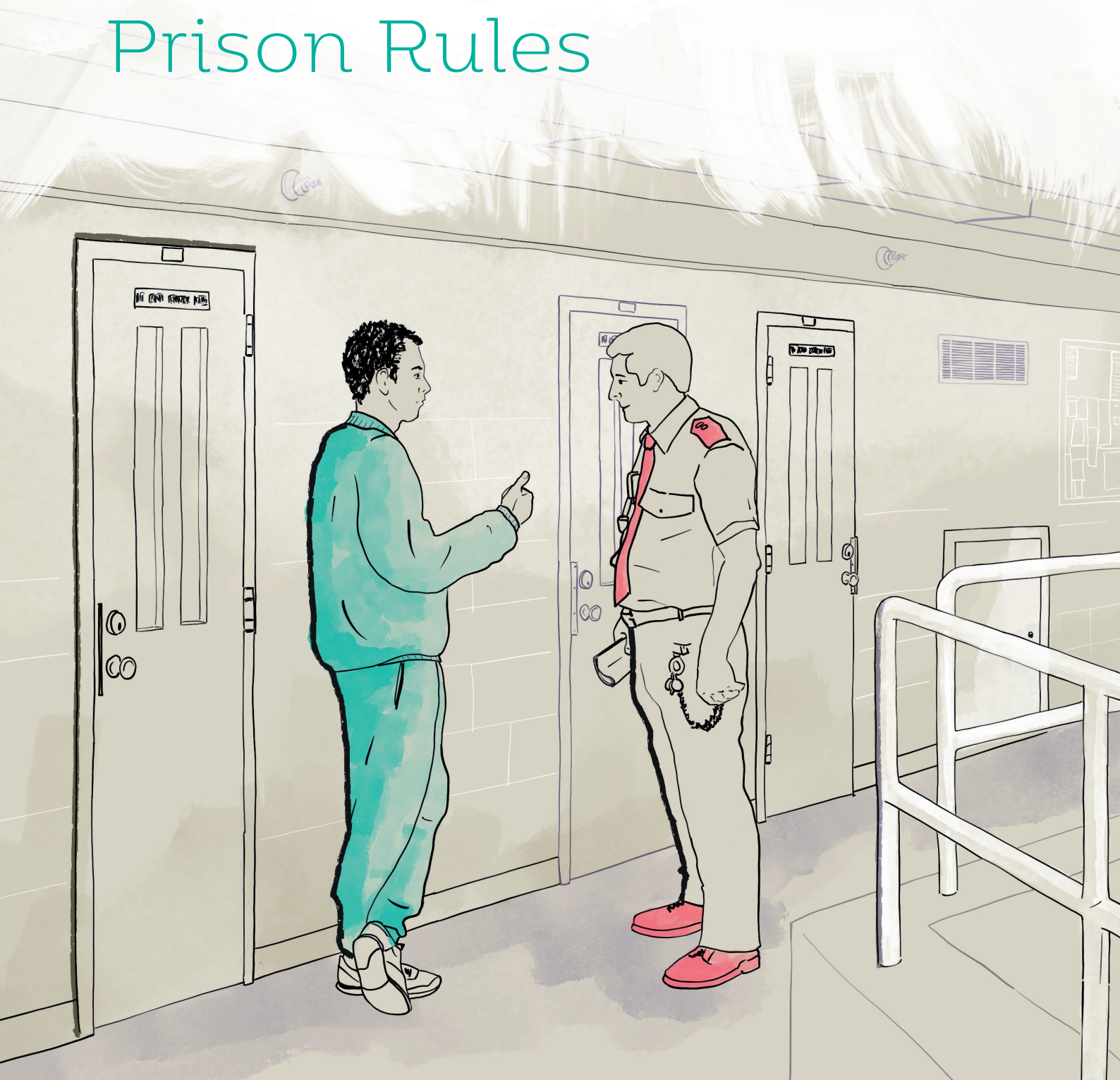


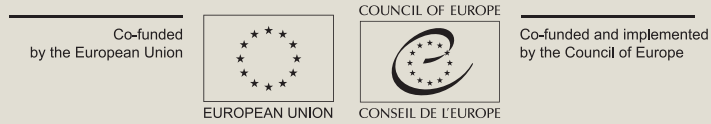


# Guidance document on the European Prison Rules



## Guidance document on the European Prison Rules

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# Introduction

This Guidance Document on the European Prison Rules (EPR) is co-published by Penal Reform International (PRI) and the Council of Europe, within the joint European Union/ Council of Europe project 'SPACE Reports and EU Network of prison monitoring bodies (the European NPM Forum)'. The EPR, adopted by the Council of Europe, set out standards on the management of prisons and the treatment of people in prison. They apply in all Council of Europe member States and provide critical guidance to prison staff on how to protect and safeguard the human rights of people in prison – from admission to release. The rules have been revised four times since 1973, most recently in 2020.<sup>1</sup>

The document has been produced following detailed desk research and consultation and outreach with practitioners. A wide range of inter-governmental institutions, prison experts and representatives of civil society with practical experience have kindly contributed their time and expertise. The authors would like to thank all of them for their crucial input and generous contributions.

This guidance document can be used as a reference document and as a resource for reviewing legislation, developing policies and in training criminal justice actors and other relevant stakeholders in Europe.

The document offers practical guidance to legislators, policymakers, prison authorities, monitoring bodies, probation services, social welfare and healthcare services, NGOs and other relevant stakeholders, to help and encourage them to take action to respond appropriately to the needs of prisoners in Europe.

This guidance brings together the most recent knowledge, international experience, good practice and technical papers developed by the Council of Europe and other international organisations to assist policymakers, legislators and practitioners to implement the rules in a way that is consistent with international standards. It also provides useful references and a resource list for more detailed information on specific issues. It provides detailed guidance on how each rule can be implemented at the practical level.

There are **9 thematic chapters** which bring together the rules relating to that theme. The publication largely follows the structure of the EPR with a few exceptions for increased coherence and accessibility. **Examples of promising practices** from Council of Europe member states are included to illustrate implementation of standards, inspire solutions, generate new thinking, and point to new tools and resources.

This guidance document should be read in close conjunction with other guidance on international detention standards including the Council of Europe's *Commentary on the European Prison Rules*, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and PRI's *Guidance Document on the Nelson Mandela Rules*, and PRI and the Thailand Institute of Justice (TIJ)'s *Guidance Document on the Bangkok Rules*.<sup>2</sup>

1. Committee of Ministers, *Recommendation Rec(2006)12-rev of the Committee of Ministers to member states on the European Prison Rules*, 1 July 2020, [search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016809ee581](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809ee581).

2. Council of Europe, *Revised Rules and Commentary CM/Rec(2006) of the Committee of Ministers to Member States on the European Prison Rules*, 2018, <https://rm.coe.int/pc-cp-2018-15-e-rev-3-epr-2006-with-changes-and-commentary-08-10-18/16808e4ac1>; PRI and OSCE/ODIHR, *Guidance Document on the Nelson Mandela Rules*, 9 August 2018; PRI and TIJ, *Bangkok Rules Guidance Document*, 2nd edition, 2021.

## Terminology

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

For brevity, the European Prison Rules are referred to as 'the EPR'.

The term 'gender' refers to the roles, behaviours, activities and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between men and women and girls and boys, gender also refers to the relationships between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through the socialisation processes.<sup>3</sup>

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

The term 'principle of non-discrimination' or any other references to discrimination refer to Article 2(1) and Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which state that 'there shall be no discrimination on the grounds of race, colour, sex, language, religions, political or other opinion, national or social origin, property, birth or any other status' and subsequent interpretative instruments.

## Abbreviations and acronyms

<b>Bangkok Rules</b>	The United Nations (UN) Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
<b>Beijing Rules</b>	UN Standard Minimum Rules for the Administration of Juvenile Justice
<b>CDPC</b>	European Committee on Crime Problems
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>CRC</b>	UN Convention on the Rights of the Child
<b>ECtHR</b>	European Court of Human Rights
<b>ECHR</b>	European Convention on Human Rights
<b>EPR</b>	European Prison Rules
<b>EPIS</b>	European Prison Information System
<b>EuroPris</b>	The European Organisation of Prison and Correctional Services
<b>Havana Rules</b>	UN Rules for the Protection of Juveniles Deprived of their Liberty
<b>ICRC</b>	International Committee of the Red Cross
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>Nelson Mandela Rules</b>	UN Standard Minimum Rules of the Treatment of Prisoners (as revised in 2015)
<b>NGOs</b>	Non-governmental organisations
<b>NPMs</b>	National Preventive Mechanisms
<b>OPCAT</b>	UN Optional Protocol to the Convention against Torture
<b>Tokyo Rules</b>	UN Standard Minimum Rules for Non-custodial Measures

3. See for example: 'Gender Equality Glossary', *UN Women Training Centre*, [trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G](https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G).

# The European Prison Rules in context

## History and purpose of the rules

The EPR set out standards on the management of prisons and the treatment of prisoners in all Council of Europe member States. They provide critical guidance to prison staff on how to protect and safeguard human rights throughout imprisonment, from admission to release, in their day-to-day work. The rules are the reference standard in Europe and have been regularly used by the European Court of Human Rights (ECtHR) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The rules also provide clear standards for prison inspection bodies. National prison laws should be, and many have been, reformed in line with the EPR.

Knowledge of good prison practice, and how to effectively protect human rights in prison, is constantly evolving, and for this reason, Rule 108 specifically requires that the EPR be updated regularly.

The rules have undergone four revisions since they were first adopted in 1973, most recently in 2020. The first iteration of the EPR, the *European Standard Minimum Rules for the Treatment of Prisoners (1973)*, sought to adapt the UN Standard Minimum Rules for the Treatment of Prisoners (adopted in 1955 but now known as the Nelson Mandela Rules, as revised in 2015) to the European context.<sup>4</sup> Reflecting the evolving needs of prison administrations, prisoners and prison staff, a revised edition of the EPR were adopted in 1987<sup>5</sup> and again in 2006 to take account of developments in prison law and practice, including a growing body of jurisprudence from the ECtHR and the CPT.<sup>6</sup>

## The 2020 revision

Developments in prison-standard setting, penal practice, criminal justice and human rights – in particular, the adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) in 2010 and the revised United Nations Standard Minimum Rules of the Treatment of Prisoners (the Nelson Mandela Rules) in 2015 – gave impetus for a review and update of the EPR as revised in 2006.<sup>7</sup>

The revision process started in 2017, led by the Council of Europe's Council for Penological Co-operation (PC-CP) and involved penological experts and Council of Europe member States. Updates to both the rules and the commentary were adopted by the European Committee on Crime Problems (CDPC) in December 2019, and the Committee of Ministers adopted the revised EPR in July 2020.<sup>8</sup>

4. Council of Europe, *European Standard Minimum Rules for the Treatment of Prisoners*, CM Resolution No. R (73)5, 19 January 1973, [rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804fac9a](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804fac9a).

5. Council of Europe, *Recommendation No. R (87)3 of The Committee of Ministers to Member States on the European Prison Rules*, 12 February 1987, [rm.coe.int/16804f856c](https://rm.coe.int/16804f856c).

6. Council of Europe, *Recommendation (2006)2-rev of the Committee of Ministers to members States on the European Prison Rules*, 11 January 2006, [www.refworld.org/docid/43f3134810.html](https://www.refworld.org/docid/43f3134810.html).

7. UN General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, A/RES/65/22, 16 March 2011; UN General Assembly, *UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, A/RES/70/175, annex, 17 December 2015.

8. Council of Europe, *Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules*, July 2020, [search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016809ee581](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809ee581).

The nine areas where revisions were made are:

### **1. Separation and solitary confinement (new Rule 53A, 60.6)**

The 2006 EPR contained general restrictions on the use of all special safety and security measures that might impact negatively on prisoners but did not specify in what circumstances prisoners could be separated from others. It did deal briefly with solitary confinement (the most extreme form of separation) as a disciplinary sanction but was silent about other forms of separation. This void has now largely been filled by the 2020 amendments to the EPR [see [Separation of prisoners](#) and [Solitary confinement](#)].

### **2. Special high security or safety measures (Rule 53)**

The revised EPR now emphasise that these measures (including separation) should only be applied in exceptional circumstances when safety and security cannot be maintained through less restrictive measures.

### **3. Women (new Rule 34.1, 34.4)**

The revised rules now include a specific reference and obligation on prison authorities to develop gender-sensitive policies to meet the needs of women [see [Women and Infants in prison](#)].

### **4. Foreign nationals (Rule 37)**

Rule 37 reflects the key principles set out in the Council of Europe recommendation on foreign nationals in prison<sup>9</sup> and, in particular, the need to take 'positive measures' to meet their distinctive needs including contact with the outside world and consideration for early release<sup>10</sup> [see [Foreign nationals](#)].

### **5. Instruments of restraint (Rule 68)**

Rule 68 now incorporates relevant standards on the use of restraints (including CPT standards) and also prohibits the use of all instruments of restraint that are inherently degrading [see [Instruments of restraint](#)].

### **6. Requests and complaints (Rule 70)**

Rule 70 now makes a distinction between making requests and lodging complaints. These rules (and the EPR commentary) incorporate guidance and general principles on complaints mechanisms outlined by the CPT and in ECtHR case law [see [Requests and complaints](#)].

### **7. Adequate prison staffing levels and minimum service guarantees (Rules 71-91)**

Rule 83a set out explicitly the requirement that prisons are 'adequately staffed at all times'. Moreover, the rules place a duty on States to ensure that measures are in place to deal with 'operational emergencies' and to guarantee a minimum level of service in prisons to cope with disruptions such as strikes by prison staff [see [Management and staff](#)].

### **8. Records and file management (Rules 15-16A)**

Rule 15 still ensures that the necessary information concerning prisoners is recorded upon their entry to prison, including on 'visible injuries and complaints about ill-treatment'. Rule 16A now requires careful record keeping for each prisoner that should continue throughout the time that the person is kept in prison [see [Prisoner file management](#)].

### **9. Inspections and monitoring (Rules 92-93)**

Rule 93 on independent monitoring now sets out explicitly the guarantees to be afforded to prison monitoring bodies in terms of record keeping, access and interviews [see [Inspections and monitoring](#)].

9. Council of Europe, *Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners*, 10 October 2012, [pjp-eu.coe.int/documents/41781569/42171329/CMRec+%282012%29+12+concerning+foreign+prisoners.pdf/a13a6dc6-facd-4aaa-9cc6-3bf875ac8b0f](http://pjp-eu.coe.int/documents/41781569/42171329/CMRec+%282012%29+12+concerning+foreign+prisoners.pdf/a13a6dc6-facd-4aaa-9cc6-3bf875ac8b0f).

10. *Ibid.*



## Scope and application of the rules



### Relevant rules

#### Rule 10:

1. The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.
2. In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should only be detained in prisons, that is, in institutions reserved for detainees of these two categories.
3. The rules also apply to persons:
  - (a) who may be detained for any other reason in a prison; or
  - (b) who have been remanded in custody by a judicial authority or deprived of their liberty following conviction and who may, for any reason, be detained elsewhere.
4. All persons who are detained in a prison or who are detained in the manner referred to in paragraph 10.3.b are regarded as prisoners for the purpose of these rules.

#### Rule 11:

1. Children under the age of 18 years should not be detained in a prison for adults, but in an establishment specially designed for the purpose.
2. If children are nevertheless exceptionally held in such a prison, there shall be special regulations that take account of their status and needs.

#### Rule 12:

1. Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose.
2. If such persons are nevertheless exceptionally held in prison, there shall be special regulations that take account of their status and needs.

#### Rule 13:

These rules shall be applied impartially, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The EPR have a close synergy with other international standards on the treatment of prisoners and detention and should be read in conjunction with them, including the Nelson Mandela Rules and the Bangkok Rules, as well as jurisprudence from the ECtHR and regional standards, including those deriving from the European Union.

The EPR, like the Nelson Mandela Rules and the Bangkok Rules, are 'soft law'. They are not binding on States but are agreed as the standards required to meet international law and good practice in prison management. They provide practical guidance to policymakers, prison managers and prison staff on day-to-day prison management and operational practice that complies with human rights standards. Like other 'soft law' standards, the EPR should be incorporated into domestic legislation and procedures. The 2006 EPR have been impactful not only in reform of national laws but also in European thinking about prisons.<sup>11</sup> The CPT regularly refers to the EPR in its country reports, and the ECtHR continues to cite the EPR frequently in its jurisprudence. The EPR and other international standards serve as a useful tool for training of prison staff, as well as an advocacy and lobbying tool for prison monitors, NGOs and other observers, and have been used as the basis for complaints against prison administrations.<sup>12</sup>

Rules 10.1 to 10.4 of the EPR set out in detail which persons are deemed to be prisoners under the rules and to whom the rules apply. As strictly drafted, the rules address the treatment of persons *'who are detained in prison'* but, given the broad interpretation and terminology across Council of Europe member States, this includes other custodial institutions including 'penitentiaries', 'work colonies' or 'penal colonies.'

The EPR apply not only to people who are physically detained within prisons but also those who are under the authorities' control and supervision. In practical terms, this includes prisoners on temporary forms of release (such as day release, home release) or undertaking

11. Smit, Dirk van Zyl and Slade, Harvey, 'The Art of Crime, What's new in the 2020 European Prison Rules? Innovative provisions on separation, solitary confinement, and other prison practices', *The Art of Crime*, November 2020, [theartofcrime.gr/whats-new-in-the-2020-european-prison-rules-innovative-provisions-on-separation-solitary-confinement-and-other-prison-practices](http://theartofcrime.gr/whats-new-in-the-2020-european-prison-rules-innovative-provisions-on-separation-solitary-confinement-and-other-prison-practices).

12. See, for example, 'Concern over cell-sharing and increased capacity at Cork Prison', *Irish Prison Reform Trust*, June 2013, [www.iprt.ie/iprt-in-the-news/concern-over-cell-sharing-and-increased-capacity-at-cork-prison](http://www.iprt.ie/iprt-in-the-news/concern-over-cell-sharing-and-increased-capacity-at-cork-prison).

external activities such as work or rehabilitation programmes. It may also include individuals who are temporarily detained in police custody or other locations where they cannot leave freely.

In some instances, persons other than pre-trial and sentenced prisoners may be held in prisons. For example, this may include immigration detainees or individuals with mental health issues who are awaiting transfer to or cannot be admitted to a secure hospital facility. In such instances, these individuals will be equally protected by the EPR. They should only be detained as an exceptional measure and for the shortest time possible.

Under international human rights law, children (anyone under the age of 18) should be detained in separate detention facilities and not with adults (Rule 11).<sup>13</sup> Children and infants may, however, be permitted to remain with their parents in detention if it is deemed to be in their best interests but special safeguards must be in place to protect them in detention.<sup>14</sup>

Similarly, people with mental health issues should not be detained in prison as it may exacerbate their condition. If such individuals are detained, they should have access to appropriate mental healthcare in line with international standards.<sup>15</sup> The CPT has also indicated that prisoners with mental health issues should be transferred to a mental health hospital immediately, noting that, 'a mentally ill prisoner should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system.'<sup>16</sup>

## Fundamental principles



### Relevant rules

#### Rule 1:

All persons deprived of their liberty shall be treated with respect for their human rights.

#### Rule 2:

Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

#### Rule 3:

Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

#### Rule 4:

Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

#### Rule 5:

Life in prison shall approximate as closely as possible the positive aspects of life in the community.

#### Rule 6:

All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

#### Rule 7:

Co-operation with outside social services and, as far as possible, the involvement of civil society in prison life shall be encouraged.

#### Rule 8:

Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners.

#### Rule 8:

All prisons shall be subject to regular inspection and independent monitoring

The EPR contain a number of fundamental principles which govern the interpretation and implementation of all the rules contained in the EPR. Authorities should apply and interpret the rules in the spirit of these principles.

13. CRC, Article 37(c), and the UN Havana Rules, 1990.

14. EPR Rules 35 and 36; *Council of Europe, Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents*, 2019, [edoc.coe.int/en/children-s-rights/7802-recommendation-cmrec20185-of-the-committee-of-ministers-to-member-states-concerning-children-with-imprisoned-parents.html](https://rm.coe.int/en/children-s-rights/7802-recommendation-cmrec20185-of-the-committee-of-ministers-to-member-states-concerning-children-with-imprisoned-parents.html); Bangkok Rules, Rules 36, 37, 48-52; Nelson Mandela Rules, Rule 29, [edoc.coe.int/en/children-s-rights/7802-recommendation-cmrec20185-of-the-committee-of-ministers-to-member-states-concerning-children-with-imprisoned-parents.html](https://rm.coe.int/en/children-s-rights/7802-recommendation-cmrec20185-of-the-committee-of-ministers-to-member-states-concerning-children-with-imprisoned-parents.html).

15. Nelson Mandela Rules, Rules 25 (1), 30 (c), 31, 32, 45 (2), 46, 109, 110; UN Convention on the Rights of Persons with Disabilities, Article 14; Bangkok Rules, Rules 6 (d), 12, 13 (f).

16. CPT, *Health care services in prisons – Extract from the 3rd General Report of the CPT*, CPT/Inf (93) 12-part, [rm.coe.int/16806ce943](https://rm.coe.int/16806ce943).

## Protection of human rights

Rules 1 and 2 of the EPR reiterate the principle that someone does not lose their human rights simply by virtue of being deprived of their liberty. This principle is recognised in a number of international and regional human rights treaties and standards<sup>17</sup> which all have ‘human dignity and value of the person’ at their core (in different iterations). These are recognised as guiding principles governing prison and wider criminal justice systems. In the European context, this principle has been reiterated by the ECtHR,<sup>18</sup> which has stated that human dignity frames the very essence of the European human rights system and that it should be extended to prisoners.<sup>19</sup>

## Necessity and proportionality of restrictions

The EPR recognise that imprisonment infringes upon prisoners’ rights including the right to liberty. However, any further restrictions should be imposed strictly in line with human rights principles, namely the principle of necessity and proportionality (Rule 3). This means that any restriction should be proportionate to its aim and should only be imposed so far as it is necessary (i.e. the least restrictive of a person’s human rights to achieve that particular aim).

The ECtHR has recognised this principle in case law stating,

...the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.<sup>20</sup>

## Budgetary pressures do not excuse inaction

The EPR state that a lack of resources cannot be cited by member States as a reason for allowing a deterioration in prison conditions that infringe the human rights of prisoners (Rule 4). The ECtHR has also recognised that budgetary or logistical difficulties should not be an impediment to the protection of prisoners’ rights, and it falls to States to organise their prison systems in a way that fully respects the dignity of prisoners, regardless of these difficulties.<sup>21</sup>

## Normalisation principle

The principle of ‘normalisation’ maintains that life in prison should resemble as far as possible the positive aspects of ‘normal’ life in a free society (Rule 5). While prison life can never be exactly the same as the outside world, the prison authorities can take positive steps to create a culture and conditions which are as close to normal life as possible.

## Reintegration

Rehabilitation and reintegration of prisoners should be the primary purpose of imprisonment (Rule 6) and the ICCPR is clear that prison systems should be rehabilitative in nature.<sup>22</sup> There is a positive obligation on States to ensure that people leaving prison are able to return to the community safely, will not reoffend and that they can lead law-abiding and self-supporting lives on release. To that end, prison authorities should equip prisoners with the skills, training, education and other assets that they need to stay out of prison in the future. Planning for a prisoner’s release starts on their arrival in prison and should be an ongoing endeavour for the entirety of a prison sentence.

17. ICCPR, Articles 7, 10; See generally the UN Convention against Torture; the Nelson Mandela Rules; the Bangkok Rules; the Havana Rules; the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; General Assembly, *UN Basic Principles for the Treatment of Prisoners*, Resolution 45/111, 14 December 1990; European Convention on Human Rights and the CPT Standards.

18. ECtHR, *Hirst v United Kingdom (no 2)*, No 74025/01, paras. 69-70 (2005) 6 October 2005.

19. ECtHR, *Vinter and Others v United Kingdom*, Nos 66069/09, para. 113, 9 July 2013.

20. ECtHR, *Kudła v Poland*, No 30210/96, paras. 92-94, 20 October 2000.

21. ECtHR, *Muršić v Croatia*, No 7334/13, para. 100, 20 October 2016.

22. Article 10(3) of the UN International Covenant on Civil and Political Rights (1966) states that prison systems ‘shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation’.

## Cooperation with other agencies

Prison authorities need the involvement of outside agencies, including social services, if they are to meaningfully support prisoners both during and beyond their imprisonment (Rule 7). Agencies such as the probation service and social workers can have a transformative impact on the lives of people in conflict with the law and play an important role in supporting the rehabilitation and social reintegration of prisoners.

Civil society organisations are also important stakeholders and provide services to the prison community. Civil society engagement can take many forms including befriending programmes, assisting with prison activities such as education, training and education, providing humanitarian aid to prisoners (food and medicines) and supporting the social reintegration of released prisoners. These organisations can provide vital resources (financial, material or personnel) to prison services that may be in financial difficulties or those with limited resources. It is, therefore, vital that prison authorities strengthen their partnerships with social services and civil society organisations as much as possible.

## Staffing

The EPR require that prison staff are given appropriate training and decent work conditions to enable them to carry out their work to the highest standards (Rule 8). Prison staff should also be recruited and selected in a professional manner. The EPR recognise the central role that prison staff play in supporting the humane treatment of prisoners and that they are responsible for implementing the EPR on a daily basis. Accordingly, prison authorities should ensure that salaries are adequate to attract and retain suitable staff, and benefits and conditions of employment reflect the demanding nature of the work as part of a law enforcement agency. Prison administrations should also provide prison staff with the necessary resources and equipment to allow them to perform their duties in suitable conditions, including decent living conditions and appropriate basic services. Prison staff should receive initial training before they start work, as well as continuing in-service training. Specialist training should be provided for staff who work with specific categories of prisoner, such as women, young persons and prisoners with special needs, foreign nationals or prisoners with mental health issues [see [Management and staff](#)].

## Inspection and monitoring

The EPR acknowledge the need to have a two-fold system of inspection, which includes internal or administrative inspections and external scrutiny through independent external monitoring bodies, such as the CPT and National Preventive Mechanisms (NPMs) (Rule 9). External monitoring bodies are critical to preventing torture and ill-treatment and are pivotal in ensuring that measures taken by the State are based on the rule of law and respect for human rights. Equally, internal inspections provide an additional safeguard to ensure that procedures, policies and practices comply with prison regulations, national laws and protect the rights of prisoners [see [Inspection and Monitoring](#)].

## Non-discrimination

The principle of non-discrimination sits at the centre of the EPR and prohibits discrimination on several protected grounds including (but not limited to) sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The protection of certain vulnerable groups or providing tailored treatment to meet the special needs of prisoners does not itself constitute discrimination but rather is required to protect those prisoners with specific needs.<sup>23</sup>

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23. Nelson Mandela Rules, Rule 2.

## Prison work as a public service



### Relevant rules

#### Rule 71:

Prisons shall be the responsibility of public authorities separate from military, police or criminal investigation services.

#### Rule 72:

1. Prisons shall be managed within an ethical context which recognises the obligation to treat all prisoners with humanity and with respect for the inherent dignity of the human person.
2. Staff shall manifest a clear sense of purpose of the prison system. Management shall provide leadership on how the purpose shall best be achieved.
3. The duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance.
4. Staff shall operate to high professional and personal standards.

#### Rule 73:

Prison authorities shall give high priority to observance of the rules concerning staff.

#### Rule 74:

Particular attention shall be paid to the management of the relationship between first line prison staff and the prisoners under their care.

#### Rule 75:

Staff shall at all times conduct themselves and perform their duties in such a manner as to influence the prisoners by good example and to command their respect.

