the first ten of those years in solitary confinement. There is no justification in terms of penal management for this kind of prolonged judicial isolation or for the use of special prisons and colonies for these prisoners.

Life sentence prisoners

Life imprisonment is the most severe penal sanction which can be imposed in those jurisdictions which either do not have, or choose not to apply, the death penalty. In the absence of the death penalty, life imprisonment takes on a symbolic significance and may be seen as the ultimate retributive sentence. Although the term life imprisonment may have different meanings in different countries, one common feature is that such sentences are indeterminate. In reality, in most jurisdictions only a few life sentence prisoners will be imprisoned for the remainder of their lives. The overwhelming majority will be released back into society, often under some form of supervision, and the sentence will need to be planned with this in mind.

Managing indeterminate sentences

The indeterminate nature of the life sentence presents particular problems for prison administrations in the management of such prisoners. The fact that their release date is not known means that special attention will have to be given to planning an appropriate programme aimed at the eventual return of these prisoners to society.

“ As of 2014, there were roughly 479,000 persons serving formal life sentences around the world, compared to 261,000 in the year 2000, representing a rise of nearly 84 per cent in 14 years. This trend will persist unless penal policies and practices are changed to limit life imprisonment.

From both a human rights and a prison management perspective, life imprisonment poses concerns. In many cases, it is unnecessarily punitive, especially for nonviolent crimes, and does not satisfy the principle of proportionality. Life imprisonment without parole, in particular, raises issues of cruel, inhuman and degrading punishment, and undermines the right to human dignity by taking away the prospect of rehabilitation.⁸⁶

Penal Reform International, *Life imprisonment: A policy briefing*, 2018

Not all long term prisoners are specially dangerous

When managing this group of prisoners, considerations of dangerousness have to be taken into account. The automatic assumption that all long term prisoners are dangerous is not supported by evidence. Life sentence prisoners, for example, do not in general present more disciplinary problems than any other group of prisoners. On the contrary, they often have better disciplinary records than prisoners serving much shorter sentences. There is no evidence that these prisoners are likely to be more disruptive or to pose a threat to good management merely because of the length of their sentences. Frequently, life sentence prisoners are older than the average of the convicted prison population. They are often first time offenders who have never previously committed violent acts. Typically, their victim will be someone they have known previously. Since the final date of release for long term prisoners will often, at least in part, depend on how they respond in prison, they have an interest in not causing trouble of any kind. For all these reasons, they can often have a calming influence on other groups of prisoners, such as those who are younger or are serving shorter sentences.

High risk prisoners

At the same time, a percentage of long term and life sentence prisoners are likely to be highly dangerous. Some of them will have committed horrendous crimes and would pose a real threat to the safety of the public if they were to escape. It is the responsibility of prison administrations to make sure that prisoners like this do not escape and also that they do not present a threat to the safety of staff and other prisoners. Managing these prisoners in a manner which is decent and humane while at the same time ensuring the safety of other people is a great challenge to professional prison management. This topic is referred to in chapter 8.

Prisoners defined as terrorists

Another set of difficulties arises when prison systems are required to deal with prisoners who have been defined as terrorists or enemies of the state. Unlike the vast majority of prisoners, these prisoners often do not accept the fact that they should be in prison, nor do they accept the legitimacy of the authority of the prison administration. Their management is complicated by the fact that they often have high political and public profiles and both the way they are treated and the manner in which they respond to imprisonment are matters of great media interest, which can have violent repercussions in civil society. The hands of prison administrators are frequently tied by the demands of political necessity. At the same time, the way in which the administration responds to the pressures created by having to manage such prisoners in a decent and humane manner is likely to be a real test of its professionalism. This issue is discussed in more detail in chapter 8.

The problem of institutionalisation

The most important issues in the management of life and long term prisoners, however, will come from the potential damage to the prisoners' mental well-being caused by the length of sentence or the uncertainty of the release date. Prison administrators will need to help prisoners to plan their sentences in such a way as to maintain their sense of self-worth and avoid the dangers of institutionalisation.