In terms of governance and role of prison staff, the EPR draw upon a recommendation adopted by the Council of Europe in 2012 where the objectives and overall duties of prison staff were set out as follows:<sup>24</sup>

- carry out all their duties in accordance with national law and international standards;
- protect and respect the fundamental rights and freedoms of individuals as enshrined, in particular, in the European Convention on Human Rights (ECHR);
- ensure that all prisoners are safe and held in conditions that comply with relevant international standards, and in particular the EPR;
- respect and protect the right of the public to be safeguarded from criminal activity;
- work towards the social reintegration of prisoners on release, by providing them with the opportunity to use their time in prison positively.

In order to achieve the above goals, there needs to be a clear distinction between the role of the police and prosecution, the judiciary and the correctional system.<sup>25</sup> Prison administrations should be under the responsibility of public authorities and should be wholly separate from military or police control and any criminal investigation services (Rule 71). In practice this also means that prison managers and staff should be independent from the police or the military.

Where military or police authorities are involved in the management of prisons, there will inevitably be a disproportionate focus on security. The civilian status of prisons underscores the multifaceted role of prison staff and facilitates links with other public service agencies, including health, education and welfare services.

The overall ethos of a prison must be focused on treating prisoners with humanity and respect for their inherent dignity as human beings (Rule 72.1). This overarching principle should be reflected in prison rules, policies and procedures and should be observed in the way managers and staff act and interact with prisoners (Rule 73) and is particularly important in the way frontline prison staff manage their relationship with prisoners (Rule 74).

24. Council of Europe, *Recommendation CM/Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff*, 2012, [search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016809c9086#\\_ftnref159](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809c9086#_ftnref159).

25. Council of Europe, *Recommendation (2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics*, September 2001, [search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805e297e](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805e297e).



Positive prisoner-staff relations can be achieved through dynamic security approaches which ‘involve proactive and frequent interaction between prison staff and prisoners.’<sup>26</sup> This requires an alert, engaged staff who know the prisoners they are working with and who can develop positive relations based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners.<sup>27</sup> It also involves staff who encourage prisoners to participate in constructive activities and who understand their needs.

All those who work in prisons should have a clear understanding of the purpose of imprisonment – to protect society and reduce recidivism through effective rehabilitation and reintegration – and of how these aims can be achieved most effectively (Rule 72.2). It is the responsibility of prison leaders to promote and champion ethical approaches to prison management, and these approaches must be reflected in the way that staff are treated.

The European Code of Ethics for Prison Staff<sup>28</sup> provides more detailed recommendations to authorities on ethical principles for staff, including around accountability; integrity; respect for and protection of human dignity; care and assistance; fairness, impartiality and non-discrimination; cooperation; and confidentiality and data protection.



#### PROMISING PRACTICE: IRISH PRISON SERVICE CODE OF ETHICS

The Irish Prison Service’s Code of Ethics<sup>29</sup> was drafted to reflect international and Irish law, best international practice and the ethical responsibilities of professionals in other comparable contexts. The Code of Ethics Charter reflects five key areas:

**Integrity:** The duty to tell the truth, be accountable and responsible for actions, behaviours and orders, and the responsibility to always stand up for what is right and just.

**Unlocking potential:** Having the belief that people can change with the right support and striving to eliminate discrimination, promote equality and protect human rights.

**Support:** Acting with dignity, respect, empathy and compassion.

**Safety:** Protecting everyone’s right to physical safety, cultivating a psychologically safe environment and contributing to the rehabilitation of prisoners.

**Teamwork:** Communicating respectfully, truthfully and sensitively, cooperating and collaborating with others, and trusting in the ability of others to perform their role effectively.

26. PRI and OSCE/ODIHR, *Guidance Document on the Nelson Mandela Rules*, 9 August 2018, p. 78.

27. Council of Europe, *Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners*, 9 October 2003, para. 18.a, <https://pjp-eu.coe.int/documents/41781569/42171329/CMRec+%282003%29+23+on+the+management+of+life+sentence+and+other+long+term+prisoners.pdf>.

28. Council of Europe, *Recommendation CM/Rec(2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff*, 12 April 2012.

29. Irish Prison Service, *Code of Ethics*, December 2021, [rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806f5464](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806f5464).



# Chapter 1

## Inspection and monitoring



# Inspection and monitoring



## Relevant rules

### Rule 92:

Prisons shall be inspected regularly by a State agency in order to assess whether they are administered in accordance with the requirements of national and international law and the provisions of these rules.

### Rule 93:

1. To ensure that the conditions of detention and the treatment of prisoners meet the requirements of national and international law and the provisions of these rules, and that the rights and dignity of prisoners are upheld at all times, prisons shall be monitored by a designated independent body or bodies, whose findings shall be made public.

2. Such independent monitoring bodies shall be guaranteed:

(a) access to all prisons and parts of prisons, and to prison records, including those relating to requests and complaints, and information on conditions of detention and prisoner treatment, that they require to carry out their monitoring activities;

(b) the choice of which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview; and

(c) the freedom to conduct private and fully confidential interviews with prisoners and prison staff.

3. No prisoner, member of the prison staff or any other person, shall be subject to any sanction for providing information to an independent monitoring body.

4. Independent monitoring bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons.

5. Independent monitoring bodies shall have the authority to make recommendations to the prison administration and other competent bodies.

6. The national authorities or prison administration shall inform these bodies, within a reasonable time, on the action being taken in respect of such recommendations.

7. Monitoring reports and the responses thereto shall be made public.

Inspection and monitoring are particularly important because prisons are closed environments in which there is a high risk of human rights violations. There are two distinct types of mechanisms that need to be in place for effective oversight of prison systems. These are internal inspections and independent, external monitoring. The work of both bodies should complement each other, and their mandates may overlap. Both are designed to take a critical look at prison systems and at individual institutions with a view to ensuring that they are run according to existing legal and policy frameworks, including the EPR.

## 1.1 Frequency and modalities of inspections and monitoring

Both internal and external inspection and monitoring bodies should aim to identify deficiencies in the management of prisons, including any problems with prison conditions or the treatment of prisoners. They should seek to understand the underlying causes and submit reports and recommendations to relevant authorities on how these problems can be resolved, and how the prison system can be more effective in line with national, regional and international standards on detention conditions.

The frequency of both internal inspections and external monitoring should be regular enough to ensure meaningful oversight of detention conditions and the administration of prisons in all facilities, with due regard for changes and developments over time and emerging priority issues or locations. The mandate and modalities of inspection and monitoring bodies and the responsibilities of prison authorities to cooperate with and respond to them should be clearly defined.

All oversight mechanisms need sufficient authority to conduct their work effectively. As set out in the EPR, this includes access to prison records, information on the numbers of prisoners and places and location of detention, and all information relevant to the treatment of prisoners and conditions of detention.

Inspectors and monitors should also be able to make unannounced visits, freely choose which prisons and parts of prisons to visit and which prisoners to interview. It must be possible for them to conduct private and fully confidential interviews with both prisoners and staff members. The Parliamentary Assembly of the Council of Europe has emphasised that monitoring should extend to the conditions of transportation of prisoners.<sup>30</sup>

While the EPR specify that this type of access and information is needed for external monitoring bodies, it should be understood that internal inspection bodies will have equal access and information as required. The Nelson Mandela Rules are clear that both internal inspectors and external monitors require similar authority.<sup>31</sup>

## 1.2 Inspection

The EPR state that prisons should be inspected regularly by a 'State agency'. In practice, internal inspection bodies are often under the authority of the central prison administration, but they could equally be directly under the control of the ministry responsible for prisons or another ministry. They might also involve judicial or other authorities. Most importantly, internal inspection bodies must be established by and report to the highest authorities. This would usually involve the Head of the Ministry in charge of prisons, or the Head of State.

Effective internal oversight of prisons demonstrates a commitment by authorities to improving prison management and respecting the rights of prisoners in line with regional and international standards. In turn, this can lead to increased public trust in the prison administration and justice system.

While external monitoring tends to focus on human rights compliance, internal bodies are more likely to look into broader issues of the administration of prisons such as internal protocols and procedures, security, staff training, staff working conditions and financial management. Internal inspection bodies may carry out regular audits of different aspects of prison administration. They may also scrutinise compliance with the application of laws and regulations which are not directly related to human rights. However, the commentary to the EPR and Rule 83(2) of the Nelson Mandela Rules make it clear that the scope of internal inspections should include the protection of the rights of prisoners.

The reports of internal inspections are not usually made public but should be reported to authorities and made accessible to other interested parties without delay.

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30. Parliamentary Assembly of the Council of Europe, *Protecting human rights during transfer of prisoners*, Resolution 2266 (2019), 1 March 2019.

31. Nelson Mandela Rules, Rule 84.






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**PROMISING PRACTICE: DEDICATED AUDIT UNIT IN SWEDEN**

The Swedish Prison and Probation Service includes a specific unit responsible for internal inspections as well as a dedicated Audit Unit which investigates how the prison and probation services are run more generally. The internal inspection body is mandated to visit all prison facilities, remand prisons and probation offices and make recommendations to central authorities. Visits usually take place over 3 to 4 days and may cover a range of specialised areas including prison administration, human resources, security, healthcare, the prison environment and the treatment of prisoners. As the focus is on how to make positive improvements and what support needs are required, inspection visits are usually welcomed by managers and staff.<sup>32</sup>

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## 1.3 Independent monitoring

Independent, external monitoring of prisons plays a central role in ensuring that prisoners' human rights are respected and, in particular, to prevent torture and other ill-treatment and improve conditions of detention in accordance with international standards.

There are different models of independent monitoring bodies, and there may be multiple bodies operating in each country. Where this is the case, it is useful for the different monitoring bodies to liaise and cooperate with each other. In all cases such bodies must have functional, operational and budgetary independence from the authorities.

NPMs are set up under the Optional Protocol for the Prevention of Torture (OPCAT),<sup>33</sup> which is mandated to undertake monitoring to prevent torture and other ill-treatment. 40 out of the 46 Council of Europe countries have ratified OPCAT and, of these, 39 have operating NPMs. Other monitoring bodies might include Ombuds offices, national human rights institutions, judicial bodies and NGOs. These play a particularly important function in countries which have not ratified OPCAT.

International bodies also carry out independent prison monitoring. These include international organisations such as the International Committee of the Red Cross (ICRC), the United Nations Office of the High Commissioner for Human Rights (UN OHCHR) and specialised bodies such as the UN Sub-committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), UN Special Rapporteurs and Special Procedures. It is good practice for these bodies to coordinate and cooperate with national monitoring bodies and mutual exchange of information is beneficial.

To be effective, monitoring bodies need sufficient personnel, financial and other resources. Monitoring teams should comprise relevant qualified and experienced experts. The composition of such teams may depend on the type of monitoring visit, but as noted by Rule 84(2) of the Nelson Mandela Rules, they should include healthcare professionals.

In practice it will also be useful to include lawyers, social workers and mental healthcare professionals in monitoring visits. Other experts may be required for specific visits and, if not available internally, it may be necessary to draw on the expertise of external specialists. The composition of monitoring teams should also be carefully considered to include gender balance, necessary specialisations and diversity, including in relation to languages spoken in the facilities to be visited.

Monitors and inspectors should have a system in place for the ongoing monitoring of abuse or discrimination based on ethnicity, race or other protected characteristics. Such monitoring should include (but not be limited to) allocation, work, vocational training,

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<sup>32</sup>. 'European Prison Information System. Internal Prison Inspection Mechanism', *EuroPris*, 28 July 2016, [www.europris.org/epis/kms/?detail=152](http://www.europris.org/epis/kms/?detail=152).

<sup>33</sup>. Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, 18 December 2002.

education, use of recreational facilities, release and parole decisions. Prison authorities should take action based on evidence and data to ensure that discriminatory practices are eradicated [see [Foreign nationals](#) and [Ethnic or religious minorities](#)].

Unlike the reports of internal inspections mechanisms, the findings and recommendations of external monitoring bodies are usually made public (Rule 93.7) subject to personal confidentiality and data protection requirements. It is the responsibility of authorities to respond within a reasonable time on how they plan to implement recommendations (Rule 93.6) or otherwise respond to issues raised. If recommendations cannot be implemented, or only partially, it will be important for authorities to explain why and put forward other proposals.

## 1.4 Protection from reprisals

The CPT has identified situations where prisoners have faced intimidation or retaliatory action on the part of the authorities before or after monitoring visits and identified direct correlation between the prevalence of ill-treatment and the risks of intimidation and reprisals prisoners actually face.<sup>34</sup> Those who provide information to monitors might also face intimidation or reprisals from other prisoners. Monitors themselves may also encounter threats or harassment as a result of their work.

It is the responsibility of authorities to ensure that any prisoners or staff members who cooperate with monitors are protected from any negative consequences resulting from this cooperation. This can include ensuring that no record is kept of their cooperation with monitors. Staff members should be vigilant to the risk of reprisals and, where necessary, actively support and protect individuals against the potential of harm. In some cases, this may include reallocating prisoners or staff members to other facilities for their protection. Authorities should also initiate investigations into every potential case of retaliation and ensure that both prisoners and staff members are aware of the potential consequences and specific penalties associated with acts of retribution.

Monitoring teams can also take measures to prevent retaliatory actions, including by ensuring all conversations are fully confidential. Monitoring teams may decide to make return visits if they are concerned that anyone they interviewed may be at risk, and facilities which present a higher risk of intimidation or retaliatory action may be subject to additional scrutiny and more frequent visits.

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<sup>34</sup>. CPT, *24th General Report of the CPT, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, January 2015.



# Chapter 2

## Categories of prisoners



# Categories of prisoners

## 2.1 Untried prisoners



### Relevant rules

#### Rule 94:

1. For the purposes of these rules, untried prisoners are prisoners who have been remanded in custody by a judicial authority prior to trial, conviction or sentence.
2. A State may elect to regard prisoners who have been convicted and sentenced as untried prisoners if their appeals have not been disposed of finally.

#### Rule 95:

1. The regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future.
2. The rules in this part provide additional safeguards for untried prisoners.
3. In dealing with untried prisoners, prison authorities shall be guided by the rules that apply to all prisoners and allow untried prisoners to participate in various activities for which these rules provide.

Part VII of the EPR focuses on the rights and entitlements of untried prisoners. The EPR make a clear distinction between untried (or more commonly referred to as pre-trial or remand) prisoners and those who have been convicted and sentenced by a court. For the purposes of the EPR, untried prisoners are those prisoners who are yet to be convicted and have been remanded in custody prior to trial, conviction or sentence by a court (Rule 94.1). It can be inferred from the rules that a State may still treat a prisoner as untried if they are convicted and sentenced for one offence but are awaiting a decision on conviction for another offence (Rule 95.1).

Around one in three people in prison globally are held in pre-trial detention, without having been convicted or sentenced.<sup>35</sup> Pre-trial detention is not a sanction, but a measure to safeguard a criminal procedure. Because of its severe and often irreversible negative effects, international law requires that pre-trial detention should be the exception rather than the rule. The UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) provide a set of basic principles to promote the use of non-custodial measures and sanctions, as well as minimum safeguards for persons subject to alternatives to imprisonment.<sup>36</sup> The Tokyo Rules require use of pre-trial detention as a measure of last resort and recommend alternative measures including bail, seizure of travel documents, periodic reporting to the police, electronic monitoring and curfew.

In many countries, however, pre-trial detention continues to be imposed systematically on those suspected of a criminal offence without considering whether it is necessary or proportionate. Moreover, many untried prisoners are often held in poorer conditions than sentenced prisoners and are at greater risk of suffering human rights violations such as torture or ill-treatment and forced confessions. As a principle of international law and as recognised by the EPR, untried prisoners should be presumed innocent until convicted and sentenced by a court (Rule 95.2).

35. PRI, *Global Prison Trends 2022*, May 2022.

36. Tokyo Rules, 1990.



The EPR provide a particular set of safeguards for untried prisoners including protection against arbitrary arrest; prompt information about the reasons for arrest and detention; prompt registration of the arrest including precise information about the reasons; identity of the law enforcement officials and place of detention; prompt access to a judge; habeus corpus; trial without delay; presumption of innocence; separation of pre-trial detainees from convicted prisoners; regular review of the legality of pre-trial detention, and access to the outside world, including access to independent doctors and family visits (Rule 95.2).

In terms of the prison regime, untried prisoners are entitled to the rights, protections, and safeguards in Part II of the EPR and can participate in activities such as work, education, exercise and recreation as set out in that section of the rules (Rule 95.3). Untried prisoners should be treated with dignity, and the regime should not be influenced by the fact that they may be convicted of an offence in the future (Rule 95.1).

## 2.2 Sentenced prisoners



### Relevant rule

#### Rule 102

1. In addition to the rules that apply to all prisoners, the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life.

2. Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment.

Part VIII of the EPR focuses on the prison regime for sentenced prisoners and the role that prison authorities and other criminal justice stakeholders play in supporting individuals to lead self-supporting and crime-free lives (Rule 102.1). These rules are anchored in the principle of rehabilitation and social reintegration of prisoners and place a positive obligation on States to provide appropriate rehabilitative programmes and services accordingly. The principle of rehabilitation for people in prisons is recognised in other international human rights standards, including the ICCPR.<sup>37</sup>

The EPR reiterate that imprisonment, in and of itself, is a harsh punishment and the regime for sentenced prisoners should not exacerbate or aggravate the suffering inherent in imprisonment (Rule 102.2). As noted, people 'come to prison as punishment not for punishment'.<sup>38</sup> These rules should be read in view of the fundamental principles setting out the right to dignity and value of the person [see [Fundamental principles](#)].

## 2.3 Women



### Relevant rule

#### Rule 34:

1. Specific gender-sensitive policies shall be developed and positive measures shall be taken to meet the distinctive needs of women prisoners in the application of these rules.

2. In addition to the specific provisions in these rules dealing with women prisoners, the authorities shall pay particular attention to the requirements of women, such as their physical, vocational, social and psychological needs, as well as caregiving responsibilities, when making decisions that affect any aspect of their detention.

37. Article 10.3 of the ICCPR states: 'The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation'.

38. John M. Moore, 'Prison – more than detention?', *Criminal Justice Matters*, No. 102, December 2015; see the Nelson Mandela Rules, Rule 3.



### Relevant rule (continued)

#### Rule 34:

**3.** Particular efforts shall be made to protect women prisoners from physical, mental or sexual abuse and give access to specialised services for women prisoners who have needs as referred to in Rule 25.4, including being informed of their right to seek recourse from judicial authorities, legal assistance, psychological support or counselling, and appropriate medical advice.

**4.** Arrangements shall always be made for prisoners to give birth outside prison. Where, nevertheless, a child is born in prison, the authorities shall provide all necessary support and facilities, including special accommodation.

Women are a minority within prison systems, representing 5% of the prisoner population across Council of Europe member States.<sup>39</sup> The different needs of women within criminal justice systems are often not met, understood, or prioritised by policymakers and prison managers. Rule 34 of the EPR on women in prison recognises the unique and particular pathways and needs of women prisoners. It requires gender-sensitive policies in recognition of women's personal backgrounds, family circumstances and the different reasons they come into conflict with the law compared to men. Prison policies must also take into account their caretaking responsibilities and particularly the need for them to maintain contact with their children. This may require positive measures to be taken to address women's needs and adapt the prison regime accordingly.

Many women who are in prison have been victims of violence, sexual abuse, discrimination and deprivation and have very specific care, assistance and treatment needs as a result. Policies relating to women in prison should be implemented in coordination with individualised needs assessments which should include their personal background, including any history of trauma or abuse, their caretaking responsibilities, social, physical and psychological needs as well as priorities for their rehabilitation and safe reintegration into the community. Consideration also needs to be given to the situation of certain groups of women in prison, including pregnant and breastfeeding women, foreign national women, older women, women serving long or life sentences, and those with mental health issues.

Women also face increased risk of violence or abuse within the prison environment. It is the duty of prison authorities to protect all prisoners from physical, mental and sexual abuse, including taking particular action to counteract the risks facing women. This can include careful allocation of women prisoners, specific safeguards on searching female prisoners, recruiting sufficient female prison staff and female medical professionals, and ensuring that women are able to safely access complaints mechanisms. The EPR are clear that specialist services should be made available to women prisoners who have experienced physical, mental or sexual abuse or trauma and that any abuse should be recorded and reported to relevant authorities (Rule 25.4, 34.3 and 42.3)[see [Healthcare](#)].



### PROMISING PRACTICE: REHABILITATION AND SUPPORT SERVICES TO WOMEN PRISONERS IN GEORGIA

In Georgia, Penal Reform International has worked with four partner organisations to deliver rehabilitation and support services to women prisoners (and their children) who have experienced violence and discrimination. The project was established to empower and improve the situation of women offenders through better access to psychosocial, legal and medical support services and to rehabilitation and protection.

<sup>39</sup>. Aebi, Marcelo F. and Tiago, Mélanie M., *SPACE I - 2020 – Council of Europe Annual Penal Statistics: Prison populations*, Council of Europe, 11 April 2021.

The range of interventions was designed to break the chain of violence and inequality experienced by women prisoners, which can begin prior to their offending and continue post-release. The project helped to address the trauma and consequences of violence and provide holistic support so that the women are resilient and empowered to lead self-sufficient, law-abiding lives after their release.

The Bangkok Rules provide more detailed guidance on the treatment of women prisoners, including in relation to hygiene and healthcare, contact with the outside world, safety and security and rehabilitation, so should be used as guidance to implement Rule 34 of the EPR.<sup>40</sup> In cases where sexual abuse or other forms of violence before or during detention are detected, the Bangkok Rules require authorities to provide full information of the right to seek recourse from judicial authorities, including the procedures and steps involved, providing them the individual with help to access legal assistance and ensuring the woman has immediate access to specialised psychological support or counselling.

The Bangkok Rules also favour gender-specific non-custodial measures for women, taking into consideration any history of victimisation and caretaking responsibilities, recognising that the majority of crimes committed by women are minor, non-violent offences and that many women are in prison 'as a direct or indirect result of the multiple layers of discrimination and deprivation, often experienced at the hands of their husbands or partners, their family and community.'<sup>41</sup>



#### PROMISING PRACTICE: GENDER-RESPONSIVE SENTENCING IN EUROPE

It is good practice for judges to consider the personal circumstances of an accused person when determining if they should be detained before their trial and when determining sentence at conviction. In Germany, criminal law recognises single parenthood to be borne in mind for sentencing, while in Portugal, judges take into account any special state of vulnerability and the possibility of giving birth in prison when deciding on the appropriate sentence. In Spain, the personal circumstances of the offender must always be taken into account at sentencing which is particularly relevant for female offenders due to their caretaking role within families.



More resources on implementing the Bangkok Rules are available at [www.penalreform.org/issues/women/work/tools-resources](http://www.penalreform.org/issues/women/work/tools-resources).

## 2.4 Infants in prison



### Relevant rule

#### Rule 36:

1. Infants may stay in prison with a parent only when it is in the best interest of the infants concerned. They shall not be treated as prisoners.

2. Where such infants are allowed to stay in prison with a parent, special provision shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when the parent is involved in activities where the infant cannot be present.

3. Special accommodation shall be set aside to protect the welfare of such infants.

<sup>40</sup>. Multiple language versions of the Bangkok Rules are available at: [www.penalreform.org/issues/women/international-standards](http://www.penalreform.org/issues/women/international-standards).

<sup>41</sup>. UNODC, *The Bangkok Rules: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary*, [www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ENG\\_22032015.pdf](http://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf).

Rule 36 of the EPR provides guidance on the treatment of infants in prison.<sup>42</sup> Rule 34.4 also specifies that prisoners should always be able to give birth outside prison, noting, however, that if a child is born in prison, authorities should provide all necessary support and facilities.

Any decision on whether a child should remain in prison with his or her mother or not must be based on individual assessments. These assessments must have the 'best interests of the child' as the primary determining factor. The best interests of the child principle derives from Article 3(1) of the UN Convention on the Rights of the Child (CRC) which states: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'<sup>43</sup>

While the prison environment can be damaging to the health and well-being of children and can impact their development, this must be balanced against the benefits of maintaining the mother-child bond, and in consideration of what the alternative arrangements for the child would be.

The rules around how long children are allowed to stay in prison differ from country to country and, while the EPR use the term 'infant', they do not specify an upper limit for how long children should be allowed to stay in prison. As the Bangkok Rules make clear, any decision to separate a child from its mother should be based on individual assessments and considerations of the best interests of the child, within the scope of relevant national laws.<sup>44</sup> It may benefit some infants to remain with their mother for longer, but this will depend on many factors, including the sentence length, specific needs of the child and care options in the community.



#### PROMISING PRACTICE: INFANTS IN PRISON IN GERMANY

In Germany, it is usual practice for mothers to have the option for their children to stay with them in prison within separate mother-baby housing units that include access to health care, parenting classes and babysitting services, with the aim of developing and maintaining the mother-child bond in the early years of development. Closed prisons in Germany allow children up to three years old to stay, and open prisons allow children up to the age of six. As an example, the open unit at Frankfurt-Preungesheim is located outside the prison walls, reflecting a policy of distancing the mother-child unit from the rest of the prison population. Each mother has her own apartment comprising a bedroom/living room, a kitchen and a bathroom. The mother can work in the community and children stay in a day care centre and are allowed to play in the local playground during the day.<sup>45</sup>

When infants do remain in prison, it is crucial that they are not treated as prisoners (Rule 36.1), and they should retain all the rights afforded to infants in the community, including the right to health, education and family life. To ensure this, the environment for children in prison and the activities and services available to them should be as close as possible to that of children outside prison.<sup>46</sup> The 'best interests of the child' principle must apply to all aspects of their life inside prison, and it is the obligation of prison authorities to ensure this, including by providing a nursery with qualified staff (Rule 36.2) and adequate, safe accommodation (Rule 36.3).

To ensure that prison authorities can provide for the needs of infants in prison, it is important that there are policies and procedures in place setting out clearly authorities' obligations to support and protect them, and that there are adequate financial and human resources allocated to provide for their needs. As the Bangkok Rules point out, the development of these children should be monitored by specialists, in collaboration with community health

<sup>42</sup> Rules 48 to 52 of the Bangkok Rules provide additional guidance on mothers with children in prison including on healthcare services and the prison environment.

<sup>43</sup> General Assembly, *Convention on the Rights of the Child (CRC)*, Resolution 44/25, 20 November 1989.

<sup>44</sup> Bangkok Rules, Rule 52(1).

<sup>45</sup> 'Children inside prison', *Children of Prisoners Europe*, 7 February 2019, [childrenofprisoners.eu/children-inside-prison](http://childrenofprisoners.eu/children-inside-prison); Melanie Paurus, International Report on the Conditions of Children of Incarcerated Parents: A Survey of Prison Nurseries, [cicmn.org/wp-content/uploads/2017/03/Melanie-Report-Edited.pdf](http://cicmn.org/wp-content/uploads/2017/03/Melanie-Report-Edited.pdf)

<sup>46</sup> Bangkok Rules, Rule 51(2).

services.<sup>47</sup> The care of all infants in prison should also be closely coordinated with other outside agencies, including social workers, psychologists, child welfare agencies and education departments.



#### PROMISING PRACTICE: CHARTER OF THE RIGHTS OF CHILDREN OF IMPRISONED PARENTS IN ITALY

Italy's Charter of the Rights of Children of Imprisoned Parents recognises the right of children to maintain a relationship with their imprisoned parents. The Charter was developed as a result of a Memorandum of Understanding between the Italian Ministry of Justice, the National Ombudsman for Childhood and Adolescence and NGO Bambinisenzasbarre ONLUS. It aims to sensitise judicial authorities to the situation of children of prisoners and acts as an advocacy tool for protecting the rights of children and parents. The Charter includes different aspects related to the imprisonment of a parent, including pre-trial detention, places of detention, arrangements for children visiting prisons, information for children, training of prison staff and data collection. Article 7 of the Charter contains suggestions around procedures and arrangements for children's stay in prison in exceptional circumstances.<sup>48</sup>

## 2.5 Detained children



#### Relevant rule

##### Rule 35:

1. Where, exceptionally, children under the age of 18 years are detained in a prison for adults, the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes, or equivalents to them, that are available to children in the community.

2. Every prisoner who is a child and is subject to compulsory education shall have access to such education.

3. Additional assistance shall be provided to children who are released from prison.

4. Where children are detained in a prison, they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

There are a number of international standards which deal with the detention of children. The most relevant are the CRC, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), and the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules). The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010) also echo the provisions of the CRC.

International standards emphasise that children under the age of 18 should only be detained as a measure of last resort. Ideally, children will not be dealt with within adult criminal justice systems. Instead, there should be a separate justice system for children with specialised and appropriately trained child-friendly personnel and institutions. These need to be set up to deal specifically with children, with activities and services designed for their needs, taking into account their vulnerability and need of special protection.

The EPR primarily set out the standards for the detention of adults. However, where children are exceptionally detained in a prison for adults (Rule 35.1), it is important to recognise that they retain the same rights as adult prisoners but also have specific needs which must be

<sup>47</sup> Bangkok Rules, Rule 51(1).

<sup>48</sup> Memorandum of Understanding between The Ministry of Justice, The National Ombudsman for Childhood and Adolescence and Bambinisenzasbarre ONLUS, available at: [childrenofprisoners.eu/wp-content/uploads/2019/02/Memorandum-of-Understanding-English-16.12.2015.pdf](http://childrenofprisoners.eu/wp-content/uploads/2019/02/Memorandum-of-Understanding-English-16.12.2015.pdf).

met, including in relation to their education, physical and psychological needs. Children in prison should have access to the same or equivalent services that are available to children in the community, and this applies to both pre-trial and children who are convicted.

Any child held in prison should be kept separately from adults (Rule 35.4). However, the EPR identify a potential exception to this rule if it is determined that such separation would be against the child's best interests. The EPR recognise that this would apply in rare cases only, for example, where only one child is held in an adult prison, it may be determined that the benefits of spending some time with adults may outweigh the negative impacts of isolation. Children should never be accommodated with adults, rather they may be permitted to spend some out-of-cell time together or participate in joint activities supervised by prison staff. In such cases, safeguarding measures must be in place to protect children from any harm.

It is useful to consider that that provisions and protections in the EPR which, although mainly aimed at adults, should also be applied to children in prison, including those held in specific facilities for children. This includes the provisions which are specific to children, including the right to education (Rule 35.2) and the equivalency principle in terms of services available (Rule 35.1). A Council of Europe recommendation on 'juvenile offenders' provides additional specific guidelines around the detention of children including in relation to allocation, admission procedures and healthcare provision.<sup>49</sup>

## 2.6 Foreign nationals



### Relevant rule

#### Rule 37:

1. Positive measures shall be taken to meet the distinctive needs of prisoners who are foreign nationals.
2. Special attention shall be paid to the maintenance and development of relationships of prisoners who are foreign nationals with the outside world, including regular contacts with family and friends, probation and community agencies and volunteers, and, subject to the prisoners' consent, diplomatic or consular representatives.
3. Prisoners, who are foreign nationals, shall be informed, without delay and in a language they understand, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their State.
4. Prisoners who are nationals of States without diplomatic or consular representation in the country, as well as refugees or stateless persons, shall be allowed similar facilities to communicate with the diplomatic representative of the State which take charge of their interests or the national or international authority whose task it is to serve the interests of such persons.
5. In the interest of foreign nationals in prison who may have special needs, prison authorities shall co-operate fully with diplomatic or consular officials representing prisoners.
6. Specific information about legal assistance shall be provided to prisoners who are foreign nationals in a language they understand.
7. Prisoners who are foreign nationals shall be informed in a language they understand of the possibility of requesting that the execution of their sentence be transferred to another country.
8. Sentenced foreign prisoners shall be entitled, as with all other prisoners, to full consideration for early release as soon as they are eligible.

Foreign nationals<sup>50</sup> are overrepresented in many prison systems. In January 2020, foreign nationals made up 15% of the prison population in Europe, varying from 2% to 70% in most countries.<sup>51</sup> In some places, foreign nationals may be held in separate prisons or parts of prisons. Foreign nationals' experiences in prison are often characterised by isolation, language barriers, limited or no family contact, discrimination and a limited understanding

49. Council of Europe, *Recommendation CM/Rec(2008)11 of the Committee of Ministers to member States of the European Rules for juvenile offenders subject to sanctions or measures*, 5 November 2008, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d2716](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d2716).

50. For the purposes of this guide, we adopt the definition used by the UNODC, which refers to foreign national prisoners as those individuals 'who do not carry the passport of the country in which they are imprisoned. This term therefore covers prisoners who have lived for extended periods in the country of imprisonment, but who have not been naturalised, as well as those who have recently arrived.' UNODC, *Handbook on Prisoners with special needs*, 2009, p. 79.

51. Marcelo F. Aebi and Mélanie M. Tiago, *Prisons and Prisoners in Europe 2020: Key Findings of the SPACE I report*, April 2021, p. 5.



of the prison regime and broader criminal justice procedures. These barriers mean that they are extremely vulnerable to ill-treatment or abuse, especially in the case of women. In line with the principle of non-discrimination, foreign nationals should not be restricted from joining any rehabilitation, reintegration, work or educational programmes to aid their reinsertion into society.

The EPR place a positive obligation on prison authorities to take 'positive measures' to meet their distinctive needs (Rule 37.1). The rights of foreign nationals in prison are also recognised in other international and regional human rights standards.<sup>52</sup> In practice, this means that prison staff should be proactive in supporting foreign nationals in every aspect of their prison life. To do this, prison authorities should ensure that appropriate training is given to prison staff who work with foreign nationals.

On admission, prison staff should provide foreign nationals with information, in a language that they understand, about their rights and duties as a prisoner, the prison rules, complaints procedure and their rights to legal advice and assistance. They should provide important information (including rules and regulations) in other languages through posters, other written materials and in person.

In terms of providing support to foreign nationals, prison authorities could:

- create a foreign national support network to provide peer-to-peer support and to be a representative body for this community of prisoners;
- allocate foreign nationals to prisons close to transport facilities that would enable their families to visit them and, if possible, alongside other foreign nationals of their own nationality, culture, religion or who speak their language;
- offer the opportunity to learn languages that enable them to communicate with other prisoners and prison staff;
- ensure that interpreters are made available including for medical appointments and that they are conducted in a culturally sensitive way;
- create a dedicated foreign national office or appoint a foreign national coordinator/lead among the staff to pro-actively support the needs of the foreign-national community in the prison.

Foreign nationals may have cultural or religious practices which require them to follow certain sanitation procedures (for example purification rituals under Islam), adhere to a special diet (for example halal or kosher food) or wear certain clothing. The prison authorities should, as far as possible, make reasonable adjustments to the prison regime to accommodate these needs. For example, if the kitchen cannot provide for culturally or religiously appropriate meals, foreign nationals should be allowed to purchase and cook their own food to make their diet more culturally appropriate or be allowed to eat meals at times to meet their religious requirements (for example during Ramadan for Muslim prisoners).

### Contact with the outside world

The EPR require prison authorities to facilitate and support foreign nationals' contact with the outside world including family, consular representatives and other agencies and bodies (Rule 37.2). Steps should be taken to facilitate the maintenance of relations between foreign nationals in prison and their families living abroad, with special measures to facilitate visits from and contact with children.<sup>53</sup> In practical terms, prison staff should allow foreign nationals to converse in their own language during such meetings unless this raises legitimate security concerns. Moreover, prison authorities should ensure that foreign nationals are afforded more access to make and receive phone calls or other forms of communication (such as video calls, emails) alongside other prisoners if in-person visits are not possible. If necessary, foreign nationals should be assisted with the costs of communicating with the outside world.

<sup>52</sup>. Nelson Mandela Rules, Rule 62; Council of Europe, *CM/Rec(2012)12 of the Committee of Ministers to member States concerning foreign prisoners*, 10 October 2012.

<sup>53</sup>. Council of Europe, *Recommendation Cm/Rec(2012) of the Committee of Ministers to Member States concerning foreign prisoners*, 10 October 2012, [pjp-eu.coe.int/documents/41781569/42171329/CMRec+%282012%29+12+concerning+foreign+prisoners.pdf](https://www.coe.int/t/Document/41781569/42171329/CMRec+%282012%29+12+concerning+foreign+prisoners.pdf).

The ECtHR has indicated that the right to respect for family life under Article 8 of the ECHR requires that foreign nationals have some contact with their families, at least through phone conversations and occasional visits, where regular visits are impossible or very difficult to organise.<sup>54</sup>

Authorities should be flexible in terms of visiting arrangements and allow foreign nationals to combine their visiting entitlements to enable longer and consecutive family visits from family overseas. In practical terms this could entail the provision of writing materials and access to video conferencing and email facilities. Moreover, prison authorities should provide support and information to families who may not be familiar with local prison rules and regulations to help them navigate the system.

The right to contact with the outside world for foreign nationals extends to contact with probation services, voluntary agencies or other approved bodies. This may include partnering or connecting with organisations or similar support services. Prison authorities should facilitate such access and take all necessary steps to allow representatives of these organisations to visit foreign nationals on a regular basis.

Foreign nationals may wish to keep abreast of news and current affairs in their own country of origin. Prison authorities should facilitate access to such media, such as newspapers, radio or TV, in a language that they understand.

One distinctive right that foreign nationals have is access to consular support (under the UN Vienna Convention on Consular Relations), although diplomatic missions are often not able or willing to provide this.<sup>55</sup> Following admission, prison staff should advise foreign nationals, in a language they understand, of their right to contact their consular representative, family members and legal representatives should they so wish (Rule 37.3). In addition, foreign nationals who are without any consular representation in the country in which they are detained have the right to regular contact and to facilities to communicate with representatives of the State which takes charge of their interests (Rule 37.4). Authorities need to facilitate phone calls and other remote communications as necessary and, if required, through the services of an interpreter. This means providing the means of communication, as well as accessible, private meeting spaces for foreign nationals to hold these calls and meetings with consular representatives or lawyers.



#### PROMISING PRACTICE: DUTCH CITIZENS IMPRISONED ABROAD

The Dutch Probation Service runs a scheme to provide support to Dutch citizens detained abroad. Dutch foreign nationals can receive consular assistance from diplomatic staff, from volunteers of the International Office of the Dutch Probation Service and from chaplains of the religious organisation Epafra. The Dutch Probation Service has 300 volunteers who live abroad and visit Dutch foreign nationals in prison in their region every six to eight weeks. Epafra has 40 chaplains from different denominations who visit Dutch foreign nationals in prison once or twice per year. Besides personal visits, Dutch foreign nationals in prison also receive other kinds of consular support, such as magazines and in countries where prison systems are unable to provide adequate food or other basic necessities they receive a monthly allowance of 30 Euros. A study found that the support provided through the scheme had a positive impact on prisoners' well-being.<sup>56</sup>

The EPR state that sentenced foreign prisoners should be entitled to full consideration for early release as soon as they are eligible (Rule 37.8) and should not be discriminated against in that respect. In many countries, foreign nationals are not considered for temporary leave (including home leave) or parole due to concerns about flight risk. Foreign nationals should be given the same opportunities to apply for such release programmes as other prisoners.

54. ECtHR, *Labaca Larrea and Others v France*, Application no. 56710/13, 56727/13, 57412/13, 7 February 2017.

55. See United Nations, *Vienna Convention on Consular Relations* 1963, 2005, Article 36.

56. 'Podcast: The Dutch experience – innovating practice to support foreign national prisoners 2016', *Penal Reform International*, 2016, [www.penalreform.org/resource/10488](http://www.penalreform.org/resource/10488).

In those cases of foreign nationals with terminal illnesses, the prison authorities should consider transferring them to their country of origin or where they have close family or social links.

### Prisoner transfer agreements

Many countries have agreements (often referred to as prisoner transfer agreements) in place to allow for the transfer of sentenced persons to serve their sentence in their country of origin. The EPR note that foreign nationals should be 'informed in a language they understand of the possibility of requesting that the execution of their sentence be transferred to another country' (Rule 37.7). There are many potential benefits of this, including that people in prison can have closer contact with support networks which is critical for their successful rehabilitation and reintegration. The prison authorities should advise foreign nationals of their right to transfer (including legal consequences) at the earliest opportunity in a language they understand. This information should be provided in a full and clear way to avoid any misunderstandings and to allow that individual to make an informed decision.

## 2.7 Ethnic or religious minorities



### Relevant rule

#### Rule 38:

1. Special arrangements shall be made to meet the needs of prisoners who belong to ethnic or linguistic minorities.
2. As far as practicable, the cultural practices of different ethnic groups shall be allowed to continue in prison.

3. Linguistic needs shall be met by using competent interpreters and by providing written material in the range of languages used in a particular prisonState.

Ethnic minorities often face a greater likelihood of a prison sentence, longer terms of imprisonment and wider discrimination within the criminal justice system and, as a result, are disproportionately imprisoned in many countries. For example, the Roma population account for up to 10% of the total population in Bulgaria and 7% in Romania, yet they make up 50% and 40% of all prisoners in these countries, respectively.<sup>57</sup> Prison authorities should ensure that ethnic and religious minority prisoners are treated equitably and are able to access services on the same basis as other prisoners. The EPR require that special arrangements be put in place to meet the needs of prisoners from ethnic or linguistic minorities (Rule 38.1).

Prison authorities should adopt special measures to ensure that ethnic or religious minorities are accommodated safely and in a culturally sensitive way. It is generally not good practice to segregate ethnic or religious minorities from the wider community, although it may be beneficial to place individuals from the same ethnic or religious minority close to each other as a support network. Prison staff should also supervise living areas regularly to ensure that members of these groups are not subject to abuse or victimisation by other prisoners. Any complaints of abuse or discrimination by prison staff or prisoners should be carefully investigated by the independent authorities.

Ethnic or religious minorities may face language barriers while in detention to the point where they may be unable to understand their legal position, their rights, prison rules and other important information. The EPR require these needs to be met through competent interpreters and written material being provided in the range of languages used in the prison

57. Council of Europe Development Bank, *Beyond Bars and Walls: Modernising Prison Systems to Unlock Social Inclusion*, December 2021.

(Rule 38.3). This means key prison materials, including the prison rules and regulations, should be translated into minority languages of the given facility and be readily accessible. The authorities should never punish individuals for speaking in their own language.

Ethnic minorities and members of religious communities are likely to have different religious and cultural practices which they may wish to observe in prison. The EPR state that the cultural practices of these different groups should be allowed to continue in prison (Rule 38.2). Prison authorities should ensure that such groups are able to observe these traditions and practices including access to a minister of their own religion, participation in communal worship and being provided with a special diet or to undertake special hygiene practices. The prison authorities should, as far as possible, make reasonable adjustments to the prison regime to accommodate the needs of any prisoners with specific cultural or religious practices.

International standards state that prison authorities must recognise that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination. Accordingly, prison authorities should provide comprehensive programmes and services that address these needs, in consultation with women prisoners themselves.

# Chapter 3

## Admission, allocation and accomodation





# Admission, allocation and accommodation

## 3.1 Admission and record keeping



### Relevant rules

#### Rule 14:

No person shall be admitted to or held in a prison as a prisoner without a valid commitment order, in accordance with national law.

#### Rule 15:

1. At admission, the following details shall be recorded immediately concerning each prisoner:
  - (a) information concerning identity;
  - (b) the reasons for commitment and the authority for it;
  - (c) the day and hour of admission;
  - (d) an inventory of personal property that is to be held in safekeeping in accordance with Rule 31;
  - (e) any visible injuries and complaints about prior ill-treatment;
  - (f) subject to the requirements of medical confidentiality, any information about health that is relevant to the physical and mental well-being of the prisoner or others;
  - (g) name and contact details of any person designated by the prisoner to be contacted in case of death, serious injury or illness; and
  - (h) the number of children, their ages and their current primary caregiver.
2. At admission, all prisoners shall be given information in accordance with Rule 30.
3. Immediately after admission, notification of the detention of the prisoner shall be given in accordance with Rule 24.9.

#### Rule 16:

As soon as possible after admission:

- (a) information about the health of the prisoner on admission shall be supplemented by a medical examination in accordance with Rule 42;
- (b) the appropriate level of security for the prisoner shall be determined in accordance with Rule 51;
- (c) the threat to safety that the prisoner poses shall be determined in accordance with Rule 52;
- (d) the information collected under Rules 15.1.g and 15.1.h as well as any other available information about the social situation of the prisoner shall be evaluated in order to deal with the immediate personal and welfare needs of the prisoner; and
- (e) in the case of sentenced prisoners, the necessary steps shall be taken to implement programmes in accordance with Part VIII of these rules.

#### Rule 16A:

1. Information recorded at admission and as soon as possible after admission shall be updated and supplemented where appropriate.
2. Information shall be collected for each prisoner relating in particular to:
  - (a) the judicial process;
  - (b) individual sentence plans, the strategy for preparation for their release and release date;
  - (c) behaviour and conduct, including risk to self or others;
  - (d) requests and complaints, unless they are of a confidential nature;
  - (e) the imposition and duration of separation and of disciplinary punishments, including the use of solitary confinement;
  - (f) the use of instruments of restraint, including their nature and duration;
  - (g) intrusive searches, in particular internal physical searches, and searches of cells;
  - (h) any transfers; and
  - (i) their personal property.
3. All information collected at admission and thereafter shall be kept confidential and made available only to those whose professional responsibilities require access to it.
4. Prisoners shall be granted access to their medical and other records, except those restricted under national law for purposes of safety and security and be entitled to receive a copy of such records upon request.
5. National law shall specify what information shall be collected and processed and shall contain detailed rules to ensure that data protection standards are met with regard to such information.



Arrival to prison is an important time, and the way in which admission procedures are organised can play a crucial role in determining prisoners' longer-term experiences of prison life, including in relation to their mental health. Good, comprehensive and holistic admission procedures enable prison management to respond to prisoners' individual needs from the beginning of their detention, identify any risks they may pose and classify them appropriately.

There are many things that may need to happen when a person arrives to prison, including prisoner searches; contact with family and lawyer, including notification of detention (Rule 15.3); medical examination; risk and needs assessments and information provision. This section specifically covers admission procedures and record keeping.

### **Arrival and interactions with prison staff**

Prisoners must be treated with respect for the inherent dignity and value as human beings from the outset of their detention and their early interactions with prison staff are crucial.

Arrival to prison is likely to be a distressing and confusing time for many, especially those who have never been to prison before, and the risks of self-harm and suicide at these early stages are high.<sup>58</sup> It is important that processes and procedures are in place to ensure prisoners' human rights are respected during this time and that staff explain admissions procedures clearly to new prisoners and provide them with all the information they need (Rule 15.2) [see **Information**]. This applies to all, whether pre-trial detainees or convicted prisoners.

When prisoners are treated with respect and consideration during admission and when this process is carried out efficiently, prisoners are more likely to trust prison staff and develop positive relations with them. Staff tasked with admissions benefit from receiving specific training on how to deal with newly arrived prisoners, including considerations of the needs of specific groups of prisoners such as foreign nationals, women or people with mental health issues.

Authorities should consider the particular vulnerability of women at the time of their admission to prison and, ideally, there will be a separate reception area for women and children with only female prison staff on duty to support them through the admission process and answer any questions they may have. Prison staff should make a particular point of asking women about the location of their children to ensure that appropriate caregiving arrangements are in place. As with all stages of detention, women and men and children and adults should be held separately during the reception process. Pre-trial and sentenced prisoners should also be held separately during admission.



#### **PROMISING PRACTICE: ADMISSION PROCEDURES IN SPAIN**

In Spain, after receiving an initial medical examination, those being admitted to prison are interviewed by educators, social workers and a psychologist so a full understanding of their needs and personal situation is gained. Once transferred to the appropriate unit, the prisoner will be met by prison staff and then by a welcoming committee comprised of other prisoners who are there to explain the practical elements of prison life and answer any questions the prisoner arriving may have. The approach to admissions, as set out in an internal directive, is to reduce any negative psychological impact of the period of admission to prison. The protocol for admission also contains specific actions on dealing with arriving foreign nationals.<sup>59</sup>

<sup>58</sup>. See, for example, HM Inspectorate of Prisons for England and Wales finding paper, *Life in prison: The first 24 hours in prison*, November 2015.

<sup>59</sup>. 'Personal and welfare needs of prisoners following admission to custody', *EuroPris*, [www.europris.org/epis/kms/?detail=489](http://www.europris.org/epis/kms/?detail=489).

### Validity of detention

The first thing that prison authorities should do when a person arrives to prison is to check the validity of their commitment order. This is important to ensure that no-one is deprived of their liberty if their detention has not been legally justified in accordance with Article 5 of the ECHR.

The EPR are clear that no one should be admitted to a prison without a valid commitment order (Rule 14). Commitment orders should be signed by a judicial or other competent authority and should include, as a minimum, the dates, time and place of arrest and the name of the person and authority ordering the commitment. Any commitment order lacking the required information should automatically be considered invalid,<sup>60</sup> and those detained are entitled to challenge the lawfulness of their detention.

### Prisoner file management

Good prisoner file management is a key element of running an effective prison and when information is used effectively it can help with resource planning, among other things. Well managed systems facilitate transparency and accountability and can improve public awareness of, and trust in, the administration of prisons. It is good practice for prison file systems to be regulated by law or defined by specific policies and guidelines.

On an individual level, accurate record keeping ensures that key court and parole hearings, appeal deadlines and release dates are not missed. Updated information about individuals also facilitates dynamic security approaches, risk and needs assessments, sentence planning and the provision of rehabilitation programmes. On a broader level, the data collected from prisoner files can help prison management identify trends and emerging issues of concern in the prison system [see [Research and evaluation](#)]. Crucially, good record keeping prevents prisoners becoming lost or forgotten in prison systems, a particular risk in overcrowded systems, and acts as a key safeguard against a range of human rights violations.

### Information in prisoner file

When a person arrives in prison, an individual file needs to be created for them. This might be a paper or electronic file. In addition to individual files, there should be a central registration book. There are certain pieces of information that need to be recorded immediately on admission, other information that needs to be recorded as soon as possible after admission (Rule 16), and some which should be collected and updated during the course of imprisonment (Rule 16A). These should be set out in national law (Rule 16A.5).

#### Information to be recorded immediately on admission

Rule 15.1 provides the information that needs to be recorded immediately on admission and entered into a confidential file, including the persons' identity; the reasons for their commitment and the authority for it; and the date and hour of their admission. The Nelson Mandela Rules require that information about a person's identity should include his or her self-perceived gender (Nelson Mandela Rules, Rule 7).

Emergency contact details should also be entered into the file upon admission, though a prisoner should also have the right to explicitly request not to have a person notified of illness or injury (Nelson Mandela Rules, Rules 7 (g), 68 and 69).

Other information that needs to be recorded immediately on admission are an inventory of personal property, any visible injuries and complaints about prior ill-treatment, and relevant health information.

<sup>60</sup>. PRI and Essex University, *Essex paper 3: Initial guidance on the interpretation and implementation of the Nelson Mandela Rules*, February 2017.

### Information to be recorded as soon as possible after admission

Some information cannot be recorded immediately upon admission because the information is gathered as part of assessments that will be carried out. The EPR list these types of information, noting that they should be recorded as soon as possible after admission (Rule 16). This should mean recording the information in the first hours, or at most, the first few days following admission.

Information about the health of the prisoner upon admission will be supplemented by that collected during initial medical examination. This needs to take place as soon as possible after admission, with the CPT having specified that examination by a doctor or nurse should take place no later than 24 hours after admission<sup>61</sup> [see [Healthcare](#)].

- Information on an individual's security classification and any threat they may pose must be recorded following determination of their individual risk and needs assessment. This assessment should also take place as soon as possible after admission [see [Safety and security](#)].
- Both the EPR and the Bangkok Rules (Bangkok Rules, Rule 3) state that, on admission, information should be recorded about the number of children the prisoner has, their ages and details of their primary caregiver [see [Contact with the outside world](#)]. The EPR note that any information available about a prisoner's personal situation, including the numbers and details of their children should be evaluated to determine any immediate personal and welfare needs (Rule 16.d). This will enable authorities to provide appropriate care and services as needed and will work more effectively where prisons have good coordination and communication mechanisms with relevant agencies, including social, welfare and education providers. In the case of parents and primary caregivers, this would include ensuring they have the opportunity to put in place any necessary arrangements for the care and welfare of their children.
- For sentenced prisoners, information should be recorded as soon as possible about their rehabilitation needs and sentence plans.

### Information to be collected and updated during the course of imprisonment

While a person is in prison their needs and circumstances can change, including their health, welfare and rehabilitation needs, the risks they pose, their security classification and legal status. Emergency contact details, location of children and other personal details may also need to be updated. It is, therefore, very important that the information in individual files is reviewed, supplemented and updated as necessary throughout the course of imprisonment (16.A.1).

The EPR specify the type of information that should be recorded for each prisoner while they are in prison. This includes information about the judicial process, individual sentence plans, release planning and their personal property.

Other information which needs to be recorded will be useful not only for interactions with, and planning for, individual prisoners, but also to extract data on trends and emerging problems within the prison system. These include information on prisoner transfers, behaviour and conduct, requests and complaints, the use of disciplinary measures, including solitary confinement, instruments of restraint and the use of searches.

Records should also be maintained on details of any prisoner transfer or transportation<sup>62</sup> including the reason for the transportation, the day and hour, details of the escort staff, other prisoners in the vehicle, any use of restraint and any incidents that occurred during the transfer [see [Transfer of prisoners](#)].

61. Council of Europe, *Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 10 April 2013*, CPT/Inf (2015) 8, 31 March 2015, para. 25.

62. Nelson Mandela Rules, Rule 7(c).

### Information about prisoners' health

Medical files are to be kept separately and managed by the healthcare service [see [Healthcare](#)]. However, the EPR note that some information about health can be included in the prisoner file, subject to the requirements of medical confidentiality (Rule 15.1(f)). This is because it may be necessary for prison staff to be aware of certain health conditions and any mental health concerns. This is an important aspect of dynamic security approaches, enabling staff to take preventive measures and respond appropriately.

### Security, confidentiality and accessibility

Individual files must be stored confidentially and made available only to authorised staff who need access to them (Rule 16A.3). This is important to protect prisoners' privacy and safety, as well as the safety of their families. This can be particularly important in relation to high-profile cases, certain types of crimes and gang related offences. Confidentiality of record keeping is also extremely important when recording details of prisoner complaints, particularly if it relates to individual staff members or other prisoners.

Secure electronic filing systems are generally preferable to paper files as these systems allow for better oversight and access control. It can also be beneficial to enable appropriate interagency access to prisoner files so that other relevant agencies such as probation and social service agencies can more effectively cooperate with prisons on individual care and development plans.

It is good practice for any staff involved with prisoner files to receive specific training on file management and confidentiality. The EPR are specific that prisoner file management should meet wider data protection standards in relation to the protection of individual privacy, as prescribed by national law (Rule 16A.5).<sup>63</sup> Safeguards around prisoner files might also include regular checks by management and periodic independent audits to ensure the rules and regulations around filing systems are being implemented correctly. Any information about the identity of children of prisoners must be kept confidential and used only in accordance with the requirement to take into account the best interests of the child (Bangkok Rules, Rule 3 (2)).