What the international instruments say

The international covenants and human rights instruments themselves have little to say directly about the treatment of prisoners who are serving life or other long sentences. A main reason for this is the expectation that they should not be treated differently from any other group of prisoners.

Providing opportunities

The key international document governing the treatment of long-term prisoners is the *United Nations Recommendations on Life Imprisonment*.⁸⁷ The United Nations recommends that states should provide life sentence prisoners with "opportunities for communication and social interaction," as well as "opportunities for work with remuneration, study, and religious, cultural, sports, and other leisure activities." If these opportunities are to be offered to life sentence prisoners, they should equally be available for all other prisoners serving long sentences. Similarly, the Council of Europe's 2003 recommendation on the management of life sentence and other long-term prisoners⁸⁸ states that such prisoners should be given opportunities for "participation in work, education, training and other activities that provide for a purposeful use of time spent in prison and increase the chances of a successful resettlement after release".

Putting it into practice

All the provisions of good prison management described in this handbook should be applied equally in the case of prisoners serving life or other long sentences. In addition, the following considerations are particularly relevant to this group of prisoners:

Initial planning after sentence

All prisoners are individuals and prison authorities need to treat them as such. One way of beginning this process for long term prisoners is to have an initial assessment, as the start of planning the sentence of each prisoner. This matter was referred to in chapter 7 of this handbook. In a number of jurisdictions prisoners serving very long sentences are taken first to an induction unit. The objective of such units is to facilitate the entry of these prisoners into ordinary prison life, to which they are transferred after a few months.

Risk assessment

In some jurisdictions initial assessment leads on to a sentence management process in which the profile of the prisoner will be assembled through consideration of a number of factors such as criminal history, family and background, past employment, problems such as alcohol and drugs, as well as reports from the police, welfare or probation service. Based on this profile a sentence plan is drawn up. This plan includes an assessment of risk presented by each prisoner to him or herself, to other prisoners and staff, and to the public. The overriding consideration in this process of risk assessment is the protection of the public. Care needs to be taken to ensure that the assessment of risk is neither higher nor lower than is indicated by the facts of the case. The sentence plan also includes the various activities and programmes in which the prisoner is likely to be involved throughout his or her sentence.

Work, education and other activities

There is no reason why the provision for work, education and other activities which are described in chapter 10 of this handbook should not also apply to prisoners serving long sentences, including life. Indeed, given the length of time that they are likely to have to spend in prison, it can be argued that prisoners serving long sentences should be given priority over other prisoners for these activities when resources are scarce. Prisoners who are subject to life or long terms of imprisonment are more likely to become dislocated from their family and community and, therefore, will need more support in the rehabilitation process.

No justification for isolation

There is no operational justification for keeping this class of prisoner in isolation, either as individuals or in a group, simply because of the length of their sentence. On the contrary, it is good management practice to keep prisoners fully occupied, in their own interests and those of the smooth running of the prison.

Contacts with family and the outside world

If a person who has been sentenced to a long term of imprisonment is to maintain emotional and physical health while in prison and eventually to return safely to the community, he or she needs to be able to maintain and develop family links and contact. There is, of course, another important justification for the need to allow this contact. That is that the other members of the family, spouses, children and others are entitled to have contact with the family member who is in prison. For these reasons the arrangements for maintaining family contact which are described in chapter 11 apply with special emphasis to prisoners who are serving long sentences.

Progress through the system

An important feature of the different forms of initial assessment and planning described above is that they can be used to identify the small number of long term prisoners who are likely to pose a serious threat to security or safety. The initial assessment will enable the administration to distinguish these prisoners from the majority of long term prisoners who, although they may have committed serious crimes, will not necessarily present a threat within the prison setting. In a number of countries this latter group of prisoners are moved quite quickly to prisons of medium or low security status, even though they are serving comparatively long sentences.

Regular review is vital

It is important to recognise that both the security classification and the sentence plan for long term prisoners will require regular review, to a greater extent perhaps than is the case for short term prisoners. The United Nations document on life imprisonment recommends that “training and treatment programmes should take into account changes in the prisoners’ behaviour, interpersonal relations and motivation regarding work and educational goals”.