Prisoners should be aware that they can access their files and be granted such access when they request it, providing there are no restrictions on access due to safety and security concerns (Rule 16A.4). In practice, this might mean that only some of the file is restricted and prisoners can access other parts. It might also mean that parts of the files are redacted before access is granted. Prison monitoring bodies should also have access to prisoner files and related to data [see [Inspection and monitoring](#)].

It is important that information is correctly entered in prisoner files, both paper and electronic. It may be useful to have a second staff member double check entered information, particularly information about key dates. Hand-written files must be fully legible and written in pen to avoid any unauthorised changes, and locked away securely, with access only to authorised staff. There should also be security and access protections for computerised files. Both manual and electronic systems should be securely backed up to avoid loss or damage to files through human error, fire, flood or other natural disaster.



#### PROMISING PRACTICE: PRISONCLOUD: INTEGRATING ICT INTO PRISON MANAGEMENT IN BELGIUM

PrisonCloud is a secure online platform of services designed for use by prisoners and staff with a focus on rehabilitation, secured contact with the outside world and secured access to information. The platform is available to prisoners in three Belgian prisons from their cells and classrooms.

<sup>63</sup> Council of Europe, *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, European Treaty Series No. 108 (as amended), 28 January 1981.

In addition to providing information about prison rules and services, e-learning opportunities and visit bookings, prisoners are able to use the service to access their judicial files to check on the progress of their case. As of 2023, there are plans to provide a self-service delivery platform, similar to PrisonCloud, in cells, kiosks and classrooms in other Belgian prisons.

## 3.2 Allocation of prisoners



### Relevant rule

#### Rule 17:

1. Prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.

2. Allocation shall also take into account the requirements of continuing criminal investigations, safety and security, and the need to provide appropriate regimes for all prisoners.

3. As far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another.

Prisoners should be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation (Rule 17.1). Being separated from family and friends adds to the hardship faced by prisoners, even those serving a short sentence. Conversely, prisoners who are located close to home have a better chance of reintegrating into society on release if they can maintain close ties with family and their wider support network while in prison [see [Contact with the outside world](#)]. Allocation close to home may also allow prisoners to receive ongoing medical treatment, including psychological or psychiatric care, from specialists already known to them.

The successful rehabilitation and reintegration of individual prisoners should be considered at the outset of a person's imprisonment and will play an important role in determining their allocation. As a minimum, allocation decisions should cause the least hardship to prisoners and their families. Allocation decisions should be based on ongoing individual assessments and consultations with relevant stakeholders, including the prisoners themselves. Prisoners do not, *per se*, have the right to choose their place of detention, but housing them at significant distance from family can constitute an interference with their right to a family life as enshrined in Article 8 of the ECHR.<sup>64</sup> For example, as special 'geriatric' housing units are usually not available in all prisons, older persons may find it more difficult to maintain family ties if they are detained far away from home. Decision-makers should consider all needs of older prisoners when making allocation decisions.

Decisions relating to the allocation of prisoners may lie with the judicial authorities. In such instances, prison authorities can make representations on the merits of allocating a prisoner close to home and advising decision-makers accordingly.

Decisions to reallocate a prisoner to a different facility should be made by a prison manager or other competent authority and be based on individual risk and needs assessments. This is important to protect against discriminatory transfers or the use of transfers as a form of punishment or with the intention of causing harm.

The EPR also recognise that prisoners should be accommodated in conditions with the 'least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others' (Rule 18.10). This provides an important benchmark for decision-makers who should be particularly mindful when allocating prisoners who are not necessarily high risk. This might include women, older prisoners, or long-term prisoners.

64. See European Court of Human Rights, *Khodorkovskiy (no 2) and Lebedev (no 2) v Russia*, Application nos. 11082/06 and 13772/05, 25 October 2013.

## Allocation decisions

A number of factors should be taken into consideration when making allocation decisions:

### Family ties and support networks:

The EPR state that, as far as possible, prisoners should be allocated close to their homes or places of social rehabilitation (Rule 17.1). Allocation close to home makes it easier for prison administrations to prepare prisoners for release. Contacts with family, friends and community can be crucial for the rehabilitation and social reintegration of prisoners and can reduce the risk of recidivism. As the main caregivers in most families, such contact can be particularly important for the rehabilitation of women prisoners.

### Appropriate rehabilitation programmes and services:

The availability of community rehabilitation programmes and services should be an important consideration when making allocation decisions. Many prisoners receive support from local NGOs or other support networks during their imprisonment and, post-release support will be easier to access if prisoners are allocated close to these support services.

### Safety and Security:

Safety and security are a core consideration of allocation decisions (Rule 17.2). When security categories are used to allocate prisoners, the least restrictive categories should be used, as high security imprisonment can bring additional hardships and privations. In exceptional situations, security considerations may override the preference for allocating a prisoner close to his or her home or place of social rehabilitation. This could be, for example, due to high level gang affiliations or if the safety of staff or their family members is at risk. Security classifications and personal circumstances may change during the course of imprisonment meaning that reallocation may be beneficial. Prison administrations should keep allocation decisions under regular review in consultation with key stakeholders and the prisoner themselves.

### Continuing criminal investigations:

Allocation decisions must also take into account the requirements of, inter alia, continuing criminal investigations. (Rule 17.2) – prisoners may, for practical reasons, need to be located close to a particular court to participate in trial proceedings.

### Prisoners' wishes:

As good practice, prison authorities should consult prisoners directly about their initial allocation and any subsequent transfers at as early a stage as possible and prior to any final allocation decision (Rule 17.3). Ideally, prisoners should be asked about where they consider to be 'home' and the best location to support their rehabilitation. If a prisoner is allocated to a prison prior to these consultations, prisoners should still be consulted and entitled to request a transfer or allocation to a certain prison or indeed challenge the decision of a prison authority to allocate or transfer them to a certain establishment (Rule 70) [see [Transfer of prisoners](#)].

## Special considerations

Prison authorities should make special efforts to accommodate women close to their places of residence, or the place where they would like to be eventually released.<sup>65</sup> Such an allocation must take into account the wishes of the women concerned, as many women in prison have a history of experiencing domestic and other forms of violence. Some women may not wish to be allocated close to their homes, preferring to put distance between themselves and an

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65. Association for the Prevention of Torture and Penal Reform International, *Women in detention: a guide to gender-sensitive monitoring*, 2013, p. 16.



abusive partner. The allocation of women prisoners should take into account their caretaking responsibilities, their individual preferences and the availability of appropriate programmes and services.<sup>66</sup>

In allocating trans prisoners, a respectful and cautious approach should be taken by prison authorities.<sup>67</sup> Placement decisions do not usually take into consideration an individual's self-identified gender and, in many prisons, trans persons continue to be detained in male or female facilities on the basis of sex assigned at birth, where they are extremely vulnerable to abuse. Similarly, trans prisoners may be vulnerable to abuse if held in the facility of their self-identified gender.

The CPT takes the view that,

*transgender persons should either be accommodated in the prison section corresponding to their gender identity or, if exceptionally necessary for security or other reasons, in a separate section which will best ensure their safety. If accommodated in a separate section, they should be offered activities and association time with the other prisoners of the gender with which they self-identify*<sup>68</sup>

Placement decisions should be undertaken with the consent of the individual concerned, as they may prefer to be housed in facilities for their birth-assigned sex for reasons such as work opportunities, safety or family contact. Moreover, the UN Special Rapporteur on Torture has noted that trans prisoners should be given the opportunity to appeal placement decisions.<sup>69</sup>

## 3.3 Accommodation and meeting basic needs



### Relevant rule

#### 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.

**2.** In all buildings where prisoners are required to live, work or congregate:

**(a)** the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

**(b)** artificial light shall satisfy recognised technical standards; and

**(c)** there shall be an alarm system that enables prisoners to contact the staff without delay.

**3.** Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

**4.** National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

**5.** Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

[...]

<sup>66.</sup> Bangkok Rules, Rule 4.

<sup>67.</sup> See Association for the Prevention of Torture, *Towards the Effective Protection of LGBTI Persons Deprived of Liberty: A Monitoring Guide*, 2018.

<sup>68.</sup> CPT, *Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 September to 10 October 2016*, CPT/Inf (2017) 34, 16 November 2017, para. 95.

<sup>69.</sup> Human Rights Council, *Report of the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment to the UN Human Rights Council*, A/HRC/31/57, 24 February 2016, para. 70.



### Relevant rule (continued)

#### Rule 18:

**6.** Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

**7.** As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

**8.** In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

- (a)** untried prisoners separately from sentenced prisoners;
- (b)** male prisoners separately from females; and
- (c)** young adult prisoners separately from older prisoners.

**9.** Exceptions can be made to the requirements for separate detention in terms of paragraph 18.8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

**10.** Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others.

Ensuring humane conditions that are in line with international and regional standards for the treatment of prisoners is key to the establishment of fair and effective criminal justice systems. When prisoners are detained in overcrowded and inhumane conditions there are higher incidents of violence, higher rates of death in custody, a lack of healthcare provision and low rehabilitative opportunities. Moreover, overcrowded prisons are also likely to have poor sanitary conditions that can facilitate the transmission of communicable diseases.

States have a heightened responsibility when they deprive someone of their liberty, and they assume a positive duty of care towards them. Prison conditions that do not meet the EPR can amount to inhuman or degrading treatment, contrary to Article 3 of the European Convention on Human Rights, as found by both the ECtHR and the CPT.<sup>70</sup> Prison authorities should have an operational team in place with overall responsibility for ensuring that prisons are in good working order. This team should be responsible for developing a maintenance plan, carrying out (as appropriate) or bringing in outside maintenance experts to undertake work, employing traders, providing materials, equipment and tools.

### Cells and accommodation

The EPR state that accommodation should meet the requirements of health and hygiene, with particular regard, among other things, to floor space (Rule 18.1). The EPR make clear that prisoners' accommodation should respect human dignity, comply with health, hygiene and privacy standards, and provide adequate space in cells as well as access to light and fresh air (Rules 18.1, 18.2) and that national law should reflect these standards. Prison rules and regulations should be drafted in light of not just the EPR but other regional and international standards and jurisprudence (such as the Nelson Mandela Rules, Bangkok Rules, CPT standards and ECHR jurisprudence)(Rule 18.3 – 18.4). Prison rules and regulations on accommodation should ensure that respect for and upholding the dignity of prisoners is at the core of these rules.

In terms of cell size, the CPT has stipulated that every person should be offered at least 4 m<sup>2</sup> of living space in multiple-occupancy cells, recognising in some jurisdictions individual cells are not used, and at least 6 m<sup>2</sup> in single cells, excluding the sanitary annexes.<sup>71</sup>

<sup>70.</sup> See ECtHR, *Kalashnikov v Russia*, Application no 47095/99, 15 October 2022; see also CPT, *Living space per prisoner in prison establishments: CPT standards*, CPT/Inf (2015) 44, 15 December 2015; see also ECtHR, *Muršić v Croatia*, Application no.7334/13, 20 October 2016 (the ECtHR has taken the CPT's standards into account and considered that the non-observance of the 4m<sup>2</sup> yardstick may raise an issue under Article 3 of the European Convention on Human Rights, with a strong presumption of violation where there is less than 3m<sup>2</sup> of living space per person).

<sup>71.</sup> See CPT, *Living space per prisoner in prison establishments: CPT standards*, (CPT/Inf (2015) 44), para. 7 (in which the CPT also indicated a desirable standard for multiple occupancy cells, in particular in the context of the construction of new prisons, namely of designing such cells to be used by up to four prisoners maximum by adding 4 m<sup>2</sup> per additional inmate to the minimum living space of 6 m<sup>2</sup> of living space for a single-occupancy cell, excluding the sanitary annexes).

Cells should offer basic furniture in good condition including a bed, chair and table for each person, as well as a cupboard or set of shelves for each. Prison authorities should regularly monitor the minimum amount of living space per prisoner and revise official capacities of all prison establishments accordingly. Prisoners should normally be housed in single cells overnight (Rule 18.5) as these accommodations effectively constitute their 'homes', and their privacy should be duly respected.

The EPR do recognise that, in some instances, prisoners may benefit from being accommodated in the same cell but only if they are 'suitable to associate with each other' (Rule 18.6). Prisoners should also be given a choice before they are accommodated with each other (Rule 18.7). Prison authorities should undertake a thorough risk assessment before housing two people together and ensure that there is adequate staff supervision in place to monitor these living arrangements, bearing in mind the safety risks. Ideally, prison authorities should avoid accommodating prisoners in large-scale dormitories which are, in the view of the CPT, undesirable and move towards a model of smaller living units.<sup>72</sup>

All buildings where prisoners live, work and congregate should have an alarm system that enables prisoners to contact staff without delay (Rule 18.2 c). Prison administrations should ensure that alarm systems are securely installed in these locations, routinely tested and meet national safety standards.

### Lighting

The EPR require that the windows should be large enough to enable prisoners to read or work by natural light in normal conditions in all buildings where prisoners are required to live, work or congregate (Rule 18.2 a). Poor lighting and lack of windows (particularly in old establishments) is common to all prison systems and can have a profound effect on the biological functioning of the body. For example, poor lighting may contribute to headaches, eye strain, depression and sleep disorders affecting the entire prison population, including staff and visitors.

In order to create healthier prison environments, prison administrations should review lighting facilities across establishments and consider, where possible, the introduction of environmentally friendly options such as LED lighting/technology, motion sensors and dimmers. In dark or poorly lit cells, the prison administration should provide prisoners with extra lighting such as lamps. Windows should not be covered or have opaque glass. All lighting should comply with national health and safety regulations.

### Temperature and climate

The EPR make clear that there should be adequate climatic conditions in prison especially in relation to heating and ventilation (Rule 18.2 a). Medical practitioners should regularly inspect the temperature of a prison to ensure that it is appropriately heated and ventilated. The ECtHR has recognised adequate temperature as a basic requirement for acceptable prison conditions and that extreme temperatures in prisons can result in inhumane conditions that threaten the well-being of both staff and prisoners, some of whom will be especially vulnerable, including children, older people, prisoners with disabilities, pregnant women or nursing mothers and those in poor health.<sup>73</sup>

Prison administrations should ensure that thermostats are available and in good working order. The prison authorities should also ensure that policies and contingency plans are in place around temperature management (including minimum and maximum thresholds). Under the Nelson Mandela Rules, prisoners have a right to a minimum of one hour of outdoor exercise per day (Rule 23) and, during extreme heat, prisoners must also be allowed out of their cells and provided with extra heating and blankets during colder weather or fans during very hot weather.

72. Ibid.

73. ECtHR, *Ananyev and Others v Russian Federation*, Application no 42525/07 and 60800/08, 10 April 2012.

## Prison design and planning

The prison infrastructure and a healthy living environment are important factors in creating a space that supports the right to dignity of the prisoner as well as providing for their basic needs (EPR, Rule 1). In addition, they can be an important catalyst for rehabilitation and support the well-being of prisoners. Prison authorities should think carefully about re-designing and refitting old and outdated prisons or replacing them with institutions that put humane design at the centre and help to normalise the life in prison (less institutional and more residential like). These may include features such as unobstructed views, access to nature, bar-less wooden doors and large windows, movable furniture, materials such as carpet, wood, home-like furniture and soft textures and colours. Evidence shows the beneficial mental and social aspects of access to natural light and fresh air, connectedness to nature, variety of outdoor spaces and views, and thermal and acoustic comfort.<sup>74</sup> Prisoners should also be entitled to privacy for sleeping, maintenance and person hygiene, and personalisation of their living space. The provision of a healthy and safe environment is of benefit not only to the prisoners but also staff working in these facilities.

The recent recognition of the importance of trauma-informed care and practice for women prisoners should also extend to creating spaces that facilitate and encourage these practices in a safe and holistic environment.<sup>75</sup>



### PROMISING PRACTICE: LIMERICK PRISON, IRELAND

Limerick Women's prison in Ireland (due to open in 2023) will provide an additional 50-bed facility to the women's prison estate. The new prison has been influenced by the Scandinavian corrections system and will promote autonomy, individuality, and well-being. The prison is trauma-informed, for both the women held there and their families. The space will include a light, bright, open reception area with skylights into the social spaces. The bedrooms will look on to a garden with trees, plants and wooden seating. The prison will have a calming colour scheme of lilac and pale blue in the communal living areas and warm cream and greys in the bedrooms. The prison visiting room overlooks gardens and includes an outdoor space and a play area for children. It has seating booths to allow for private conversations.<sup>76</sup>

## Overcrowded prisons

Given the fact that prison overcrowding is one of the key contributing factors to poor prison conditions and authorities' inability to meet the standards set down in the EPR, Rule 18.4 requires the development of national strategies, enshrined in law, to manage overcrowding in prisons.

Prison authorities should adopt a 'whole-of-government' approach to managing overcrowding in prisons and develop appropriate strategies across key ministries and departments. Such measures may include:

- increasing the use of non-custodial measures;
- reducing the use of pre-trial detention;
- decriminalisation of certain offences;
- diverting minor cases or those individuals with mental health issues or drug addiction out of the criminal justice system;
- crime prevention initiatives;
- developing parole and other early release measures.<sup>77</sup>

74. 'How to build for success: prison design and infrastructure as a tool for rehabilitation', Dr Marayca López for *Penal Reform International*, 24 July 2014, [www.penalreform.org/blog/build-success-prison-design-infrastructure-tool-rehabilitation](http://www.penalreform.org/blog/build-success-prison-design-infrastructure-tool-rehabilitation).

75. Trauma informed practice means having knowledge about adversity and trauma and its effects on individuals, communities and society more generally. The six principles of trauma-informed practice include safety, trust, choice, collaboration, empowerment and cultural consideration. Covington, Stephanie, 'Creating a Trauma-Informed Justice System for Women', *The Wiley Handbook on What Works with Girls and Women in Conflict with the Law: A Critical Review of Theory, Practice and Policy*, (pre-publication chapter) John Wiley & Sons Ltd, March 2022.

76. See 'Limerick women's prison: an architecture of hope', *Architect's Journal*, 14 July 2022, [www.architectsjournal.co.uk/news/limerick-womens-prison-an-architecture-of-hope](http://www.architectsjournal.co.uk/news/limerick-womens-prison-an-architecture-of-hope).

77. See PRI, *Ten-Point Plan to Reduce Prison Overcrowding*, February 2012.

During the COVID-19 pandemic, many prison authorities released low-risk prisoners and limited the use of pre-trial detention to decongest prisons on an urgent basis. The CPT has noted such policies 'should be an integral part of any sound criminal justice system'<sup>78</sup> but that building new prisons and/or adopting policies to expand the capacity of prison systems 'will not provide a lasting solution to the problem of overcrowding'.<sup>79</sup>

### Separation of categories

To ensure the safety and physical integrity of detainees, certain groups and individuals should be separated in distinct prisons or sections of the same prison (Rule 18.8 a – c). Most importantly, untried prisoners should be accommodated separately from sentenced prisoners (Rule 18.8 a), male prisoners should be separate from females (Rule 18.8 b) and young adult prisoners should be housed separately from older prisoners (Rule 18.8 c). These rules should be applied in line with the rules on allocation of prisoners (Rule 17.1 – 3). The separation of prisoners should not result in any negative impact on access to services or care or to a deterioration in the material conditions of detention.

### Young adult prisoners

The separation of 'young adult prisoners' from older prisoners should be noted carefully. The EPR are clear that persons under the age of 18 should not be detained in an adult prison (see Rule 11), a principle of international law. However, young adult prisoners (who are over 18 years of age but who are not yet ready to be integrated with other adult prisoners) are recognised as a separate cohort with distinct needs and vulnerabilities. Prison authorities should review their policies for housing young adults with adult prisoners and develop a specific regime for them. Prison authorities can take practical steps to respond to the needs of young adult prisoners:

- Mental health provision is a key need for young adult prisoners. Prison authorities should ensure that adequate mental healthcare services are made available to this cohort of prisoners.
- Prison staff working with young adult prisoners should be fully trained in adolescent development and developmental delay so that they can support these individuals in a meaningful way.
- Young adult prisoners should be given a full programme of purposeful activities led by specifically trained staff.
- Prison staff should create robust sentence management plans for this cohort of prisoners.
- Prison staff should place a strong focus on the resettlement of young adults in the community on release and tailor programmes accordingly.
- Young adult prisoners should be provided with a personal officer – a prison officer who will be familiar with them and acts as their point of contact throughout detention.



#### PROMISING PRACTICE: EXTENSION OF JUVENILE LAW TO YOUNG ADULTS IN THE NETHERLANDS

In the Netherlands, the youth justice regulations form a separate part within the Criminal Law addressing children and young children between 12-18 years old. These regulations can also be applied to young adults (adolescents) aged 18-23 years old, when it is deemed suitable to do so. In 2014, the Dutch government introduced this option by virtue of a new Article 77c of the Criminal Code. Under this new law, young adults, aged 18-23, who have committed an offence before their 23rd birthday can be sanctioned under the youth justice regulations.

78. CPT, *31st General Report of the CPT*, 1 January - 31 December 2021.

79. *Ibid.*, para. 104.

In such instances, the case will be decided by a Youth Judge who will consider reports of the Child Protection Council and Youth Probation Service when making such a decision. In practice, these cases are considered by Youth Judges on an infrequent basis. An evaluation of the adolescent criminal law found that ‘...the overall picture is that the application of the juvenile criminal law in young adults is relevant to the desistence of criminal careers and provides scientific evidence for different assumptions behind such a development-oriented approach’.<sup>80</sup>

### Men and women

The EPR recognise that women in detention must always be separated from men (Rule 18.8 b). This measure acknowledges the different needs of women. Separating men and women ensures that women’s particular needs can be met including gender-specific healthcare, rehabilitation, safety and hygiene needs and childcare issues (for children living in prison with their mother). The separation of men and women also protects women from physical or verbal abuse, including sexual violence. International standards require that female staff must supervise women prisoners, with male staff being allowed to enter the female prison establishment only when strictly necessary and only in the presence of female staff.<sup>81</sup> Ideally, women should be housed in separate institutions from men. In ‘mixed’ institutions, the area where women are detained must be entirely separate from the premises allocated to men.

The EPR allow a degree of flexibility in terms of separating prisoners but only in those cases where prisoners consent and it is in their best interests to house them together (Rule 18.9). Unisex (or co-ed) prisons have been a feature in some prison systems in Europe (for example in Spain), with some advantages noted including the fact it promotes the normalisation principle.<sup>82</sup> However, as a rule, separation of women and men is required according to international standards and any exception to this should be done only under rare circumstances with careful considerations of the high risks especially of gender-based violence.

### Special considerations

Prisoners with physical or mental health issues should not, as a rule, be systematically separated from the wider prison community. In some instances, prisoners with disabilities may need to be separated from the wider community as a temporary measure, for example on the grounds of safety, access or specific care needs, but it should always be with their consent and in such a way that avoids stigmatisation. Prisoners living with HIV/AIDS or Tuberculosis should not be separated from the rest of the prison population solely on the basis of their health status.<sup>83</sup>

Prison authorities should ensure that pregnant women and breastfeeding mothers are accommodated in cells/dormitories with adequate hygiene and sanitary facilities, regular access to hot water, ventilation, fresh air and heating, and have access to regular exercise.

The physical prison environment and layout – particularly buildings which are very old – may be full of dangers and trip hazards for an older person or people with disabilities, including poor lighting and ventilation and uneven flooring. Older persons often suffer from physical disabilities, mobility problems, sensory or cognitive impairments, which make day-to-day life more challenging in a prison setting. In some instances, environmental adaptations will need to be made to meet an individual’s sensory, functional and cognitive abilities. This could include, for example, installing shower chairs, ramps or shower handles or moving an older person to a lower bunk. Cells should be adapted to allow wheelchair access and toilets similarly adapted for people with reduced mobility.

80. Laan, A.M. van der et al., ‘Evaluatie van het adolescentenstrafrecht, Een multicriteria evaluatie’ (Evaluation of adolescent criminal law: A public policy multi-criteria evaluation), *WODC*, Cahier 2021-6/3, 25 May 2021.

81. See Nelson Mandela Rules, Rule 53.

82. See Ciaran Giles, ‘Spain is trying co-ed prisons’, *News & Record*, 20 January 2015, [greensboro.com/spain-is-trying-coed-prisons/article\\_bf1c8dca-7d56-52b8-9b79-004be9671451.html](https://www.greensboro.com/spain-is-trying-coed-prisons/article_bf1c8dca-7d56-52b8-9b79-004be9671451.html).

83. UNODC et al., *Technical Brief 2020 Update, HIV prevention, testing, treatment, care and support in prisons and other closed settings: a comprehensive package of interventions*, [www.unodc.org/documents/hiv-aids/publications/Prisons\\_and\\_other\\_closed\\_settings/20-06330\\_HIV\\_update\\_eBook.pdf](http://www.unodc.org/documents/hiv-aids/publications/Prisons_and_other_closed_settings/20-06330_HIV_update_eBook.pdf).



# Chapter 4

## Hygiene and healthcare



# Hygiene and healthcare

## 4.1 Hygiene



### Relevant rule

#### Rule 19:

1. All parts of every prison shall be properly maintained and kept clean at all times.
2. When prisoners are admitted to prison, the cells or other accommodation to which they are allocated shall be clean.
3. Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.
4. Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.
5. Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.
6. The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.
7. Special provision shall be made for the sanitary needs of women.

### Basic sanitation and good hygiene practices

Basic sanitation and good hygiene practices are a major challenge in many prisons. The EPR place great weight on the importance of good standards of hygiene in the prison setting both in relation to prisoners and the institutions themselves. Poor hygienic conditions often contribute to the transmission of communicable diseases within prisons. The rules make clear that all parts of the prison facility, including the living accommodation of prisoners, should be kept clean at all times (Rule 19.1). Prisoners are, if possible, entitled to a bath or shower daily but at least twice a week, or more frequently if necessary, at a temperature suitable to the climate (Rule 19.4).

Measures to provide basic sanitation and good hygiene in prisons can include:

- The appointment of a prisoner-led sanitation committee (or similar) to input or support daily cleaning programmes of the prison establishment;
- Ensuring that cleaning teams regularly disinfect and fumigate cells and take action to prevent rodents, fleas, lice and bedbugs;
- Ensuring a continual and adequate supply of water is available for drinking, preparing meals, personal hygiene, sewage disposal and cleaning;
- Guaranteeing that water is freely available to all prisoners (in line with international standards) and that appropriate steps be taken to ensure access is ensured to people belonging to vulnerable groups (such as older prisoners, those with physical impairment or mental health issues, women and children).<sup>84</sup>

<sup>84</sup>. See ICRC, *Water, Sanitation, Hygiene and Habitat in Prisons – Supplementary Guidance*, April 2012; ICRC, *Water, Sanitation, Hygiene and Habitat in Prisons*, June 2020.

Prisoners are also under a duty to keep themselves, their clothing and sleeping quarters clean and tidy (Rule 19.5). The prison authorities should supply prisoners with the requisite cleaning materials and cleaning implements (for example a broom, mop, shaving equipment, hairbrush) and products to enable them to perform this function (Rule 19.6). The provision of these items should consider any safety concerns.

The prison authorities should ensure that prisoners maintain high standards of personal hygiene through frequent body washing and personal cleanliness, clean clothes and maintenance of clean premises. This includes permitting regular trimming or shaving of beards, but there should be no requirement for prisoners to shave their heads (either for punishment or as a matter of routine) as this is humiliating. If appropriate, prison authorities should deliver periodical hygiene education programmes to prisoners on important topics to ensure healthy behaviours.

### **Hygiene measures in epidemics and pandemics**

COVID-19 offered many important lessons in managing pandemics in closed settings particularly in relation to prevention and response measures. During the pandemic, international organisations and NGOs issued important guidance on managing its spread in places of detention.<sup>85</sup> During health crises, prison authorities should adhere to strict sanitary and hygiene measures to prevent the spread of the virus within the prison. In particular, prison authorities should:

- Provide all persons detained with equipment for maintaining the highest possible level of hygiene (such as personal protective equipment, soap, cleaning products) alongside information and advice on how to prevent infection;
- Ensure that prison staff are adequately trained to understand how a virus spreads, including detecting potential symptoms, and are provided with clear instructions on how to use protective equipment;
- Liaise closely with health ministries and other public health bodies to create and implement health guidance, procedures, contingency plans and protocols to be followed within prisons in the event of a pandemic, epidemic or other public health crisis.

### **Access to sanitary facilities**

Prisoners should have *'ready access'* to sanitary facilities including toilet and showers which should be hygienic and respect privacy (Rule 19.3). Prisoners should have unrestricted access to toilet facilities and to clean water, without fear of their safety.

The ICRC recommends a minimum of one toilet for each accommodation area that houses up to 25 detainees; in single cells, each cell should contain a toilet.<sup>86</sup> In terms of showers, the ICRC recommends one shower per 50 detainees.

Sanitation facilities should be culturally appropriate, and prisoners using toilets should not be in full view of other detainees. Prison authorities should ensure that shower areas are hygienic and safe for prisoners, giving particular consideration to people in a situation of vulnerability. Prison authorities should also ensure that enough staff are on duty during shower times as it is a high-risk area where prisoners may be subject to violence or sexual assault, while ensuring privacy (for example they may be able to hear but not see the prisoners).

### **Women and sanitation**

Prison authorities should ensure that women in prison have regular access to hot water for the personal care of themselves and their accompanying children. This requirement is particularly important for women who are involved in cooking, those who are pregnant, breastfeeding, menstruating, or going through menopause.

<sup>85</sup> See a selection of key guidance at 'Resources related to COVID-19', *Penal Reform International*, [www.penalreform.org/issues/covid-19/resources-related-to-covid-19](http://www.penalreform.org/issues/covid-19/resources-related-to-covid-19).

<sup>86</sup> See ICRC, *Water, Sanitation, Hygiene and Habitat in Prisons – Supplementary Guidance*, April 2012.

Women have distinctive hygiene needs, which must also be met. The EPR recognise that prison authorities should make 'special provision for the sanitary needs of women' (Rule 19.7), and the CPT has noted that failure to provide basic necessities, such as sanitary pads, can amount to degrading treatment.<sup>87</sup> The CPT recommends ready access to sanitary and washing facilities, adequate quantities of essential hygiene products, such as sanitary towels and tampons, and safe disposal arrangements for blood-stained articles as particularly important. Hygiene articles should be provided free-of-charge.



#### PROMISING PRACTICE: PERIOD POVERTY IN BELGIAN PRISONS

In November 2020, *The Brussels Times* reported on a survey carried out by Caritas Vlaanderen, which found that, at times, 12% of females aged 12-25 years old did not have the financial means to purchase period products. On 17 May 2022, the Belgian government announced that period products would be free for women prisoners. Previously, only prisoners without a source of income had access to menstrual products. As of 2020, the Belgian government committed €200,000 to address period poverty in the country.<sup>88</sup>

The Bangkok Rules provide comprehensive coverage of the key hygiene needs of women in prison, as well as children staying with them in prison.<sup>89</sup>

### Clothing and bedding



#### Relevant rule

##### Rule 20:

1. Prisoners who do not have adequate clothing of their own shall be provided with clothing suitable for the climate.
2. Such clothing shall not be degrading or humiliating.
3. All clothing shall be maintained in good condition and replaced when necessary.

4. Prisoners who obtain permission to go outside prison shall not be required to wear clothing that identifies them as prisoners.

##### Rule 21:

Every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness

The EPR provides comprehensive guidance on prisoners' clothing and bedding. This guidance is closely aligned to issues around personal dignity and autonomy. In some cases, inadequate clothing and unsanitary bedding may contribute to factors which contravene Article 3 of the ECHR.<sup>90</sup>

In many countries, prisoners are required to wear a uniform provided by the prison, usually on the grounds of security (i.e. high security or flight risk). For prisoners, the opportunity to wear their own clothes gives them a sense of autonomy and helps to normalise their experience in prison. In all cases, prisoners' clothing should not be degrading or humiliating (Rule 20.2), should be kept in good condition and should be replaced when necessary. It is important to note that untried prisoners are entitled to wear their own clothes (Rule 97). The EPR do not address the issue of prisoner uniforms for sentenced prisoners, leaving this option open, but they do stipulate that clothing provided should not be degrading or humiliating. Moreover, prisoners should not be obliged wear clothing which identifies them as prisoners when they

<sup>87</sup> CPT, *10th General Report on CPT's activities covering the period 1 January to 31 December 1999*, CPT/Inf (2000)13, 18 August 2000, para. 31; CPT, *Report to the Estonian Government on the visit to Estonia carried out by CPT from 30 May to 6 June 2012*, CPT/Inf (2014)1, 21 January 2014, para. 60.

<sup>88</sup> 'Countries that fight period poverty in Europe', *The Borgen Project*, 24 June 2022, [borgenproject.org/period-poverty-in-europe/](https://borgenproject.org/period-poverty-in-europe/); 'Free period products for female prisoners in Belgium', *The Brussels Times*, 17 May 2022, [www.brusselstimes.com/225397/free-period-products-for-female-prisoners-in-belgium](https://www.brusselstimes.com/225397/free-period-products-for-female-prisoners-in-belgium).

<sup>89</sup> Bangkok Rules, Rule 5.

<sup>90</sup> ECtHR, *Ananyev and Others v Russia*, Applications nos. 42525/07 and 60800/08, 10 April 2012.



leave the facility (Rule 20.4), for example to attend a court hearing. Prisoners should be provided with clothing which is suitable for the climate (Rule 20.1) such as outercoats, boots and socks for cold weather or cooler clothes for warmer climates.

Prison authorities should ensure that prisoners have access to laundry facilities so that all clothes, especially undergarments, can be washed regularly. All prisoners should be entitled to have their own bed or bed mat, clean bedding (clean pillow, blanket and mattress) and their own sleeping space. The ECtHR has noted that each prisoner must have an individual sleeping space in a cell.<sup>91</sup> It is not acceptable for prisoners to sleep in shifts, shared sleeping spaces or on a rota basis. Bedding should be changed if they are irreparably damaged and at least every few years. The CPT has recommended that bedsheets and pillowcases of prisoners should be changed for clean bedclothes at 'sufficiently frequent intervals' (at least twice a month).<sup>92</sup> In addition, every newly arrived prisoner should receive a complete set of new bedclothes.

## Nutrition



### Relevant rule

#### Rule 22:

1. Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.
2. The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.
3. Food shall be prepared and served hygienically.
4. There shall be three meals a day with reasonable intervals between.
5. Clean drinking water shall be available to prisoners at all times.
6. The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds.

Food plays a critical role in an individual's physical, mental and emotional well-being. In some jurisdictions prisoners have very little, if any, choice about what or when they eat, which can lead to tension in some cases.

Under the EPR, the provision of food with adequate nutritional value and clean drinking water for the prison population is the responsibility of the State<sup>93</sup> (Rule 22.1, 22.5). The authorities should provide prisoners with a nutritious diet (three meals a day) which should take into account the individual's age, health, physical condition, religion or culture (Rule 22.1, 22.4). Ideally, meals should be served at reasonable intervals and not too early so as to avoid long gaps between mealtimes.

The EPR requires the national authorities to include the requirements of a nutritious diet in national law (Rule 22.2) which could take the form of prison law, regulations or prison service orders.

### Dietary needs

Prison catering services must ensure that the menu caters for a variety of dietary needs including, but not limited to, gluten-free, vegetarian, vegan, diabetic or coeliac needs. The EPR stipulate that a medical practitioner or a qualified nurse should order a change in diet for a particular prisoner on medical grounds (Rule 22.6). This may be very relevant for women prisoners who are pregnant or breastfeeding, older prisoners or prisoners with health conditions which require a special diet.

<sup>91</sup>. Ibid.

<sup>92</sup>. CPT, *A decency threshold for prisons – criteria for assessing conditions of detention*, CPT/Inf (2021)5-part.

<sup>93</sup>. See Nelson Mandela Rules, Rule 22.

If a prisoner requires a particular diet due to a medical condition, prison healthcare staff should ensure that this diet is catered for by kitchen staff. Prison menus should provide enough information, and in an accessible format, that enables prisoners to make informed decisions about their meals. If possible, prisoners should be consulted about food options, for example through consultations or surveys.

In terms of dietary issues, prison authorities should cater for prisoners who wish to observe religious dietary laws, such as kosher or halal laws. In addition, special arrangements may need to be made during religious festivals such as Ramadan to allow prisoners to eat outside the usual mealtimes. During religious festivals, prison staff should give careful consideration to the practical organisation of these meals. Prison staff should ensure that kitchen orderlies (be it staff or prisoners) use separate tools to avoid cross-contamination and correctly label specific food in kitchen stores. In addition, food and meals should be stored, prepared and served in line with religious and cultural requirements.

Young adult prisoners may require more food as they have a greater energy intake than other prisoners. Prison authorities should be mindful of the needs of young adult prisoners and adapt the regime accordingly.

For women, the Bangkok Rules provide guidance on the nutritional and other healthcare needs of pregnant women and breastfeeding mothers, as well as the developmental and healthcare needs of dependent children.<sup>94</sup> Pregnant women, breastfeeding mothers and other women who have recently given birth should be examined regularly by a qualified healthcare practitioner, who should draw up a programme of health and diet for each woman. Pregnant women and breastfeeding mothers should be provided with extra food, milk and supplements, and prison catering staff should receive appropriate training on the nutritional needs of pregnant and nursing mothers. Women should be given individual information about their healthcare plans and should be consulted as to their problems and needs.

Children who live with their mothers in prison will have specific nutritional needs. They should be examined by a healthcare specialist at the time of their admission, and a health and nutritional programme should be drawn up for each child at this time.<sup>95</sup>

### Food preparation

The EPR state that food should be prepared hygienically, which means that it should be stored safely and prepared in line with national food health and safety regulations (Rule 22.3). Prison authorities must ensure that anyone engaged in food handling activities, either prisoners or prison staff, are competent to do so and have been given appropriate training on food safety principles and the relevant legislation. It is also good practice to display a written food safety policy in the main prison kitchen.

Prison staff should also ensure that food provided to all prisoners is kept safe and not open to tampering or contamination in kitchens.

Prison authorities should consider offering self-catering options to prisoners as and where appropriate. Accordingly, cooking facilities, such as access to equipment such as microwaves, kettles or toasters, should be provided subject to appropriate safety measures. Self-catering arrangements also give prisoners a sense of autonomy as well as a chance to develop their cooking skills. This can be particularly important for people serving long-term or life sentences.

Under the EPR, prison healthcare staff are entitled to inspect all areas and report to the prison director on issues relating to food preparation. In addition, external prison monitors (national, regional or international) should be given full access to these areas as part of their monitoring remit.

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94. See Bangkok Rules, Rule 42 and 48.

95. *Ibid.*, Rule 9.



## 4.2 Healthcare

Healthcare is covered in Section III of the Rules – Rules 39–48 – which includes the key aspects of prison health and implementing the right to health which incorporates the right to medical treatment and to preventive measures.

Prisons are inherently unhealthy settings with much higher rates of disease, substance dependency and mental illness among the prison population than in the wider community. People in prison often come from disadvantaged and deprived backgrounds where they have been exposed to transmissible diseases and poor nutrition, and their access to good quality health services will have been limited. Some prisoners may have neglected their health and may never have been treated by a qualified doctor before their imprisonment, particularly if they come from remote or rural areas. Additionally, people in prison may have a history of abuse or high-risk behaviour including drug use, self-tattooing or unprotected sex. They may also have substance dependence and be suffering from withdrawal symptoms.

Poor or inadequate prison conditions may, of themselves, present a serious risk to prisoners' physical or mental health. A lack of access to sufficient nutritious food and safe drinking water and inadequate opportunities for physical exercise – all of which are common in prison settings – can also contribute to the deterioration of health. Poor sanitary conditions increase the chances of skin or parasitic diseases, and the lack of sunlight, fresh air, heating or ventilation can also seriously affect prisoners' health. Communicable diseases are of particular concern among prisoners, with tuberculosis rates in prisons in Europe up to 84 times higher than in the general population.<sup>96</sup>

Prison healthcare is governed by several fundamental principles which cut across the delivery of all prison healthcare services.

### 1. Continuity of care

Prisoners are entitled to continuous access to healthcare on transfer, arrival at prison or on release, which should be facilitated by prison management.<sup>97</sup> In order to provide continuity of care, prison healthcare services should maintain close and regular links with the wider community healthcare services to ensure a smooth transition of care between services. In practice, prison services, and healthcare officials in particular, should be able to access shared digital healthcare systems if available.

### 2. Equivalence of care

Prison administrations should provide the same standard of healthcare that a prisoner could expect to receive in the outside world.<sup>98</sup> In practical terms, healthcare in prison should be 'at least' consistent in the range and quality with what is available in the community.

### 3. Non-discrimination

Prisoners should have access to healthcare services without discrimination on the grounds of their legal status.<sup>99</sup> In practice, this means that different groups of prisoners should receive appropriate care in line with their specific healthcare needs, including gender-sensitive treatment. In addition, healthcare services should be provided free of charge.<sup>100</sup>

### 4. Independence

The first duty of health-care staff is to their patients, and prison healthcare staff should be able to act in full clinical independence of the prison administration. It is essential that all clinical decisions are governed by medical criteria without any undue influence from other parties or individuals.<sup>101</sup>

96. WHO, 'Europe Fact Sheet, Prison and Health', [www.euro.who.int/data/assets/pdf\\_file/0020/250283/Fact-Sheet-Prison-and-Health-Eng.pdf](http://www.euro.who.int/data/assets/pdf_file/0020/250283/Fact-Sheet-Prison-and-Health-Eng.pdf).

97. Nelson Mandela Rules, Rule 24(2).

98. UN Basic Principles for the Treatment of Prisoners, Rule 9; Nelson Mandela Rules, Rule 24(1); Council of Europe, *3rd General Report of the CPT's activities, covering the period 1 January to 31 December 1992*, CPT/Inf (93) 12, 4 June 1993, paras 30-77; General Assembly, *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*, Resolution 37/194, 18 December 1982, Principle 1.

99. Nelson Mandela Rules, Rule 24(1); UN Basic Principles for the Treatment of Prisoners, Rule 9.

100. Nelson Mandela Rules, Rule 24(1).

101. See also Nelson Mandela Rules, Rule 32(1)(a); 59th World Medical Association General Assembly, *Declaration of Seoul on Professional Autonomy and Clinical Independence*, October 2008.

## State responsibility for healthcare



### Relevant rule

#### Rule 39:

Prison authorities shall safeguard the health of all prisoners in their care.

The EPR stipulate the State's duty to provide for the medical treatment of prisoners, and to promote his or her physical health and well-being.<sup>102</sup> The State's duty of care is critical because prisoners have no alternative but to rely on the authorities to promote and protect their health. Accordingly, prison authorities must ensure that they have sufficient resources available to ensure that prison healthcare is adequate in relation to the size and needs of the prison population. The full range of health services, including necessary medical, surgical and psychiatric services must be accessible to those in prison, without discrimination and equivalent to those available outside prison. In some cases, prison administrations may experience significant resource and operational challenges in providing adequate healthcare to prisoners. However, a lack of financial means or economic difficulties encountered by States does not negate or reduce the State's duty of care and responsibility when it deprives a person of their liberty.<sup>103</sup>

The ECtHR has found that the State has an obligation, under the ECHR, to protect the physical well-being of persons deprived of liberty by providing them with the requisite medical care.<sup>104</sup> In some cases, the lack of appropriate medical care may amount to inhuman or degrading treatment contrary to Article 3 of the ECHR.<sup>105</sup>

## Organisation of prison healthcare



### Relevant rule

#### Rule 40:

1. Medical services in prison shall be organised in close relation with the general health administration of the community or nation.
2. Health policy in prisons shall be integrated into, and compatible with, national health policy.
3. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

4. Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.
5. All necessary medical, surgical and psychiatric services, including those available in the community, shall be provided to the prisoner for that purpose.

The World Health Organisation (WHO) and the UN Office on Drugs and Crime (UNODC) state that the 'management and coordination of all relevant agencies and resources contributing to the health and well-being of prisoners is a whole-of-government responsibility'.<sup>106</sup> Being part of the wider healthcare system can bring better health outcomes and improve the delivery of healthcare for prisoners. It can also support integration of prisoners into society on release and lower rates of reoffending.

Health ministries should provide and be accountable for healthcare services in prisons and advocate for healthy prison conditions. If prison health is not under the scope of ministries of health, then prison administrations and the relevant ministry should work closely with the ministry of health in several areas including policy planning and implementation, training of

<sup>102</sup>. Further international standards on the right to health in prison can be found in the Nelson Mandela Rules, Rules 24-35; the Bangkok Rules, Rules 6-17; and the Havana Rules.

<sup>103</sup>. UN Human Rights Committee, Communication No 763/1997, *Lantsova v Russian Federation*, CCPR/C/74/D763/1997, 28 March 2002.

<sup>104</sup>. ECtHR, *Kudla v Poland*, Application No 30210/96, 26 October 2000.

<sup>105</sup>. ECtHR, *Testa v Croatia*, Application no 2087/04, 30 January 2008.

<sup>106</sup>. UNODC and WHO Europe, *Good Governance for Prison Health in the 21st Century: A policy brief on the organisation of prison health*, 2013.

prison healthcare staff, joint collection of key statistics/data and the development of national standards and/or Standard Operating Procedures (SOPs) on prison health. Legislation on health should include healthcare in prison.

In recent years, there has been a growing trend of transferring prison health to ministries of health. An integrated healthcare system allows for healthcare to be delivered in prisons by people who understand wider public healthcare issues and can promote links with the wider healthcare system. It also promotes equity within the prison system and helps to uphold international and regional human rights standards particularly around equivalency and continuity of care for prisoners.<sup>107</sup> European countries that have implemented a complete transition to ministries of health include Finland, France, Norway, Slovenia, Italy, Luxembourg, San Marino and the United Kingdom.<sup>108</sup>

It is important to acknowledge that such transfers can be a complex and lengthy process as they bring together two different work cultures (health and corrections) and raises other challenging issues including (but not limited to) data sharing, ethics, prison/healthcare staff relations, and level and quality of care.<sup>109</sup> Such challenges need to be considered at the start of a transfer process to mitigate their impact. When assessing any potential plans to integrate prison healthcare with community healthcare services, prison authorities should consider the necessary budgetary implications, transfer of funding and the creation of medical departments directly under the ministry of health with an independent healthcare budget separate from that used by prison administrations.

The Council of Europe has created a useful tool, *Key questions to prison health organisation and management – a checklist* which provides useful prompts and questions to consider when assessing a potential integration of services.<sup>110</sup>



#### PROMISING PRACTICE: FINLAND'S PRISON HEALTHCARE UNDER THE MINISTRY OF SOCIAL AFFAIRS AND HEALTH

Since 2016, prison healthcare services in Finland have been provided by the Unit for Prisoners' Health Services (VTH), an independent entity under the Finnish Institute for Health and Welfare (THL), a department of the Ministry of Social Affairs and Health. VTH is an autonomous body with its own budget, rules and procedures, but THL has a legal responsibility to ensure that VTH meets its goals and operates according to the law and to support its performance and efficiency. It has been noted that, since 2016, the perception is that the quality of healthcare in prisons has greatly improved given the cooperation between VTH and THL.<sup>111</sup>

In the areas of communicable diseases (including HIV, hepatitis and tuberculosis) the public and prison systems should work together to ensure early detection of diseases and ensure that prison settings are included in national HIV, tuberculosis and drug-dependence programming.<sup>112</sup> Similarly, in the case of other public health emergencies (such as pandemics), effective coordination and communication between different government agencies is key to a fast, streamlined and effective response. This was evident during the COVID-19 pandemic where, in a number of countries, ministries of health, justice and social affairs worked in close cooperation to manage the pandemic response. In Portugal, for example, the Ministry of Health worked in close cooperation with the Ministry of Justice to manage the pandemic response in prisons.

107. See Council of Europe, *Recommendation No. R (98) 7 of the Committee of Ministers to Member States concerning the ethical and organisational aspects of healthcare in prison*, April 1998, para. 10, which states, 'Health policy in custody should be integrated into, and compatible with, national health policy', [rm.coe.int/09000016804fb13c](https://rm.coe.int/09000016804fb13c); WHO Europe, *Moscow Declaration on Prison Health as part of Public Health*, 2003; CPT, *15th General Report on the CPT's activities covering the period 1 August 2004 to 31 July 2005*, CPT/Inf (2005) 17, para. 52.

108. WHO Europe, *Status report on prison health in the WHO Europe Region*, 2019; see also WHO Europe, *Status report on prison health in the WHO Europe Region*, 2022.

109. *Ibid.*, p. 31.

110. Pont, Jörg and Harding and Timothy Wilfrid, *Organisation and Management of Health Care in Prison – Guidelines*, Council of Europe, February 2019, pp. 59-63.

111. See PRI, *Good governance for prisons: putting good governance into action during and beyond the COVID-19 pandemic*, March 2022, p. 27.

112. UNODC, *Policy Brief, HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*, 2013.

In terms of prevention and health promotion, prisoners should be included in all community health initiatives, such as vaccination roll out and screening. WHO Europe documented high rates of COVID-19 vaccination in prisons in Europe.<sup>113</sup>

## Special considerations for healthcare

### Women

The EPR state that gender-sensitive policies should be developed to meet the specific needs of women prisoners (Rule 34.1). In order to adequately respond to their healthcare needs, gender specific services should be provided including sexual and reproductive healthcare and preventive healthcare (including pap smears and breast cancer screening)(Rule 34.1).

Wherever possible, women should receive medical treatment from female nurses and doctors. It is considered good practice to have a female chaperone present if an examination of a woman is carried out by a male doctor, whether the woman has requested a chaperone or not. This provides a safeguard against possible harassment or abuse. The female chaperone could be a nurse or other healthcare staff.

More widely, prison healthcare services should develop specific policies relating to health provision for women in prison, in coordination with community health services, and a mechanism for cooperation between the ministry of health and prison healthcare should be established to effectively respond to the gender-specific healthcare needs of women.

The Bangkok Rules provide comprehensive coverage of the key hygiene and healthcare needs of women in prison as well as children staying with them.<sup>114</sup>

Adequate provisions should be made for the care of children entering prison with their mothers, including age-appropriate facilities and services. Staff training, prison policies and programmes should ensure that the children staying with their mothers in prison are never treated as imprisoned. Children living with their mothers should be examined by a child healthcare specialist at the time of their admission, and a health and nutritional programme should be drawn up for each child at this time. Thereafter, their health and development should be monitored by qualified healthcare specialists, in close collaboration with community healthcare services.

### Ethnic and religious minorities

Members of ethnic and religious minorities may have specific healthcare needs related to their socio-economic marginalisation in society which will need to be managed by prison healthcare staff on arrival and throughout their detention. It is likely that members of these groups will have had inadequate medical care prior to imprisonment, owing to discrimination in some cases, and some groups may be at higher risk of certain conditions such as sexually transmitted diseases or substance abuse issues. In addition, ethnic or religious minorities may have faced discrimination in securing mental healthcare services and treatment prior to their imprisonment. Prison authorities can take various measures to meet the healthcare needs of minority prisoners. Such measures include awareness raising and undertaking culturally sensitive healthcare screenings and providing information about available healthcare services in an appropriate language (both verbally and in writing). Prison authorities should capture key data relating to the specific healthcare needs of these prisoners and ensure that appropriate healthcare services are available to meet those needs.

### Older persons

It often falls to prison staff, in the first instance, to identify signs of health deterioration in older persons. Prison staff should be provided with adequate training to identify such issues and convey them to healthcare professionals. Prison authorities should ensure that the healthcare team includes appropriately trained healthcare staff with

<sup>113</sup>. 'WHO/Europe shows high rates of COVID-19 vaccination in prisons', *World Health Organization*, 15 July 2021, [www.who.int/europe/news/item/15-07-2021-who-europe-shows-high-rates-of-covid-19-vaccination-in-prisons](http://www.who.int/europe/news/item/15-07-2021-who-europe-shows-high-rates-of-covid-19-vaccination-in-prisons).

<sup>114</sup>. Bangkok Rules; see also PRI and TIJ, *Guidance document on the Bangkok Rules: Implementing the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, December 2021(2nd Ed.).

experience in gerontology and aged care. Prison authorities will also need to ensure that geriatric healthcare is included in all healthcare related policies, guidelines and other working documents.

### Prison healthcare staff



#### Relevant rule

##### Rule 41:

1. Every prison shall have the services of at least one qualified general medical practitioner.
2. Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of emergency.
3. Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly.
4. Every prison shall have personnel suitably trained in health care.
5. The services of qualified dentists and opticians shall be available to every prisoner.

A well-staffed and multidisciplinary healthcare team play a vitally important role in improving the health of people in prison, on release and in the wider community. In order to attract and retain competent and professional prison healthcare staff, the pay and benefits should be commensurate with those of health staff working in the community.

Prisoners should be able to access a doctor or other qualified healthcare professional at any time during the day and night, and any request to see a doctor should be met without undue delay. The EPR require, as a minimum, the services of at least one 'qualified medical practitioner' or a part-time general medical practitioner if a full-time general medical practitioner is not available (Rules 41.1, 41.2). A 'qualified general medical practitioner' should be understood to mean a fully qualified medical doctor.<sup>115</sup> In emergencies, a doctor should always be available to provide necessary healthcare irrespective of the detention regime (including security level, status as a pre-trial or sentenced prisoner or in solitary confinement).<sup>116</sup> The CPT has also endorsed this position.<sup>117</sup> This is particularly important in cases where a person has been placed in solitary confinement as medical oversight is an important safeguard against torture and ill-treatment. In addition, the CPT has stated that a competent first aider should always be present on prison premises, preferably with a recognised nursing qualification.<sup>118</sup>

The CPT has noted that, on occasion, nurses are assisted by medical orderlies some of whom may be prisoners. This should be seen as a measure of last resort, and prisoners should never be involved in distributing medicines.<sup>119</sup>

The prison healthcare service should at least be able to provide regular out-patient consultations and emergency treatment.<sup>120</sup> The direct support of a fully equipped hospital service should be available, either in a civil or prison hospital.<sup>121</sup> Where a prison service has its own hospital facilities, the EPR require adequate levels of staff and equipment to provide prisoners with the appropriate care and treatment (Rule 46.2).

In addition to medical doctors, every prison should have personnel suitably trained in healthcare (Rule 41.4). In practice, this should include trained nurses and may also include paramedics. Prisoners should also be entitled to the services of qualified dentists and opticians (Rule 41.4).

<sup>115</sup>. Council of Europe, *Recommendation No. R(98)7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison*, 1998, [rm.coe.int/09000016804fb13c](https://rm.coe.int/09000016804fb13c).

<sup>116</sup>. *Ibid.*; see also, Nelson Mandela Rules, Rule 25.

<sup>117</sup>. CPT, *Standards on Health Care services in prisons*, CPT/Inf(93)12-part.

<sup>118</sup>. *Ibid.*

<sup>119</sup>. *Ibid.*, para. 76.

<sup>120</sup>. *Ibid.*, para. 35.

<sup>121</sup>. *Ibid.*, para. 36.