Transfer to lower security

Several years before the anticipated date of release most long term prisoners will be suitable for transfer to a low security prison or hostel. Here they can have the opportunity to leave the prison from time to time, sometimes for several days, as part of the final preparation for return to the community. This latter part of the sentence is often monitored by a parole board or other releasing authority.

Elderly Prisoners

Growing numbers of elderly prisoners

One consequence of the increase in the length of sentences in some jurisdictions is that prison administrators are having to respond to the needs of growing numbers of elderly prisoners. In some jurisdictions the recent trend towards mandatory life or long sentences has led to a significant increase in prisoners who will become old in prison.

This may require the provision of a range of specialist facilities to deal with the problems arising from a loss of mobility or the onset of mental deterioration.

“ The worldwide population is ageing dramatically. This phenomenon is also reflected in correctional populations throughout the world. For example, in the United Kingdom the overall prison population grew by 51% between 2000 and 2009, while the population over the age of 60 grew by 216%. In Japan, the number of prisoners over the age of 60 increased by 160% between 2000 and 2006. Such a rapid rise in the number of older prisoners has been described as a correctional “ageing crisis” which poses an urgent challenge for correctional health-care systems – especially those poorly equipped to meet the complex needs of older adults.⁸⁹

International Review of the Red Cross, Ageing prisoners:
An introduction to geriatric health-care challenges in correctional facilities, 2018

The problems of the elderly

Prison administrations will need to give particular consideration to the different problems, both social and medical, of this group of prisoners. The growing numbers of prisoners in this category has led to the development of specialist units for the elderly in England and in some parts of the United States. The healthcare needs of this group of prisoners are also dealt with in chapter 6 of this handbook.

Losing contact with families

Those who are serving long sentences or who have a long history of involvement in crime are more likely to have lost contact with their families. This presents particular problems for older prisoners at the end of their sentence. Many of them may have no family to go to and may be seen as too old to work. Prison administrations will need to work carefully with outside agencies in order to help these prisoners re-settle into the community.

Prisoners under sentence of death

The framework

Use of the death penalty is reducing

More than two thirds of the countries in the world have now abolished the death penalty in law or in practice and this proportion is increasing year by year. For example, 47 member states of the Council of Europe, covering an area from Lisbon on the Atlantic Ocean to Vladivostok on the Pacific, have either abolished the death penalty or are observing a moratorium. The international covenants and other human rights instruments recommend strongly that state parties should move towards abolition of the death penalty.

Prisoners on death row

In those countries which still retain the death penalty prison authorities will usually be responsible for holding prisoners who are under sentence of death. In some cases the appeal process will be a very lengthy one and prisoners may be held on death row for many years. This may also be the case in countries where there is a moratorium on executions but existing death sentences have not been commuted.

Care of prisoners and staff

The responsibility of taking care of prisoners who have been sentenced to death is a heavy one for the staff involved. Prison authorities have a special obligation to treat such prisoners decently and humanely and also to provide proper support for staff involved in this onerous task.

What the international instruments say

The international instruments are unequivocal in calling for the abolition of the death penalty.

International Covenant on Civil and Political Rights, Article 6:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

(5) Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

(6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Second Optional Protocol to the International Covenant on Civil and Political Rights:

The States Parties to the present Protocol, believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights.

United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Article 9:

Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

World Medical Association Resolution on Physician Participation in Capital Punishment, adopted by the 34th World Medical Assembly Lisbon, Portugal, September 28-October 2, 1981 and amended by the 52nd WMA General Assembly in Edinburgh, Scotland during October 2000 and further in Korea 2008:

RESOLVED, that it is unethical for physicians to participate in capital punishment, in any way, or during any step of the execution process, including its planning and the instruction and/or training of persons to perform executions, The World Medical Association REQUESTS firmly its constituent members to advise all physicians that any participation in capital punishment as stated above is unethical. URGES its constituent members to lobby actively national governments and legislators against any participation of physicians in capital punishment.