### Training of prison healthcare staff

In order to adequately meet the needs in prison, prison healthcare staff may require specific training and knowledge to enable them to carry out their duties competently. Doctors working in prisons should have a good understanding of the prison environment and its impact on the provision of healthcare and should be able to adapt their medical care accordingly. Healthcare staff should receive regular in-service training on the specificities of prison health, the functioning of prisons, prison regulations and human rights.<sup>122</sup>

Healthcare staff may also need bespoke training, for example on the reporting and documenting allegations of torture or other ill treatment in line with the Istanbul Protocol (UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), and should be trained in its application.<sup>123</sup> More widely, prison healthcare staff will require ongoing training in the main health problems facing prisoners including infectious diseases, mental healthcare, self-harm and suicide prevention, TB, HIV/AIDS and hepatitis. They will also require training, as appropriate, in relation to the needs of different types of prisoners such as young people, women, foreign nationals, older people in prison and LGBTQI+ prisoners.

In developing personnel and training policies for healthcare staff, authorities can adapt training materials developed by international organisations and regional agencies on specific topics. For example, UNODC has created a training curriculum on *Women and Imprisonment* which can be used to train, among others, healthcare staff. The training curriculum includes a module on hygiene and healthcare issues.<sup>124</sup>

In order to avoid any discriminatory practices or attitudes, prison staff (and in particular healthcare staff) should be appropriately trained on gender identity and sexual orientation.

### Ethical duties and professional standards

Prison healthcare staff are bound by the same ethical principles and professional duties that govern their work in the wider community.<sup>125</sup> International human rights standards recognise the application of these important ethical principles in the prison context.<sup>126</sup>

Prison healthcare staff should act in full **clinical independence** in the prison setting and should make decisions based solely on medical criteria alone.<sup>127</sup> The decision of healthcare staff may not be overruled or ignored by non-clinicians including prison staff. Healthcare staff may be vulnerable to 'dual loyalties' between their professional duties and to the prison authorities. As good practice and to guarantee clinical independence, prison healthcare staff should be employed by the healthcare authorities rather than correctional authorities.

The principle of **confidentiality** is a cornerstone of medical ethics and is particularly important in the prison setting.<sup>128</sup> Prisoners should feel free to discuss any medical issues with healthcare staff in full confidence and to hold individual private consultations as necessary. This will be particularly important in cases where prisoners may want to disclose torture or mistreatment allegations or, in the case of women, issues around gender-based violence. The duties of medical confidentiality are reflected in international medical standards.<sup>129</sup>

122. Council of Europe, *Resolution (98) 7 of the Committee of Ministers concerning the ethical and organisational aspects of healthcare in prisons* Section D, para. 34, [rm.coe.int/09000016804fb13c](https://rm.coe.int/09000016804fb13c); see also CPT, *Standards on Health Care services in prisons*, CPT/Inf(93)12-part.

123. Office of the High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (2022 edition), 29 June 2022.

124. UNODC, *Training curriculum on women imprisonment*, July 2015.

125. See also Nelson Mandela Rules, Rule 32 – the relationship between all healthcare personnel and prisoners should 'be governed by the same ethical and professional standards as those applicable to patients in the community'.

126. Council of Europe, *Recommendation No. R(98) 7 of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison*, 8 April 1998, [rm.coe.int/09000016804fb13c](https://rm.coe.int/09000016804fb13c); Nelson Mandela Rules, Rule 32(1)(a)-(d); 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; CPT, *Standards on Health Care services in prisons*, CPT/Inf(93)12-part.

127. See 59th World Medical Association General Assembly, *Declaration of Seoul on Professional Autonomy and Clinical Independence*, October 2008.

128. For more information on medical confidentiality see PRI and OSCE/ODIHR, *Guidance Document on the Nelson Mandela Rules*, 9 August 2018.

129. See 34th World Medical Assembly, *Declaration of Lisbon on the Rights of the Patient*, adopted in 1981 and reaffirmed in 2015; 3rd General Assembly of the World Medical Association, *International Code of Medical Ethics*, adopted in 1949 and reaffirmed in October 2022.



Healthcare staff should always guarantee medical confidentiality and may only breach this rule in exceptional circumstances when there is an immediate risk of harm to the patient or others and must be disclosed on a 'need to know' basis with the consent of the patient.

All medical examinations of prisoners should be conducted in private – unless requested otherwise by the doctor concerned – and out of hearing and sight of prison staff.

Prisoners do not lose their rights to personal autonomy in decision-making or bodily integrity by virtue of being in prison and are entitled to make informed choices about their healthcare. As a general rule, healthcare professionals must respect a prisoner's right to autonomy and not carry out any examinations or treatment without the informed consent of the patient.<sup>130</sup> To that end, patients should be provided with all relevant information (taking account of any literacy, language or other barriers) relating to their condition, their treatment regime and medication programme. The right to informed consent extends to the right of a prisoner to refuse treatment or other medical intervention. In cases of non-consent or refusal, the doctor must make sure that the patient fully understands the implications of their decision including any negative potential consequences.

Patients are entitled to have access to their medical file. Prisoners should also be allowed to request that the information be communicated to their families, legal representative or to an outside doctor.

## Duties of healthcare staff



### Relevant rules

#### Rule 42:

1. The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission and shall examine them unless this is obviously unnecessary.
2. The medical practitioner or a qualified nurse reporting to such a medical practitioner shall examine the prisoner, if requested, at release and shall otherwise examine prisoners whenever necessary.
3. When examining a prisoner, the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:
  - (a) observing the normal rules of medical confidentiality;
  - (b) diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;
  - (c) recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;
  - (d) dealing with withdrawal symptoms resulting from the use of drugs, medication or alcohol;
  - (e) identifying any psychological or other stress brought on by the fact of deprivation of liberty;
  - (f) isolating prisoners suspected of infectious or contagious conditions for the period of infection and providing them with proper treatment;
  - (g) ensuring that prisoners carrying the HIV virus are not isolated for that reason alone;
  - (h) noting physical or mental defects that might impede resettlement after release;

(i) determining the fitness of each prisoner to work and to exercise; and

(j) making arrangements with community agencies for the continuation of any necessary medical and psychiatric treatment after release, if prisoners give their consent to such arrangements.

#### Rule 43:

1. The medical practitioner shall have oversight of the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury, and any prisoner to whom attention is specially directed.
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.
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.

[...]

<sup>130</sup> CPT, *Standards on Health Care services in prisons*, CPT/Inf(93)12-part.



### Relevant rules (continued)

#### Rule 44:

The medical practitioner or other competent authority shall regularly inspect, collect information by other means if appropriate and advise the director upon:

- (a) the quantity, quality, preparation and serving of food and water;
- (b) the hygiene and cleanliness of the institution and prisoners;
- (c) the sanitation, heating, lighting and ventilation of the institution; and
- (d) the suitability and cleanliness of the prisoners' clothing and bedding.

#### Rule 45:

1. The director shall consider the reports and advice that the medical practitioner or other competent authority submits according to Rules 43 and 44 and, when in agreement with the recommendations made, shall take immediate steps to implement them.

2. If the recommendations of the medical practitioner are not within the director's competence or if the director does not agree with them, the director shall immediately submit the advice of the medical practitioner and a personal report to higher authority.

The EPR set out in very comprehensive terms the duties of medical practitioners within the prison setting. In practice, prisoners often experience challenges in securing healthcare services and there can be considerable variation between prisons in terms of the quality of care available.

The EPR mandate prison healthcare staff with the task of overseeing and reporting on all aspects of prison life including sanitation and hygiene; heating, ventilation and lighting; and the quality and preparation of food (Rule 44 a – d). In order to meet this function, the healthcare team should include or have access to specialists with expertise in food nutrition, sanitation, exercise and other areas.

In their monitoring role, prison healthcare staff should be entitled to inspect all areas of prison facilities where staff and prisoners live and work.

In relation to the wider conditions of detention, the EPR also state that the prison director should consider the reports and advice from medical practitioners and, when in agreement with the recommendations, take immediate steps to implement them (Rule 45.1). As good practice, prison healthcare staff should hold regular meetings with prison management to discuss prison conditions and to follow up on the implementation of any recommendations made in reports.

### On admission

On admission and as promptly as possible, prisoners should be seen by prison healthcare staff officials for an initial medical screening. The purpose of this screening is to identify immediate healthcare needs including chronic health conditions, ongoing medication requirements, treatment for substance dependency as well as documenting physical injuries and any signs or evidence of torture and other ill-treatment. The screening should also include an assessment of suicide and self-harm risks.

The initial medical screening should take place within 24 hours of admission.<sup>131</sup> As it is not always possible to ensure that a doctor is able to carry a medical examination of all people as soon as they are admitted, authorities should ensure that each person is at least seen by a suitably qualified nurse who can report any concerns to the doctor. Prison authorities should ensure that such procedures are followed and clearly set out in internal regulations and guidelines. An individual and comprehensive healthcare plan should be developed for each prisoner based on the findings of the screening.

During initial screening, prison healthcare staff should pay special attention and be particularly sensitive to prisoners in situations of vulnerability. This means conducting gender-sensitive health screenings for women and deploying female staff for any examinations as required. For women, the assessment should also identify whether

<sup>131</sup> CPT, 23rd General Report of the CPT, CPT/Inf (2013) 29, 2013, para. 73; see also Nelson Mandela Rules, Rule 30.

the woman has been subject to gender-based violence, screening for sexually transmitted diseases and blood-borne diseases, women's reproductive health history including recent pregnancies, abortions, mental health history and substance dependency.

LGBTQI+ prisoners, and in particular trans persons, may have special medical needs. As with all prisoners, the prison authorities should conduct a full health screening on arrival to identify and determine any health needs. It is important that initial screenings are conducted in full confidentiality, by qualified healthcare personnel. Individuals that have experienced sexual violence or other forms of abuse or trauma may have an increased need for dedicated mental health support. The initial health screening is particularly important in the case of trans persons who may require hormone or other treatment associated with transition.

It is good practice, to include screening for TB, and prisoners should be offered voluntary testing for other communicable diseases (HIV or hepatitis B and C). The EPR are explicit in stating that it is not necessary to segregate HIV+ infected prisoners unless they are ill and need specialised care. This position is confirmed by the CPT, which notes that 'there is no medical justification for the segregation of an HIV+ prisoner who is well'.<sup>132</sup> The CPT also notes that prisoners should be provided with counselling before and, if necessary, after any HIV/AIDS screening test.<sup>133</sup> Prison staff should be provided with continuous training in preventive measures and attitudes to be adopted to HIV-positivity and given advice on non-discrimination and confidentiality principles.<sup>134</sup>

Medical files should be opened for newly admitted prisoners. Medical files should be kept separately and managed by healthcare services [see **Prisoner file management**]. These files should be kept in a confidential manner and remain under the ownership and control of healthcare staff.<sup>135</sup>

### Documenting torture and ill-treatment

Prison healthcare staff play an important role in documenting signs of torture and ill-treatment. If healthcare staff identify such signs, it should be documented in line with international standards, namely the Istanbul Protocol. Prison healthcare staff should obtain consent of the prisoner before conducting any examination including by ensuring that they are fully informed about the risks and benefits of reporting torture and other ill-treatment to the authorities. Prison authorities should ensure that any evidence relating to torture and other ill-treatment is kept in a safe place and any files are stored safely and confidentially. Where consent is not given for allegations of torture and ill-treatment to be reported, the CPT has taken the view that healthcare officials are under an automatic reporting obligation regardless of the wishes of the individual concerned.<sup>136</sup>

Survivors of torture or sexual violence should be provided with appropriate support and care including professional psychological support and counselling. Prison authorities should ensure that such services are available or, in the least, refer individuals to appropriate external services such as rehabilitation centres or NGOs.

### Ongoing healthcare provision

Following the initial screening, prisoners should have access to ongoing healthcare provision 'with a frequency consistent with healthcare standards in the community' (Rule 43.1).

It is critical that medical practitioners are granted unimpeded access to prisoners, especially those who are in restricted regimes including solitary confinement, in poor mental health or suffering from drug or alcohol withdrawal.<sup>137</sup> The EPR are explicit that medical practitioners should report to the prison 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 restrictive measures such as solitary confinement (Rule 43.3). The oversight role that medical

<sup>132</sup>. CPT, *Health care services in prison*, CPT/Inf (93)12-part, para. 56, [rm.coe.int/16806ce943](https://rm.coe.int/16806ce943).

<sup>133</sup>. *Ibid.* para. 55.

<sup>134</sup>. *Ibid.*

<sup>135</sup>. Nelson Mandela Rules, Rules 26(1)(2).

<sup>136</sup>. CPT, *23rd General Report of the CPT*, CPT/Inf (2013) 29, 2013 para. 73.

<sup>137</sup>. Nelson Mandela Rules, Rules 45 and 46.

practitioners play is very important as they may be the only ones who are aware of the impact of a particular regime on a prisoner's mental or physical health. The healthcare team should include individuals who have the requisite training or expertise to identify the mental and physical health impacts of certain regimes on prisoners. The healthcare team should also pay particular attention to prisoners in situations of vulnerability.

Access to preventive healthcare services should be provided including for hepatitis, among other common diseases, and gender-specific tests such as prostate cancer screening for men and pap tests, cervical smears, and breast screening for women.<sup>138</sup>

## Specialist care



### Relevant rules

#### Rule 46:

1. Sick prisoners who require specialist treatment shall be transferred to specialised institutions or civil hospitals, when treatment is not available in prison.

2. Where a prison service has its own facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment.

Where there is a hospital or clinic on site, the EPR require adequate levels of staff and equipment to provide appropriate care and treatment (Rule 46.2). The EPR recognise that, in some instances, the prison service may be unable to provide adequate or appropriate treatment to prisoners. In those cases, the healthcare services will need to refer prisoners for specialist treatment at institutions or hospitals outside prison. Prison staff will need to liaise closely with community health services to supplement and provide specialist care as and where necessary, with close attention to the special healthcare needs of prisoners in situations of vulnerability.

It is the responsibility of the prison to transfer individuals in a safe and secure way which respects their dignity and does not place them in any undue hardship or risk. Authorities should liaise with the hospital and undertake a risk assessment to decide the level of escort and restraint required for safe custody to hospital. Any use of restraints must be used strictly in accordance with the law and only if necessary to prevent prisoners from injuring themselves or other or from damaging property – i.e. the least restrictive possible<sup>139</sup> [see [Instruments of restraint](#)]. Prisoners should be accompanied by healthcare staff and emergency medical equipment should be available in the vehicle.

Prison authorities and prison healthcare services should develop policies and programmes to respond to the healthcare needs of pregnant women, breastfeeding mothers and children living with their mothers in prison. Pregnant women, breastfeeding mothers and other women who have recently given birth should be examined regularly by a qualified healthcare practitioner, who should draw up a programme of health and diet for each woman. Prison authorities should ensure that pregnant women and breastfeeding mothers are accommodated in cells/dormitories with adequate hygiene and sanitary facilities.

Trans prisoners may require specialised care in terms of their transition. In line with equivalency of care, trans prisoners should be allowed to continue with their transition while in detention and access appropriate treatment and medication.

Older persons in prison face chronic medical conditions which require enhanced medical attention, such as hypertension, diabetes, Parkinson's disease, pulmonary disease, arthritis, asthma, depression, mobility problems and cognitive impairment. Assessments and measures to put in place the necessary environmental adaptations to the prison (cells, communal areas) to accommodate needs of older prisoners should be carried out

<sup>138</sup>. Bangkok Rules, Rule 18.

<sup>139</sup>. Nelson Mandela Rules, Rule 47.

or commissioned by healthcare staff. This could, for example, include the installation of shower chairs, ramps or shower handles moving older prisoners to a lower bunk bed. It may also be good practice to house older persons together in geriatric units.

The delivery of palliative care to the terminally ill is becoming a growing responsibility for prison administrations globally. Terminally ill patients will have specific healthcare needs including palliative care and constant monitoring. In many cases, the prison environment is not conducive to end-of-life care as prison staff lack the necessary training and resources to provide this highly specialised care. As good practice, those at the end of life or requiring palliative care should be transferred to specialised institutions (such as a hospice) or civil hospitals. The Council of Europe has reaffirmed that such decisions to transfer should be made on medical grounds only.<sup>140</sup>

Prisoners with disabilities (sensory, intellectual or physical) may be more reliant on staff or other detainees to move around, dress, bathe and fulfil other daily tasks. Often, the prison infrastructure is inadequate to meet the needs of prisoners with disabilities, and prison staff will need to make necessary adjustments accordingly.

Prisoners who use drugs should be permitted access to harm reduction measures and, where appropriate, relevant gender-sensitive healthcare to reduce the risk of transmission of infections such as HIV, hepatitis and tuberculosis. Overdose prevention and management advice is also essential, in particular upon release. Prison authorities should offer treatment to all those in need and should include a range of options such as substitution therapy, psychosocial and mutual aid approaches, needle and syringe programmes and access to safer sex measures (condom distribution, education programmes).

## Mental health



### Relevant rules

#### Rule 47:

1. Specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality who do not necessarily fall under the provisions of Rule 12.

2. The prison medical service shall provide for the psychiatric treatment of all prisoners who are in need of such treatment and pay special attention to suicide prevention.

The prevalence of mental health conditions is much higher within prison populations, particularly among women, and prisoners have a higher chance of developing poor mental health while in detention.<sup>141</sup> Research suggests that around one in seven prisoners has a serious mental health issue.<sup>142</sup> Moreover, prisoners with mental health issues may be at increased risk of violence and victimisation from other prisoners or prison staff. The Council of Europe recommendation concerning the protection of the human rights and dignity of persons with mental disorders makes it clear that people with mental health issues should not be subject to discrimination in 'penal institutions' and should be afforded appropriate therapeutic options in line with the principle of equivalency of care.<sup>143</sup>

The promotion, protection and restoration of mental health in prisons are vital measures for prisoner rehabilitation and their safe integration back into the community.

On admission, prison healthcare staff should carry out a full medical screening which should include a mental health needs assessment including identification of any risk of suicide or self-harm.<sup>144</sup> The authorities should have strict procedures and protocols in place to

<sup>140</sup>. Council of Europe, *Recommendation No. R(98)7, 1998 Concerning the Ethical and Organisational Aspects of Health Care in Prisons*, 8 April 1998, [rm.coe.int/09000016804fb13c](https://rm.coe.int/09000016804fb13c).

<sup>141</sup>. PRI, *Mental Health in Prison: A short guide for prison staff*, April 2018.

<sup>142</sup>. Ibid, p. 3. For the purposes of this guide, we use the World Health Organisation definition of Mental Health as 'a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community', see WHO, *Promoting mental health: concepts, emerging evidence, practice: Summary Report*, 2004, [rm.coe.int/rec-2004-10-em-e/168066c7e1](https://rm.coe.int/rec-2004-10-em-e/168066c7e1).

<sup>143</sup>. Council of Europe, *Recommendation Rec(2004)10, Committee of Ministers concerning the protection of the human rights and dignity of persons with mental disorder*, 22 September 2004.

<sup>144</sup>. See also Nelson Mandela Rules, Rule 30.

manage those prisoners identified at risk. All mental healthcare should be delivered on an individualised basis and reviewed on a regular basis. The CPT has noted that patients should be involved in the drafting of their individual treatment plans and should be informed of their progress.<sup>145</sup>

People with mental health issues should not ordinarily be held in prisons but in secure psychiatric hospitals or other suitable institutions (Rule 12.1). In those cases where they are detained in prisons, the EPR require that 'specialised prisons or sections under medical control' (i.e. psychiatric units) should be available to treat those prisoners (Rule 47.1). Prison authorities should ensure that such units are adequately and appropriately staffed (psychiatrists, nurses, psychologists, occupational therapists, social workers) and are designed, as far as possible, in a way that provides a positive therapeutic environment and are conducive to the treatment and welfare of the patient.

The EPR require the provision of appropriate psychiatric treatment to prisoners where needed (Rule 47.2). In such cases, prison conditions are likely to exacerbate their poor mental health, and so they should be transferred to a suitably equipped psychiatric facility in line with the EPR.<sup>146</sup> The CPT has also stated that prisoners with mental health conditions 'should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system.'<sup>147</sup>

Prison staff, including healthcare staff, should be well equipped and trained to identify, support and respond appropriately to prisoners with mental health issues and those at risk of self-harm and suicide. Comprehensive mental health training including induction and continuous training programmes should be designed and delivered by mental health specialists with knowledge and understanding of the prison health context.

Positive staff attitudes and interactions are critical to the mental well-being of prisoners. In practice, prison staff should communicate positively with prisoners, using dynamic security approaches (see Rule 51.2); in doing so, prison staff may be able to identify warning signs and potential triggers for mental health decline. The Nelson Mandela Rules recommend the use of dynamic security, negotiation and mediation approaches in interaction with prisoners.<sup>148</sup> Prison staff should carefully monitor particular groups of individuals who may (but not necessarily) be more at risk, including women, children/younger people, pre-trial detainees, foreign nationals, LGBTQI+ prisoners, older persons and prisoners with disabilities.

### Women and mental health

Women who are admitted to prison are more likely than men to have existing mental healthcare needs, often as a result of domestic violence and physical and sexual abuse. Furthermore, most women who are admitted to prison are mothers, and the separation from their children, as well as the rest of the family, can have severe negative impacts on their mental well-being. Gender-sensitive policies and specialised services should be in place to support them. This support may include counselling and appropriate medical advice.<sup>149</sup> Prison authorities should ensure that counselling programmes for women are integrated and holistic and take into account economic, social, physical and psychological factors. Programmes that equip prisoners with practical skills while at the same time providing therapeutic support can be particularly beneficial. Due to their specific backgrounds and the challenges they face in prison, women are particularly likely to benefit from counselling and psychosocial, cognitive and motivational programmes. Such programmes might include cognitive behavioural therapy – a talking therapy aimed at helping prisoners manage problems by changing the way they think and behave and by breaking problems down into smaller parts.

<sup>145</sup> CPT, *Report to the Azerbaijani Government on the visit to Azerbaijan from 8 to 12 December 2009*, CPT/Inf(2009)28, 26 November 2009, para. 68.

<sup>146</sup> EPR, Rule 12.

<sup>147</sup> CPT, *Health care services in prisons*, CPT/Inf(93)12-part.

<sup>148</sup> Nelson Mandela Rules, Rule 76(c).

<sup>149</sup> EPR, Rule 34(1)-(3).



### Suicide and self-harm prevention

Proper supervision of prisoners and the ability of staff to identify those at risk are key components of effective suicide and self-harm prevention. In practice, initial health screenings must be robust and identify the risk of suicide early in custody.

Prison authorities should also have good suicide and self-harm protocols in place to manage these incidents. The use of solitary confinement is detrimental to prisoners' health and increases the risk of suicide; under international standards, it is prohibited for prisoners with mental health conditions when their condition may be exacerbated by such measures.<sup>150</sup> The CPT has emphasised the importance of training prison staff on recognising indications of suicidal risk and, if so identified, keeping suicidal prisoners under a special observation scheme.<sup>151</sup>

Special precautions can include suicide-proof clothing and ligature-free cells or constant observation. Such precautions, although essential, can be a high-risk measure for human rights violations and so must be kept under constant review and used for the shortest time possible. Those under such measures should be offered appropriate counselling, support and other services at the earliest opportunity to remove the necessity of such precautions.

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#### USEFUL RESOURCES ON MENTAL HEALTH:



##### ***Mental Health in prison: a short guide for prison staff***<sup>152</sup>

This guide seeks to help prison staff understand and respond appropriately to the mental health needs of adult prisoners. It focuses on how prison staff can promote and protect mental health and well-being and enable those with existing conditions to function better in the prison environment.



##### ***Women in prison: mental health and well-being – a guide for prison staff***<sup>153</sup>

This guide is written to help understand how life in prison can affect a person's mental health, with a focus on women. It describes how to recognise the signs of poor mental health and how best to respond. It also includes a checklist based on international human rights standards aimed to help with the implementation of key aspects of prison reform and advocacy initiatives in line with international standards and norms.

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### Purposeful activities to support mental health

Prison regimes and poor prison conditions can exacerbate or cause mental ill-health, particularly where there is a lack of physical activity and mental stimulation or contact with the outside world. Thus, prison authorities should take measures that support a 'healthy prison' environment. In practice, prison staff should encourage prisoners to participate in physical activities, discuss their health needs, ensure that prisoners have access to prison health facilities and adequate, nutritious food and other essentials.

In terms of purposeful activities such as education, work or rehabilitation programmes, some prisoners with mental health issues may feel anxious or lack confidence to participate. In such instances, prison staff should talk to prisoners about available activities, try to understand and address any barriers to participation and ensure that activities are tailored to a range of interests, abilities and confidence levels. Prisoners will feel less isolated if they have regular contact with families, friends and the wider outside world. Staff should be proactive in helping to facilitate prisoners' contact with people in the community [see [Contact with the outside world](#)].

Uncertainty, doubt and fear of the unknown can be major contributory factors in poor mental health. Prison staff should proactively inform prisoners about developments in their legal case, prison life, and accessing support, legal and pastoral services.

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<sup>150</sup>. Nelson Mandela Rules, Rule 45(2).

<sup>151</sup>. CPT, *Standards on Health Care services in prisons*, CPT/Inf(93)12-part, 1993.

<sup>152</sup>. PRI, *Mental Health in prison: A short guide for prison staff*, April 2018.

<sup>153</sup>. PRI and the Prison Reform Trust, *Women in prison: mental health and well-being – a guide for prison staff*, 2020.



### PROMISING PRACTICE: THE SAMARITANS' LISTENER SCHEME (UNITED KINGDOM AND IRELAND)

The Listener Scheme is a peer-support scheme within prisons, which aims to reduce suicide and self-harm. There are Listeners in almost every prison in the UK, and in the Republic of Ireland. Listeners are prisoners who provide confidential emotional support to their peers who are struggling to cope or feeling suicidal. Typically, 1,500 Listeners respond to over 50,000 requests for support every year. In the 12 months ending June 2021, Samaritans answered over 365,000 calls from people in prison. Listeners are selected and trained by the Samaritans.<sup>154</sup>

## Medical experiments



### Relevant rule

#### Rule 48:

1. Prisoners shall not be subjected to any experiments without their consent.
2. Experiments involving prisoners that may result in physical injury, mental distress or other damage to health shall be prohibited.

The issue of using prisoners as test subjects for medical experiments and research is highly contentious as they may not be able to make a truly voluntary and uncoerced decision. International standards are quite unequivocal, and the EPR state explicitly that medical experiments should not be carried out on prisoners without their consent (Rule 48.1).