Putting it into practice

Decency and humanity

One of the main challenges facing prison administrations in regard to prisoners under sentence of death is the need to make a clear distinction between the management of individual prisoners who are awaiting execution and the legal and political position about the use of the death penalty in the relevant country. One of the most important responsibilities of prison staff is to treat all prisoners, regardless of charge, crime or sentence, with decency and humanity. Prisoners who are facing the death penalty should not be subjected to unnecessary restriction on their movement within prison or to more severe treatment simply because they have been sentenced to death.

“ The American Civil Liberties Union and the Abolitionist Law Center, which advocates for the rights of prisoners, [have] filed a federal lawsuit against officials in charge of the Pennsylvania Department of Corrections, alleging that their policy of holding death-sentenced inmates indefinitely in solitary confinement is in violation of the Eighth Amendment, which bans cruel and unusual punishments, and the Fourteenth Amendment, which guarantees equal protection. According to the suit, the state of Pennsylvania has 156 prisoners at the State Correctional Institution-Greene and the SCI-Graterford awaiting execution; 80 percent of them have been in solitary confinement for than 10 years. The five plaintiffs named in the suit, who are between the ages of 46 and 50, have spent from 16 to 27 years in isolation.⁹⁰

Mother Jones, All Death Row Inmates in Pennsylvania Are Put in Solitary Confinement. Now the State Is Getting Sued, 25 January 2018

Separation of death penalty prisoners

In countries which still retain the death penalty any appeal against such a sentence will often involve a lengthy process, in some cases extending over several years. In many prison systems these prisoners are held segregated from all other prisoners in an area which is often referred to as death row. In some countries this involves separation in some form of solitary confinement. In other countries prisoners are held in common cells along with other prisoners who are in the same legal position.

“ One convicted murderer in Japan, Iwao Hakamada, spent more than 45 years in solitary confinement awaiting death. Japan's policy of not telling the condemned when they would be hanged until the day itself meant he had no way of knowing which day might be his last. But none was. Hakamada was freed on appeal in March [2014]. His case was extreme, but the average wait on death row in Japan is still seven years. In the US the average is longer still, at around 13 years.⁹¹

BBC News, When murderers were hanged quickly, 7 August 2014

No justification for automatic separation

In terms of good prison management there is no justification for holding such prisoners routinely in isolated conditions where they have no access to any facilities for work, education or cultural activities. Their death sentence should not involve additional punishment in respect of their conditions and the prison administration should do all in its power to reduce the mental anguish commonly known as death row phenomenon which may result from the lengthy process of appeal. Regardless of the fact that they are under sentence of death such prisoners should be assessed in the same way as any other prisoner and allocated to appropriate conditions. As in other forms of assessment it is important to look at the individual circumstances and risks posed by each prisoner. Whilst some may require special conditions, the majority will not.

“ Jayakanthan, on walking into the room to meet us, blinked continuously for the first few minutes. He explained that he was not accustomed to so much light as he was kept in solitary confinement in a cell with no source of sunlight. He was provided food in his cell and was permitted to come out of his cell for only 20 minutes every day. His solitary confinement began in September 2013 and he had no human contact since then, except for an occasional conversation with the guard stationed outside his cell at all times. He said that his routine interaction was only with lizards that entered his cell and that he had befriended the lizards by feeding them his food. He felt that the noises made by the lizards were to thank him for feeding them. He also shared his observation that after a while, the lizards would stop coming to him for food but would nonetheless visit his cell and make noises as though talking to him as their friend.⁹²

Death Penalty India report 2016, volume II

Equality of treatment

Prisoners under sentence of death retain all the rights to which prisoners in general are entitled. It is particularly important to ensure that they do not receive a lower standard of treatment in terms of such matters as food, healthcare, hygiene, exercise and association with other prisoners.

Full access to lawyers

Prison authorities should be particularly careful to make sure that prisoners who are under sentence of death have full access to the lawyers who are dealing with any appeal against conviction or sentence. They are entitled to the normal safeguards in respect of access and privacy of communication as other prisoners.