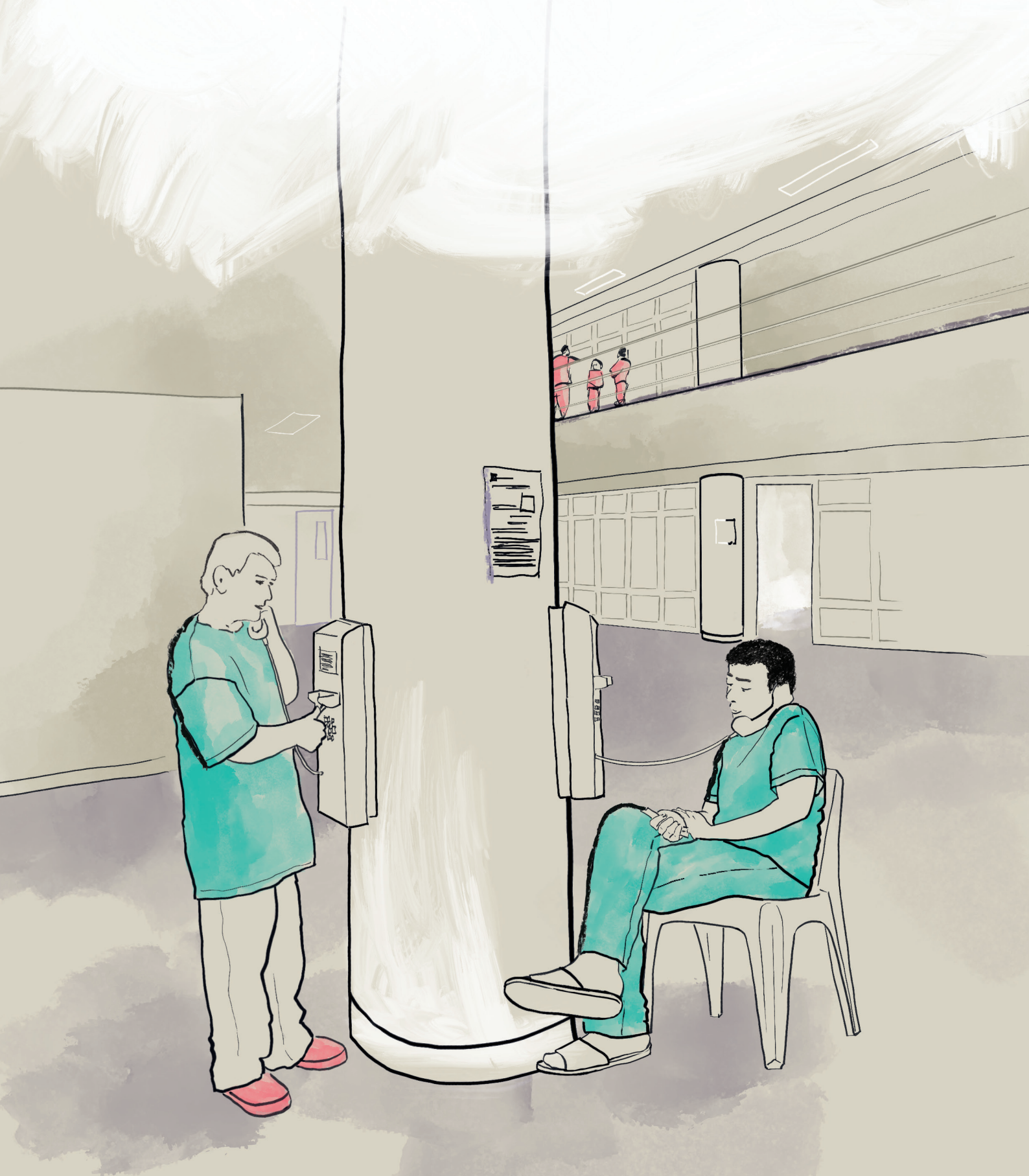
The CPT has noted the need for a 'very cautious approach' when there is any question of medical research with prisoners, given issues around consent and agency.<sup>155</sup> Strict safeguards should be in place to ensure that prisoners give free and informed consent to any medical research. This should include the intervention of a board of ethics or similar body to oversee any medical research programmes. The involvement of prisoners in medical teaching programmes should require the prisoners' consent. Research staff should be fully trained and qualified to undertake research in the prison setting.

<sup>154</sup>. 'Listener Scheme', Samaritans, [www.samaritans.org/how-we-can-help/prisons/listener-scheme](http://www.samaritans.org/how-we-can-help/prisons/listener-scheme).

<sup>155</sup>. CPT, *3rd General Report on the CPTs activities*, CPT/Inf(93)12, 4 June 1993.

# Chapter 5

## Contact with the outside world



# Contact with the outside world



## Relevant rules: Sentenced prisoners

### Rule 23:

1. All prisoners are entitled to legal advice, and the prison authorities shall provide them with reasonable facilities for gaining access to such advice.
2. Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.
3. Where there is a recognised scheme of free legal aid, the authorities shall bring it to the attention of all prisoners.
4. Consultations and other communications, including correspondence about legal matters between prisoners and their legal advisers, shall be confidential.
5. A judicial authority may, in exceptional circumstances, authorise restrictions on such confidentiality to prevent serious crime or major breaches of prison safety and security.
6. Prisoners shall have access to, or be allowed to keep in their possession, documents relating to their legal proceedings.

### Rule 24:

1. Prisoners shall be allowed to communicate as often as possible – by letter, telephone or other forms of communication – with their families, other persons and representatives of outside organisations, and to receive visits from these persons.
2. Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.
3. National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.
4. The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

5. Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.
6. Any information received of the death or serious illness of any near relative shall be promptly communicated to the prisoner.
7. Whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral or for other humanitarian reasons.
8. Prisoners shall be allowed to inform their families immediately of their imprisonment, their transfer to another institution and of any serious illness or injury they may suffer.
9. Upon the admission of a prisoner to prison, the death or serious illness of, or serious injury to a prisoner, or the transfer of a prisoner to a hospital, the authorities shall, unless the prisoner has requested them not to do so, immediately inform the spouse or partner of the prisoner or, if the prisoner is single, the nearest relative and any other person previously designated by the prisoner.
10. Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case.
11. Prison authorities shall ensure that prisoners are able to participate in elections, referenda and in other aspects of public life, in so far as their right to do so is not restricted by national law.
12. Prisoners shall be allowed to communicate with the media unless there are compelling reasons to forbid this for the maintenance of safety and security, in the public interest or in order to protect the integrity of victims, other prisoners or staff.





### Relevant rules: Untried prisoners

#### Rule 98:

1. Untried prisoners shall be informed explicitly of their right to legal advice.
2. All necessary facilities shall be provided to assist untried prisoners to prepare their defence and to meet with their legal representatives.

#### Rule 99:

Unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners:

- (a) shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners;
- (b) may receive additional visits and have additional access to other forms of communication; and
- (d) shall have access to books, newspapers and other news media.

The right to private and family life is a fundamental human right, not only for prisoners but for members of their family, including any children.<sup>156</sup> Pre-trial detainees have the same right to contact with the outside world as convicted prisoners, unless there is a specific prohibition, but they may also be entitled to additional visits and have additional access to other forms of information (Rule 99 (a and b)).

Contact with the outside world provides an important safeguard against human rights violations. It also facilitates rehabilitation and successful social reintegration, supports psychological health and overall well-being, and can reduce the risk of suicide and self-harm. It may include contacts with families, legal representatives and other persons and representatives of outside organisations (Rule 24.1) but should be interpreted as broadly as possible to include any person who a prisoner may be visited by, subject to the requirements of safety and security. This is important to facilitate the maximum opportunities for outside contact so that all prisoners, including those who do not have formalised family relationships, can retain a support network. Contact with outside world might also include media representatives.

It is good practice for prisoners to be consulted on who is allowed to visit them, with the Bangkok Rules noting specifically that women prisoners should be properly consulted in view of their disproportionate experience of gender-based violence (Bangkok Rules, Rule 44).

### Legal advice

All prisoners have the right to legal representation, which forms a fundamental component of the right to a fair trial. Prison authorities are required to facilitate access to legal advice by providing prisoners with adequate opportunities, time and facilities to communicate and consult with a legal representative (Rule 23.1). In the case of pre-trial detainees, it is particularly important for them to receive legal advice in advance of their trial so that they can prepare their defence (Rules 98.1 and 98.2). Convicted prisoners may also need legal advice to prepare for their appeal, to make complaints about any aspects of prison life or for any other legal matter (Rule 23.2).

Prisoners may pay for a legal adviser of their choice (Rule 23.2), but those who cannot afford a lawyer have an equal right to legal advice in the form of free legal aid. Prison authorities can facilitate this by providing assistance with the costs of telephone calls and letters or the provision of writing materials to help them prepare their defence.

Prison staff should be proactive in talking to prisoners about the legal support available and what help they might need to access it. Authorities need to facilitate phone calls and other remote communications and they should prioritise in-person meetings with lawyers. This means providing the means of communication, as well as accessible, private meeting spaces for legal consultations, and ensuring that prisoners have the time they need to consult

<sup>156</sup> ECHR, Article 8(2); ICCPR, Article 23; CRC, Article 16(1).

with their lawyers or legal aid providers. Authorities should place no limits on the number of prisoners' communications with lawyers or the amount of time they are able to spend consulting with their lawyers.

The facilitation of access to legal advice includes providing all prisoners with information about how to access such advice, including free legal aid where available (Rule 23.3). Prison authorities need to ensure that this information is provided in accessible format to illiterate or low-literate prisoners, those with mental health issues and intellectual disabilities, younger prisoners and foreign nationals.

Some groups of prisoners, including women and younger prisoners, may also be less likely to access legal advice, and prison authorities should pay particular attention to assisting them. This should include a process of understanding what the barriers may be for those groups. While these might be part of broader discriminatory laws, rules and procedures on access to justice, prison staff can work with individual prisoners to overcome case specific barriers, and work in conjunction with other agencies to tackle the wider issue of discrimination.

Information about legal advice, including free legal aid, should be provided to all prisoners as soon as possible after their admission to prison and throughout the course of their detention. This requirement should be set out in regulations. Relevant information should be prominently displayed using posters or other visual materials in common areas of the prison and made individually available to all prisoners in the form of pamphlets or other accessible formats. Prison authorities can work closely with legal aid providers, including enabling them to provide information sessions about legal aid, disseminate their information to prisoners and where possible, installing hotlines for prisoners to access advice. Training of police and prison staff is also an important way of helping them understand the importance of access to legal aid and their role in facilitating it. This can be done in conjunction with broader efforts to promote the benefits of legal advice in the community.

### Confidentiality of legal communications

It is the responsibility of prison authorities to ensure that prisoners' communications with their legal representatives remain fully confidential in line with the right to lawyer-client privilege.

Confidentiality can be ensured by:

- Ensuring that prisoners are never asked to explain their reasons for wanting to communicate with their lawyer;
- Locating telephones, tablets and other modes of communication in areas where conversations cannot be overheard;
- Allowing prisoners to write to their lawyers, in paper or electronically, without interference or censorship;
- Designing all lawyers' visiting areas to guarantee full privacy and confidentiality and that this confidentiality is upheld in practice. The Nelson Mandela Rules clarify that, to ensure confidentiality, in-person meetings may be held within sight, but not within hearing, of prison staff;<sup>157</sup>
- Ensuring that prisoners have access to their legal documents whenever they need them (Rule 23.6). In some cases, they may be able to keep them in their cells, but where it is not safe to do so or confidentiality cannot be ensured, they should be able to request them at any time during normal working hours.

There may be exceptional circumstances in which restrictions on the right to confidentiality can be authorised, including to prevent serious crime or major breaches of prison safety and security (Rule 23.5). These restrictions can only be authorised by judicial authorities and should never be left to the discretion of prison authorities. These exceptions, the procedures and safeguards that need to be in place must be clearly set out in laws or procedures, and

<sup>157</sup> Nelson Mandela Rules, Rule 61(1).



with clearly defined lines of responsibility. When deemed necessary, the reasons for such restrictions should be clearly justified and explained to the prisoner and the decision must be subject to review.

### **The role of prison authorities to facilitate contact**

The EPR place a positive duty on prison authorities to facilitate different forms of communication for all prisoners so that they can maintain contact with family and others. In doing so, prison authorities may need to provide prisoners with welfare support to enable them to maintain this contact (Rule 24.5). They will also need to ensure that all prisoners have information about how contact is arranged, including visiting times and rules.

In practical terms the facilitation of communication could entail free telephone calls or financial support to make telephone calls; pens, paper, envelopes and stamps for letter writing; free access to the Internet and to specific messaging/video communications services; transportation and other logistical support for home leave; and support for families' transportation and accommodation (this could be achieved in collaboration with civil society and charities). It can also mean ensuring that the means of communication are available and accessible to all prisoners.

Facilitating contact with the outside world should involve proactive efforts on the part of management and staff. Prison staff should be aware of particular individuals or groups of prisoners who have no or limited outside contact and whose mental health and reintegration prospects might be at particular risk as a result. This might include high-risk, life and other long-sentenced prisoners, foreign nationals, members of ethnic or linguistic minorities, LGBTQI+ prisoners, older prisoners, high-risk prisoners, and those with mental health issues.

Staff can make additional efforts to facilitate visits for these groups or encourage alternative options. This might involve talking to prisoners about contact options, discussing any difficulties they might be facing or any concerns they may have. If prisoners are reluctant to communicate with the outside world, prison authorities should seek to understand why and support them as needed. These groups might benefit in particular from visits by civil society representatives, religious officials, consular representatives and other professional or institutional organisations.

Prisoners from ethnic, linguistic, or religious minorities may be more isolated from the outside community or may not speak the local language. Prison authorities should pay particular attention to these individuals and provide them with extra support and assistance to maintain links with family and friends outside prison. In addition, members of these groups should be able to communicate to the outside world in a language of their choice, unless there are specific security concerns. Information on prison visiting rules should be provided in the main minority languages spoken in the prison.




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#### **PROMISING PRACTICE: SUPPORTING FAMILIES OF FOREIGN NATIONALS AND MINORITY ETHNIC PRISONERS IN NORWAY**

For Fangers Pårørende (FFP) is a Norwegian organisation that provides support and advice to families of prisoners, including specialised help for children of prisoners. FFP also reaches out to foreign national and minority ethnic prisoners and their families to learn about their needs and provide them with appropriate information and support, including facilitating contact using interpreters when needed. FFP's information is available in eight languages including Arabic, Somali, Polish, Urdu and Romanian.

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The EPR state that prisoners should be allowed to communicate with the outside world 'as often as possible', by letter, telephone or other forms of communication and to receive visits (Rule 24.1). Regular contact is important for reducing the detrimental impact of imprisonment, stabilising prisoners' mental health and improving their rehabilitation prospects.

The reference to ‘other forms of communication’ in the EPR includes forms of electronic communication such as online messaging and video platforms. These forms of communication, along with letters and telephone calls, should not be used instead of in-person visits, but can very usefully supplement face-to-face visits or provide an alternative means of communication when in-person visits are not possible.

The value of remote communications became particularly apparent during COVID-19 restrictions, but they can be equally useful in other situations where families are unable to visit. This could be due to distance, costs or logistics. Remote visiting arrangements can be particularly beneficial for foreign prisoners, those with family in distant locations and people with large families, particularly where there are restrictions on numbers of visitors.

### **In-person visits**

In person visits are a significant form of contact which should be prioritised wherever possible. These visits are particularly important in counteracting the negative impacts of prison life, and also facilitate a smoother transition from prison to community by providing a degree of normality and continuity.

There are many different arrangements for in-person visits, and the EPR call on such arrangements to allow for relationships to continue and develop in ‘as normal a manner as possible’ (Rule 24.4). This normalcy principle applies to the frequency, timing and types of visiting arrangements as well as the visiting conditions. On timing and frequency, the CPT has stated that all prisoners should be entitled to at least one hour of visiting every week and have access to a telephone at the very least once a week.<sup>158</sup>

### **Open visits**

Open visiting arrangements, which allow for physical contact between prisoner and visitor, provide the greatest degree of normality and should be the preferred option unless there are specific security concerns. Such visiting arrangements should be the norm in low security facilities. Extended family visits can also aid reintegration. They might be particularly useful for those whose families have to travel long distances to visit and for visits involving children.

### **Private or intimate visits**

Private or intimate visits are those in which prisoners can be alone with their families or other person, including private visits with their children or conjugal visits with a visitor, subject to risk assessments. These types of visits also support normalisation of relationships and facilitate reintegration.

### **Closed visits**

Closed visits usually take place behind a barrier and, while less beneficial, can provide a useful alternative only when open visits need to be restricted. The restrictions imposed during closed visits should be determined by individual risk assessments.

### **Home leave**

Home leave, during which prisoners can be released temporarily to spend time at home, under escort or alone, is another effective way to normalise family contact and prepare a prisoner and their family for release. It can be particularly useful for prisoners who are nearing their release date and can also enable education or occupational opportunities. This type of leave is also important for significant family events such as marriages and births, or for humanitarian reasons including family illness or to attend a funeral (Rule 24.7). The ECtHR has held that, where there is no risk of escape, home leave must be offered for the funeral of a close relative.<sup>159</sup>

The visiting environment can play a significant role in ‘normalising’ contact with the outside world and determining how prisoners and visitors experience in-person visits. Authorities should consider how to organise visiting areas with this in mind. Factors to consider

<sup>158</sup>. CPT, *26th General Report of the CPT*, CPT/Inf (2017) 5, para. 59.

<sup>159</sup>. ECtHR, *Płoski v. Poland*, No. 26761/95, 12 November 2002.

include seating arrangements, room décor, lighting, heating and ventilation. The way prison staff interact with visitors is also crucial in facilitating positive visiting experiences. Staff will benefit from training in such interactions and should consider not only their verbal communication, but also the impact of their body language.

### Contact with children

All forms of communication are particularly important for families with children because of the particular impact of imprisonment on children, family relationships and the parent-child bond. These considerations should not be limited to children of biological parents but could include any children impacted by the imprisonment of a family member or family friend. It should be noted however that the impact of maternal imprisonment can be particularly detrimental,<sup>160</sup> and particular attention should be paid to maintaining the mother-child bond.

The Council of Europe has stated that children should normally be allowed to visit an imprisoned parent within a week following their detention, and regularly and frequently thereafter. It provides that, in principle, 'childfriendly visits should be authorised once a week, with shorter, more frequent visits allowed for very young children, as appropriate'.<sup>161</sup>

There are many ways in which prison authorities can reduce the detrimental impact of imprisonment on children through facilitating contact and enhancing visiting experiences. For example:

- Providing child-friendly information about prisons and what to expect from a prison visit;
- Ensuring a child-friendly visiting environment, including consideration of colour schemes, decorations, outdoor spaces and the provision of toys and books;
- Training prison staff in how to interact with children visiting prison;
- Providing flexible visiting schedules to take into account school times and school holidays;
- Allowing open, extended and private visits for visits involving children;
- Giving prisoners the opportunity to spend time with their children at home, especially when they are nearing the end of their sentence;
- Providing prisoners with the opportunity to input into decisions about the children, including in relation to their education;
- Facilitating other means of communication in addition to in-person visits, including telephone and video calls;
- Working closely with schools, social workers, NGOs and other agencies to coordinate support and services needed by children impacted by imprisonment.

Contact with the outside world is also particularly important for children in prison, in terms of their well-being, rehabilitation and reintegration prospects. Prison authorities should therefore make particular efforts to facilitate family and other contact for them, including extended visits and home visits.



#### PROMISING PRACTICE: SUPPORTING CHILDREN VISITING PRISONS IN GERMANY

In Germany, the organisation BAG-S e.V. developed a tool named 'Bear Buddy' to help guide young children through prison, from entry to departure, when they come to visit an imprisoned parent. The children are provided with a picture book that they can read while waiting to see their parent. Bear Buddy is described in a picture book and paw prints and images are located at various stages throughout the prison. Children are then given a Bear Buddy at the end of their first visit. This initiative was designed to make prison seem less hostile to children while also providing children with a comforting item during their visit.<sup>162</sup>

<sup>160</sup>. See, for example, Baldwin, Lucy, 'Motherhood disrupted: Reflections of post-prison mothers', *Emotion, Space and Society*, volume 26, pages 49-56, February 2018.

<sup>161</sup>. Council of Europe, *Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents*, April 2018, [childrenofprisoners.eu/wp-content/uploads/2019/12/CoE\\_Rec20185.pdf](https://childrenofprisoners.eu/wp-content/uploads/2019/12/CoE_Rec20185.pdf).

<sup>162</sup>. 'Bear Buddy', *Children of prisoners of Europe*, [childrenofprisoners.eu/database/bear-buddy](https://childrenofprisoners.eu/database/bear-buddy).

## Notifications

Prisoners have a right to inform their families and other contacts about imprisonment, transfer to another institution and any serious illness or injury (Rule 24.8). This is a key safeguard against torture and other ill-treatment, incommunicado detention and enforced disappearance, but can also reduce stress and facilitates emotional support. Conversely, prisoners also have the right to receive prompt information about the death or serious illness of a near relative (Rule 24.6).

Prison authorities have a positive duty to facilitate these communications and, in cases of death, serious illness or injury, may need to inform prisoners' relatives or other contact person themselves unless the prisoners has specifically requested them not to do so (Rule 24.9). The Nelson Mandela Rules are also clear that a prisoners' request not to have his or her spouse notified of illness or injury should be respected.<sup>163</sup>

To facilitate these notifications, prison authorities need to keep accurate, up-to-date records of prisoners' emergency contacts and information on their next of kin [see [Admission and record keeping](#)].

## Contact during transfers

The right to contact with the outside world applies in the context of prisoner transfers, and this is a key safeguard against human rights violations. Prisoners have the right to inform family and others, including lawyers, about any transfer (Nelson Mandela Rules, Rule 68), and they should be given the opportunity to do so before the transfer happens. This right also extends to consideration of the location of family and others when a prisoner transfer is being discussed [see [Transfer of prisoners](#)].

When prisoners are moved to a different facility, it is good practice for them to also be allowed to inform their contacts that they have safely arrived. Prisoners who need to stay in hospital should be able to stay in touch with their family and others from the hospital. As with all contact, any restrictions can only be imposed as necessary for the requirements of safety and security and must still allow an acceptable minimum level of contact.

## Participation in public life

People in prison must be allowed to keep themselves informed of public affairs (Rules 99.3 and 24.10). Authorities should facilitate access to newspapers, periodicals and other publications, or via radio, television and Internet. This allows engagement with what is happening in their community and can ease reintegration. The EPR recognise that there might be exceptional situations where this access might need to be prohibited for a specified period in individual cases, including in cases of pre-trial detainees. Any such exception would need to be ordered by judicial authorities.

The EPR also recognise prisoners' right to participate in elections, referenda and other aspects of public life unless their right to do so is not restricted by national law (Rule 24.11). The ECtHR continues to give recognition to prisoners' right to vote and authorities' responsibility to facilitate this, finding that deprivation of the right to vote must be for legitimate purposes and must pass a proportionality test.<sup>164</sup> The ECtHR has recognised that restrictions on voting rights might be warranted in individual cases, but that blanket restrictions on prisoners' voting rights can violate the right to freedom of expression (Article 3 of Protocol 1 – Right to free elections). Pre-trial detainees should never be deprived of their right to vote, but it has been found that, in many jurisdictions, authorities do not adequately facilitate this right.<sup>165</sup>

<sup>163</sup>. Nelson Mandela Rules, Rule 69.

<sup>164</sup>. ECtHR, *Hirst v. the United Kingdom (No. 2)*, No. 74025/01, 30 March 2004; ECtHR, *Scoppola v. Italy (no. 3)*, GC, No. 126/05, 22 May 2012; ECtHR, *Anchugov and Gladkov v. Russia*, Nos. 11157/04 and 15162/05, 04 July 2013; ECtHR, *Iwanczuk v. Poland*, No. 25196/94, 15 November 2001.

<sup>165</sup>. PRI, *The right of prisoners to vote: a global overview*, March 2016.

Prison authorities' positive duty to ensure prisoners are able to participate in elections can involve providing not only the means and ability to vote, but also facilitating voter registration and providing information about the elections and the voting process. Particular attention needs to be paid to the risk of coercion or interference in elections within prisons.



#### PROMISING PRACTICE: PRISONER VOTING IN IRELAND

The 2006 Electoral Amendment Act of Ireland<sup>166</sup> provides for postal voting at elections and referendums by those who are in prison and eligible to vote. The act provides a practical framework for prisoner voting with specific arrangements for postal votes and allows prisoners to vote in their home constituency. It has been noted that, while prisoner voter turnout has remained low, the Irish Prison Service made considerable efforts in recent elections to facilitate prisoner voting as required by the Act. This included providing information on voting in the induction packs for all prisoners and producing an additional information leaflet on prisoner voting. All prisons had a stock of ballot application forms available, and each facility had a designated official with responsibility for the facilitation of postal voting.<sup>167</sup>

#### Restrictions on contact

The EPR recognise that, in some situations, it may be necessary to restrict or monitor communications and visits for prisoners (Rule 24.2).

Legitimate reasons for restricting or monitoring contact include preventing escapes, the smuggling of prohibited items or other criminal activities. Restrictions on contact with the media might also be forbidden under certain circumstances, including if this might entail a specific risk to victims, other prisoners or staff members (Rule 24.12). In some situations, particularly in cases of pre-trial detainees, restrictions might be necessary to prevent them from influencing witnesses, protect the ongoing criminal investigation and protect witnesses or victims of crime. Any restrictions on pre-trial detainees' contact with the outside world should be for a specified period, and the decision must be ordered by a judicial authority (Rules 24.2 and 99).

Restrictions on prisoners' outside contact might entail the suspension of visits, monitoring correspondence and telephone calls, conducting searches before or after visits, and visual supervision of in-person visits. There may be more associated risks with outside contact for high-risk prisoners and additional restrictions or monitoring may be necessary. This might include having a pre-approved list of visitors and correspondents, enhanced searches and supervision. In low security facilities there is unlikely to be any need for restrictions or supervision.

The Nelson Mandela Rules make it clear that family contact should never be prohibited as a disciplinary sanction or restrictive measure.<sup>168</sup> There are also some bodies and officials for whom communication by prisoners should never be restricted, and the EPR state that these should be specified in national law (Rule 24.3). This would include, for example, prisoners' rights to communicate with national, regional and international detention monitoring bodies, national courts and the ECtHR. Contact restrictions should never be imposed as a blanket policy against groups such as high-risk prisoners.

All restrictions on outside contact need to be carefully balanced against the duty to facilitate contact given the clear benefits of such contact for prisoners and their families. Any restrictions on outside contact, and particularly restrictions on in-person visits, can be

<sup>166</sup>. Electoral (Amendment) Act 2006, [www.irishstatutebook.ie/eli/2006/act/33/enacted/en/print.html](http://www.irishstatutebook.ie/eli/2006/act/33/enacted/en/print.html).

<sup>167</sup>. 'Prisoner Data', *House of the Oireachtas*, 18 June 2019, [www.oireachtas.ie/en/debates/question/2019-06-18/254](http://www.oireachtas.ie/en/debates/question/2019-06-18/254).

<sup>168</sup>. Nelson Mandela Rules, Rule 43(3).

very damaging, including in relation to mental health. This was apparent where increased incidents of self-harm, suicides and suicide attempts were reported during restrictions on in-person visits as part of COVID-19 prevention measures.<sup>169</sup>

Restrictions must only be imposed in accordance with the principles of necessity, proportionality and legality, and safeguards need to be in place to ensure they are not used disproportionately or for the wrong reasons. The ECHR (Article 8.2) requires that any interference with the right to private and family life should only be restricted 'in accordance with the law'.

Clear policies and guidance should be available to judicial and prison authorities on when and how restrictions can be imposed, and their use must be timebound, carefully monitored and regularly reviewed.

Determinations that monitoring or restrictions are necessary must be informed by individual risk assessments and the reasons clearly documented and explained to those affected. Keeping records of the reasons for imposing restrictions will allow authorities to check that such measures are being used fairly, consistently and without discrimination within and across different facilities.

Restrictions and monitoring must be kept to the minimum needed to achieve the stated aims, based on the risk of specific communications or visits. The EPR are clear that, even where restrictions are in place, an 'acceptable minimum level of contact' must still be allowed (Rule 24.2).

Prisoners and visitors should be made aware that restrictions and supervision may be imposed and the circumstances under which this could happen. It is good practice, for example, to display a sign near telephones to inform people of potential monitoring, and visitors should be informed if more stringent search measures are put in place. Such measures can act as a deterrent against smuggling contraband or the commission of other acts that threaten safety and security.