Visitors

Chapter 11 of this handbook refers to the manner in which visitors to prisoners should be treated by staff. Prison staff should be especially sensitive when dealing with family and friends who come to visit prisoners under sentence of death. This may include telling families about the imminent execution and ensuring that all proper religious and other requirements are observed.

“ According to evidence obtained, persons sentenced to death are kept in total isolation, they are forbidden to take walks, and prison staff treat them as if they are no longer among the living. Isolation makes them especially vulnerable to physical and psychological coercion. Conditions of detention on death row have repeatedly led to suicide attempts. The bodies of executed persons are not released to their families, and the time and place of execution, as well as the place of burial are kept secret, leaving relatives in a state of uncertainty, unable even to bury the body in accordance with family traditions and beliefs.⁹³

International Federation for Human Rights, Death Penalty in Belarus: Murder on (Un)lawful Grounds, 2016

*Staff should
be specially
selected*

Staff who are in charge of prisoners under sentence of death on a daily basis should be specially selected for this stressful responsibility. They should usually be experienced; they should be given special training, especially in the emotional aspects of their work; and they should have continuous support from management.

*Response to
an execution*

If an execution is to take place within a prison this will have a serious effect at different levels. This effect will begin to be felt as soon as the date for execution has been set; it is likely to increase as this date approaches and will continue for some time after the execution has taken place. The prison authorities should have a strategy to deal with the consequences of this for everyone involved.

Appendix

List of relevant human rights instruments

International Human Rights Instruments

International Bill of Human Rights

- *Universal Declaration of Human Rights*
Adopted by UN General Assembly Resolution 217A (III) of 10 December 1948
- *International Covenant on Economic, Social and Cultural Rights*
Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976
- *International Covenant on Civil and Political Rights*
Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976

Prevention of discrimination

- *International Convention on the Elimination of All Forms of Racial Discrimination*
Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969
- *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*
Proclaimed by General Assembly resolution 36/55 of 25 November 1981
- *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*
Adopted by General Assembly resolution 47/135 of 18 December 1992

Rights of women

- *Convention on the Elimination of All Forms of Discrimination against Women*
Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981
- *Declaration on the Elimination of Violence against Women*
General Assembly resolution 48/104 of 20 December 1993

Rights of the child

- *Convention on the Rights of the Child*
Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990

The administration of justice

- *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*
General Assembly resolution 70/175, annex, adopted on 17 December 2015
- *Basic Principles for the Treatment of Prisoners*
Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990
- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*
Adopted by General Assembly resolution 43/173 of 9 December 1988

- *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*
Adopted by General Assembly resolution 45/113 of 14 December 1990
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987
- *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*
Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199. Entered into force on 22 June 2006
- *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*
Adopted by General Assembly resolution 37/194 of 18 December 1982
- *Safeguards guaranteeing protection of the rights of those facing the death penalty*
Adopted by Economic and Social Council resolution 1984/50 of 25 May 1984
- *Code of Conduct for Law Enforcement Officials*
Adopted by General Assembly resolution 34/169 of 17 December 1979
- *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*
Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
- *Basic Principles on the Role of Lawyers*
Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990
- *Guidelines on the Role of Prosecutors*
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Regional Human Rights Instruments

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“ Secure prisons are essential to making our justice system an effective weapon against crime. When prisoners – convicted or awaiting trial – are entrusted to your care, they must know and the public must know that they will remain there until they are legally discharged...

The full contribution which our prisons can make towards a permanent reduction in the country’s crime-rate lies also in the way in which they treat prisoners. We cannot emphasise enough the importance of both professionalism and respect for human rights.”

President Nelson Mandela
speaking to prison staff in South Africa in 1998



This handbook underlines the importance of managing prisons within an ethical context which respects the humanity of everyone involved in a prison: prisoners, prison staff and visitors. This ethical context needs to be universal in its appeal and this universality is provided by the international human rights instruments.

There is also a pragmatic justification for this approach to prison management: it works. This style of management is the most effective and safest way of managing prisons.

What this approach underlines is that the concept of human rights is not merely another subject to be added to the training curriculum. Rather, it suffuses, and is an integral part of, good prison management.

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