Any restrictions on communication with legal representatives must be subject to specific conditions and can only be ordered, in exceptional circumstances, by judicial authorities. The CPT has stated that where access to a lawyer is restricted by judicial authorities, the individual should have 'access to another independent lawyer who can be trusted not to jeopardise the legitimate interests of the investigation.'<sup>170</sup>

### Mitigating restrictions

There are ways to restrict or monitor contact while ensuring that an acceptable minimum level of contact can continue. This will depend on the specific threat as well as the means of communication being restricted. In practical terms, this could mean:

- Increased visit supervision instead of restricting visits;
- Enhanced visitor searches/searching the prisoner before and after the visit instead of restrictions/supervision;
- Restrictions on in-person visits may only need to apply to particular visitors;
- If contact visits need to be restricted, in-person visits could still be possible separated by glass or other barrier;
- If one type of contact needs to be restricted this should not necessarily imply restrictions on other types of communication;
- Correspondence can be checked for prohibited items but may not need to be read;
- If electronic communications need to be restricted due to their higher security risk, this does not mean that letters and telephone calls need to be restricted;
- Contact should only be restricted for a limited and specified period of time, according to the particular threat, and should never be imposed indefinitely.

169. See, for example, Rajeev Syal, 'Self-harm among women and children in UK prisons rises to record levels', *The Guardian*, 28 October 2021, [www.theguardian.com/society/2021/oct/28/self-harm-among-women-and-children-in-uk-prisons-rises-to-record-levels](http://www.theguardian.com/society/2021/oct/28/self-harm-among-women-and-children-in-uk-prisons-rises-to-record-levels); Ashleigh Furlong, 'Europe's prisoners left in limbo on coronavirus vaccinations', *Politico*, 10 March 2021, [www.politico.eu/article/europe-prisoners-limbo-coronavirus-vaccinations](http://www.politico.eu/article/europe-prisoners-limbo-coronavirus-vaccinations).

170. CPT, *21st General Report*, CPT/Inf (2011) 28, 10 November 2011, para. 22; CPT, *Report to the Turkish government on the visit to Turkey carried out by the CPT*, CPT/Inf (2014) 7, 13 March 2014, para. 19.





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**PROMISING PRACTICE: THE USE OF VIDEO TECHNOLOGY IN ENGLAND AND WALES**

In England and Wales, as with many other countries, the use of video technology for facilitating contact with family and others during the COVID-19 pandemic was widely welcomed by prisoners, their families and prison staff, and plans are being implemented for their continued use in the future, as a supplement to in-person visits. The use of video calls enabled prisoners to connect their families in their home environment, see family units together and meet family who do not live locally. As one prison manager noted: 'Video calls have been an incredibly positive step forward in what has been a very difficult time. It has revolutionised the way people can communicate with loved ones, and having such a user-friendly service has ensured that the men in our care can keep in touch with family and friends all over the world.'<sup>171</sup>

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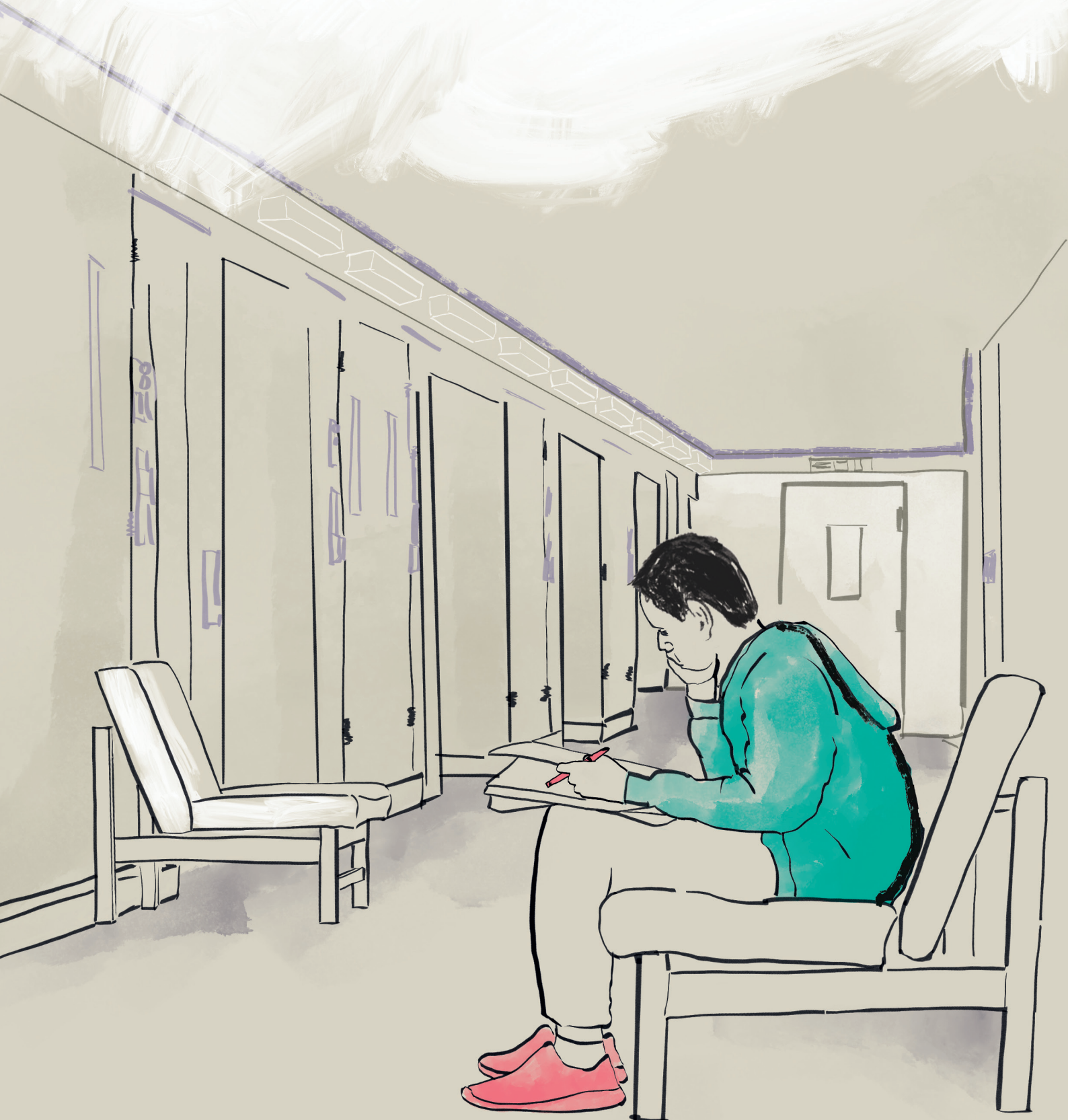
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<sup>171</sup>. 'Press release: Secure video calls help all prisoners maintain essential family ties during pandemic', *GOV.UK*, January 2021, [www.gov.uk/government/news/secure-video-calls-help-all-prisoners-maintain-essential-family-ties-during-pandemic](https://www.gov.uk/government/news/secure-video-calls-help-all-prisoners-maintain-essential-family-ties-during-pandemic).



# Chapter 6

## Prison regime



# Prison regime



## Relevant rule: Prison regime

### Rule 25:

1. The regime provided for all prisoners shall offer a balanced programme of activities.
2. This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

3. This regime shall also provide for the welfare needs of prisoners.

4. Particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse.



## Relevant rule: Work

### Rule 26:

1. Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.
2. Prison authorities shall strive to provide sufficient work of a useful nature.
3. As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release.
4. In conformity with Rule 13, there shall be no discrimination on the basis of gender in the type of work provided.
5. Work that encompasses vocational training shall be provided for prisoners able to benefit from it and especially for young prisoners.
6. Prisoners may choose the type of employment in which they wish to participate, within the limits of what is available, proper vocational selection and the requirements of good order and discipline.
7. The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work in the community in order to prepare prisoners for the conditions of normal occupational life.
8. Although the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be subordinated to that purpose.

9. Work for prisoners shall be provided by the prison authorities, either on their own or in co-operation with private contractors, inside or outside prison.

10. In all instances, there shall be equitable remuneration for the work of prisoners.

11. Prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to allocate a part of their earnings to their families.

12. Prisoners may be encouraged to save part of their earnings, which shall be handed over to them on release or used for other approved purposes.

13. Health and safety precautions for prisoners shall protect them adequately and shall not be less rigorous than those that apply to workers outside.

14. Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by national law to workers outside.

15. The maximum daily and weekly working hours of the prisoners shall be fixed in conformity with local rules or custom regulating the employment of free workers.

16. Prisoners shall have at least one rest day a week and sufficient time for education and other activities.

17. As far as possible, prisoners who work shall be included in national social security systems.



### Relevant rule: Exercise and recreation

#### Rule 27:

1. Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.
2. When the weather is inclement, alternative arrangements shall be made to allow prisoners to exercise.
3. Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.
4. Prison authorities shall facilitate such activities by providing appropriate installations and equipment.
5. Prison authorities shall make arrangements to organise special activities for those prisoners who need them.
6. Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.
7. Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities.



### Relevant rule: Education

#### Rule 28:

1. Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.
2. Priority shall be given to prisoners with literacy and numeracy needs and those who lack basic or vocational education.
3. Particular attention shall be paid to the education of young prisoners and those with special needs.
4. Education shall have no less a status than work within the prison regime and prisoners shall not be disadvantaged financially or otherwise by taking part in education.
5. Every institution shall have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other media.
6. Wherever possible, the prison library should be organised in co-operation with community library services.
7. As far as practicable, the education of prisoners shall:
  - (a) be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty; and
  - (b) take place under the auspices of external educational institutions.



### Relevant rule: Freedom of thought, conscience and religion

#### Rule 29:

1. Prisoners' freedom of thought, conscience and religion shall be respected.
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.
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.



### Relevant rule: Untried prisoners

#### Rule 100:

1. Untried prisoners shall be offered the opportunity to work but shall not be required to work.
2. If untried prisoners elect to work, all the provisions of Rule 26 shall apply to them, including those relating to remuneration.

#### Rule 101:

If an untried prisoner requests to be allowed to follow the regime for sentenced prisoners, the prison authorities shall as far as possible accede to this request.



### Relevant rules: Sentenced prisoners

#### Rule 103:

1. The regime for sentenced prisoners shall commence as soon as someone has been admitted to prison with the status of a sentenced prisoner, unless it has commenced before.
2. As soon as possible after such admission, reports shall be drawn up for sentenced prisoners about their personal situations, the proposed sentence plans for each of them and the strategy for preparation for their release.
3. Sentenced prisoners shall be encouraged to participate in drawing up their individual sentence plans.
4. Such plans shall as far as is practicable include:
  - (a) work;
  - (b) education;
  - (c) other activities; and
  - (b) preparation for release.
5. Social work, medical and psychological care may also be included in the regimes for sentenced prisoners.
6. There shall be a system of prison leave as an integral part of the overall regime for sentenced prisoners.
7. Prisoners who consent to do so may be involved in a programme of restorative justice and in making reparation for their offences.
8. Particular attention shall be paid to providing appropriate sentence plans and regimes for life sentenced and other long-term prisoners.

#### Rule 104:

1. As far as possible, and subject to the requirements of Rule 17, separate prisons or separate sections of a prison shall be used to facilitate the management of different regimes for specific categories of prisoners.
2. There shall be procedures for establishing and regularly reviewing individual sentence plans for prisoners after the consideration of appropriate reports, full consultations among the relevant staff and with the prisoners concerned, who shall be involved as far as is practicable.
3. Such reports shall always include reports by the staff in direct charge of the prisoner concerned plans.

#### Rule 105:

1. A systematic programme of work shall seek to contribute to meeting the objective of the regime for sentenced prisoners.
2. Sentenced prisoners who have not reached the normal retirement age may be required to work, subject to their physical and mental fitness as determined by the medical practitioner.
3. If sentenced prisoners are required to work, the conditions of such work shall conform to the standards and controls which apply in the outside community.
4. When sentenced prisoners take part in education or other programmes during working hours as part of their planned regime they shall be remunerated as if they had been working.
5. In the case of sentenced prisoners, part of their remuneration or savings from their work may be used for reparative purposes if ordered by a court or if the prisoner concerned consents.
3. If sentenced prisoners are required to work, the conditions of such work shall conform to the standards and controls which apply in the outside community.

#### Rule 106:

1. A systematic programme of education, including skills training, with the objective of improving prisoners' overall level of education as well as their prospects of leading a responsible and crime-free life, shall be a key part of regimes for sentenced prisoners.
2. All sentenced prisoners shall be encouraged to take part in educational and training programmes.
3. Educational programmes for sentenced prisoners shall be tailored to the projected length of their stay in prison.



As one of the main purposes of imprisonment, rehabilitation should include a broad range of programmes including work, education and vocational courses, exercise, and association and cultural activities. Prison authorities and other agencies such as probation staff play an important role in helping prisoners to successfully reintegrate into society and lead crime-free lives. Providing prisoners with education, work and training opportunities can also help to 'normalise' their time in prison, making it closer to life in the community and helping prisoners to lead independent lives after release.

In addition, good prison rehabilitation programmes can help ensure a safer prison environment as prisoners engaged in constructive activities are generally better to manage and less likely to be disruptive. Providing prisoners with constructive activities can also help reduce levels of depression and other mental health issues which are very prevalent among prisoners.

The EPR require a balanced programme of activities which allows for time outside of cells and human and social interaction (Rules 25.1 and 25.2). The CPT has stated that prisoners should aim to spend a reasonable part of their day outside their cells, engaged in purposeful activities of a varied nature.<sup>172</sup> The prison regime should offer these activities at some level although the balance may differ depending on the prison population in terms of their age, abilities and wider needs.

Prison staff should pay particular attention to the needs of prisoners who have experienced physical, mental or sexual abuse (Rule 25.4). In cases of ill-treatment, survivors should be immediately provided with professional psychological support and counselling.<sup>173</sup> Prison authorities should provide compassionate support that is survivor centred and trauma informed, including through in-person counselling services for as long as is necessary. Such treatment may be provided in cooperation with specialist services in the community and NGOs.

Recreational, physical and cultural activities can have a beneficial impact on prisoners in a number of ways. Physical exercise supports the mental and physical health of prisoners, helps to normalise prison life and makes for a safer prison environment. Arts and cultural activities in prisons have been found to be very useful and transformative tools in supporting the mental health and well-being of prisoners as well as wider rehabilitation efforts. Cultural activities in prison not only have an impact on prisoners themselves but also prison staff and the wider community.

### **Sentence planning**

The EPR provide a comprehensive set of rules detailing the prison regime for sentenced prisoners (Rules 103-106). On admission, the prison authorities, in conjunction with an interdisciplinary team, should prepare an individualised sentence plan for each prisoner following a risk and needs assessment. It is good practice to include the prisoners themselves in the sentence planning process and to incorporate different activities and interventions including work, education, life skills, social work, medical and psychological care (Rules 103.4-103.5). The prison authorities should have a system in place to review sentence plans on a regular basis (Rules 104.2 and 104.3). The plans should include goals that are achievable based on assessed risks and offending-related needs. The prison authorities should pay particular attention to sentence plans for life-sentenced and other long-prisoners as they will have special needs in relation to rehabilitation, education and work.

Risk and needs assessments and sentence planning are critical to ensuring reintegration. Re-entry into society can be distressing for prisoners, and prison administrations should therefore focus, at an early stage, on preparing prisoners for release. In-prison programmes should help prisoners prepare to adapt to life in the community by teaching them life and relationship skills as well as other practical skills (such as financial management, budgeting, IT skills) and information about support services in the community. The prison authorities

<sup>172</sup> CPT, *25th General Report of the CPT*, CPT/Inf (2016) 10, April 2016.

<sup>173</sup> See also Bangkok Rules, Rule 7(2).

should work closely with other partners, including probation services and community agencies, to support prisoners as they approach release with practical support and assistance (often referred to as ‘through the gate’ services)(Rules 107.4).

Prisoners may benefit from temporary, conditional or pre-release home leave schemes to help reconnect with family and the wider community. Temporary release schemes may also allow prisoners to meet with prospective employers and finding accommodation. These schemes should be supervised and managed by the probation service (Rules 107.3).

Transfer of a prisoner to another facility should not entail disruption to training and education opportunities, and any decisions to transfer a prisoner must take this into consideration.

### Prison work and vocational training

Prison work programmes can provide prisoners with valuable skills, confidence and improved self-esteem and, alongside vocational training, have been shown to reduce levels of recidivism. There are many models of prison work, including those run by prisons and state enterprises as well as individual private-sector initiatives. As an ultimate goal, work provided should allow a prisoner to maintain or increase their ability to gain employment after release and, within limits, a prisoner should be allowed to choose the type of work they wish to perform (Rules 26.6, 26.3). The prison authorities should carry out an assessment to see what type of work is suitable for each individual prisoner.

As noted in the EPR and other international standards, prison work should not be a punishment or afflictive in nature, and prisoners should not be held in slavery or servitude (Rule 26.1).<sup>174</sup> Prison work should also comply with all rules and regulations on occupational health and safety and relevant employment laws and, importantly, prisoners should be paid for their work (Rules 26.10, 26.13–26.17).<sup>175</sup> Prisoners should be encouraged to save part of their earnings but may also send part of their earnings to their family as necessary (Rules 26.11, 26.12).



#### PROMISING PRACTICE: LABOUR RIGHTS FOR PRISONERS IN FRANCE

In France, the *loi pour la confiance dans l'institution judiciaire* (Trust in the judiciary institution Law), which came into effect on 1 May 2022, reforms labour rights for prisoners in France to bring prisoners closer to the work environment in the outside world. The new law creates a legal status for prisoners who are employed under a formal prison work contract, *contrat d'emploi pénitentiaire*, following an application and interview process. Prisoners sign a prison work contract either with the prison administration (for prison service roles) or a private company (for production positions) which sets out the rights and obligations of each party. The contract includes key provisions including contract duration (fixed term or indeterminate), hourly rate of pay, trial period, hours of work (from 10 to 35 hours per week), grounds for suspension or termination of the contract and legal remedies. In addition, the reforms strengthen prisoners' social rights in France (via the Prisoners' social rights Ordinance issued by the Council of Ministers on 19 October 2022). From 2023, prisoners will contribute to and benefit from unemployment insurance on release from prison. The new social rights regime also gives working prisoners pension rights and compensation in the case of maternity leave, occupational disease or accident.

Prison authorities should work closely with external bodies (businesses, community organisations and other enterprises) to help connect prisoners and future employers. Prison authorities can organise recruitment fairs in prison and support employers to set up training and production facilities within the prison estate.

<sup>174</sup>. Nelson Mandela Rules, Rule 97(1)(2).

<sup>175</sup>. See also Council of Europe, *Committee of Ministers Resolution No R(75)25 on Prison Labour*, 18 September 1975, [prison.eu.org/spip.php?page=imprimer\\_article&id\\_article=6727](https://prison.eu.org/spip.php?page=imprimer_article&id_article=6727).

Since pre-trial detainees have not yet been found guilty of any offence, they are not obliged to work. However, wherever possible, opportunities to work should be available for pre-trial detainees, and they should be encouraged to participate in work programmes. If pre-trial detainees do undertake work, the rules relating to safe employment practices, remuneration and other considerations apply equally to these prisoners (Rule 100.2).

Sentenced prisoners who are not at retirement age may be required to work if they are fit and healthy to do so (Rule 105.2). Work programmes should not be seen as a punishment and should conform to all health and safety regulations and appropriate labour laws that apply in the wider community (Rules 105.3). Moreover, sentenced prisoners should be appropriately remunerated for their work, thus avoiding risks of favouritism or corrupt practices in distributing work opportunities.

The EPR also make provision for sentenced prisoners to participate in restorative justice programmes (Rule 103.7) and to make reparations for their offences. Prisoners who wish to engage in these programmes should do so voluntarily and should be fully informed of the nature of such programmes and their involvement in the process. The delivery of these programmes should be conducted in line with international standards and best practices.<sup>176</sup> The EPR also make provision for part of a sentenced prisoner's income or savings to be used to provide reparations if ordered by the court.



#### PROMISING PRACTICE: MEASURING REHABILITATION ACTIVITIES AND TIME OUT OF CELL

The Swedish Prison and Probation Service (SPPS) register and measure the 'employment rate' in prison. The employment rate is calculated by measuring the hours spent in some kind of employment in relation to the total available time (the number of possible employment hours according to the prison's schedule, which does not include leisure time at night and weekends, which is not registered or measured). Despite a growing prison population, the activity rate has been at a similar level over the past three years and averaged 78% in 2021, i.e. the number of prisoners employed and the total number of hours worked have significantly increased.

Measuring the activity rate has proven to be a useful tool to give an indication of the overall employment rate in a given facility and makes it possible to identify differences between prisons. However, it should ideally be combined with an analysis of how well activities are in line with the individual sentence plans to measure the quality of the activities, a combined data analysis that SPPS is not able to extract from currently used tools.

Vocational training and skills development programmes help to prepare prisoners for productive roles in society and focus on the wider development of the individual. These programmes equip prisoners with 'life skills' such as general employment skills, enterprise and self-employment training, career guidance and job-hunting skills. These programmes also offer skills and training in particular sectors such as construction, catering, painting and decorating. Vocational training priorities must be in line with the reality of the labour market.

Importantly, prisoners should also have a choice as to the type of training programme they would like to join. They should be trained according to recognised national standards and receive accredited qualifications for their learning. Even if prisoners are employed to do basic prison tasks within a prison, such as catering, cleaning or gardening, these could be part of accredited training programmes. The fact that qualifications were gained inside prison should not be mentioned on any certificate of learning.

The EPR make specific reference to vocational training and its particular benefit to young prisoners (Rule 26.5). The Havana Rules specifically provide that access to education should not be limited to compulsory school ages, and a child should also be able to receive vocational training 'in occupations likely to prepare him or her for future employment.'<sup>177</sup>

<sup>176</sup> Council of Europe, *Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters*, 3 October 2018, [search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016808e35f3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3).

<sup>177</sup> The Havana Rules, Rule 42.

International standards do permit children to undertake work in prison, but it should be remunerated, comply with national labour laws and international standards set out in the CRC and International Labour Organisation treaties.<sup>178</sup> In providing vocational training, prison authorities should ensure that such activities are age-appropriate and fully comply with domestic and international human rights standards.

Women prisoners should be offered vocational training, work and educational opportunities that provide a realistic route to potential employment after release. These opportunities should be determined on an individualised basis and should not just be offered in line with gender stereotypes (such as sewing and hairdressing). The Bangkok Rules provide additional gender-specific standards on rehabilitation opportunities for women prisoners.




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#### **PROMISING PRACTICE: THE LAZZARELLE COOPERATIVE: COFFEE PRODUCTION AT POZZUOLI WOMEN'S PRISON, ITALY**

In Italy, an all-women social enterprise, the *Cooperative Lazzarelle*, produces artisanal coffee inside the largest women's prison in Pozzuoli, Naples. The cooperative, while based in the prison, is independent from the prison administration. It hires women prisoners to work in the internal roasting plant within the prison and, since established in 2010, has employed 70 women in the roastery. The cooperative works with women prisoners who want to change their lives, adopting both a 'learning on the job' and Diversity Management approach, aiming to equip the women with skills and confidence to pursue crime free lives after leaving prison. The recidivism rate for women who have participated in the programme is low; 95% of the women have not re-offended.<sup>179</sup>

In 2020, the cooperative opened a bistro in the centre of Naples, completely managed by women prisoners, and in 2022, the prison expanded the roastery to add a chocolate laboratory to promote and design a new product, '*cioccolatino*'. This employs four women prisoners who are trained for four months by a master chocolatier.

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### **Exercise, cultural and religious activities**

All prisoners should be entitled to exercise and to participate in recreational activities. Ideally, prisoners should be allowed at least one hour of exercise every day if the weather permits (Rule 27.1). Prison authorities should ensure that they have adequate outdoor space and other facilities, such as a fitness room, available for prisoners to exercise and associate with others, as well as adequate levels of staff and equipment to support these activities. Such activities should be accessible to all prisoners including those with special needs such as physical disabilities or injuries (27.5).

The EPR call on prison authorities to promote recreational activities in their programming which includes 'sport, games, cultural activities, hobbies and other leisure pursuits' (Rule 27.6) to name but a few. In practical terms, prison authorities may look to organise cultural events in prison such as arts, music, dance or drama festivals or collaborate with arts bodies such as theatres, orchestras and artists to deliver performances and workshops with prisoners.

The EPR recognise that prisoners have the right to freedom of thought, conscience and religion as per international human rights standards.<sup>180</sup> Thus, prison authorities are under a positive obligation to allow prisoners to practice their religion unless there are security concerns (Rules 29.1 and 29.2). This means that prisons should include places of worship for all denominations and faiths represented in the facility. In addition, where there is a reasonable number of prisoners belonging to a religion, an approved representative of that religion should be appointed who should be allowed to hold regular services and to make pastoral visits to prisoners (Rule 29.2). As part of good prison management, prison staff should be given appropriate training to support a religiously diverse prison population and to

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<sup>178</sup>. Ibid. Rules 44–46.

<sup>179</sup>. Information provided to PRI, February 2023. For more about the *Cooperative Lazzarelle*, see [caffelazzarelle.jimdofree.com/lazzarelle-en](http://caffelazzarelle.jimdofree.com/lazzarelle-en).

<sup>180</sup>. ECHR, Article 9; see also Committee of Ministers, *Guidelines for prison and probation services regarding radicalisation and violent extremism*, 2 March 2016.

better understand different cultural and religious traditions. The right to freedom of thought, conscience and religion includes the right not to practice any faith or religion; prison staff should be mindful of any attempts by prisoners to convert others and take appropriate action.

### **Preventing and countering violent extremism and radicalisation that can lead to terrorism**

While generalisations about the extent to which radicalisation to terrorism or violence occurs or grows in prisons are difficult to make, prisons are viewed as potential places where detainees may become vulnerable to, reinforce or embrace violent extremist views. In a bid to prevent and counter radicalisation in prisons leading to terrorism or violence, States are adopting measures that may have profound impacts on prisoners' human rights.<sup>181</sup>

In terms of rehabilitation and reintegration, prison authorities should support prisoners in their efforts to withdraw from violent extremism and radicalisation that can lead to terrorism, and reintegrate into society on release. This requires prison authorities to provide out-of-cell activities as well as general and targeted interventions.

Rehabilitation programmes should focus on changing violent and unlawful behaviours which may be best achieved through disengagement programmes. Prison authorities should ensure that such programmes are gender-sensitive and highly tailored to the local context, culture and tradition as well as to the nature of violent extremism in any given country.

Any limitations to the access of (suspected) violent extremist prisoners, including pre-trial detainees, to education, vocational training, and creative and recreational activities should be based on individual risk and needs assessments. They should follow the same set of principles that apply to all other prisoners.

Violent extremist prisoners should not be excluded from rehabilitation programmes and prison authorities should offer these individuals the same activities and purposeful activities as other members of the prisoner community. The CPT has stated that 'existence of a satisfactory programme of activities is just as important – if not more so – in a high security unit than on normal location' and recommends a diverse range of programmes (education, sport, work of vocational value) but notes that work activities may need to be limited due to security considerations.<sup>182</sup>

Disengagement programmes should be delivered by a multidisciplinary team who are adequately recruited, vetted and trained. These teams may include religious representatives, psychologists, social workers, healthcare professionals, sports instructors and art therapists. It is beneficial if they reflect the gender, linguistic and ethnic background of individuals with whom they will work. Community members, family members, civil society organisations, former violent extremists and, sometimes, victims of terrorist acts may be involved on a case-by-case basis. Prison authorities should also keep a strict record of disengagement programmes to monitor their impact and effectiveness and adapt them, as required, based on the needs and circumstances of the prisoner.

### **Education**

Education is a human right and, for many prisoners, is key to rehabilitation. While technological innovation such as online education programmes are becoming more common in some regions' prisons, they are not available in every region owing to the fact that more than half of the world has limited or no access to the Internet, on which many such tools rely.<sup>183</sup> In prisons and the wider criminal justice system in low- and middle-income countries, where resources are often scarce, this digital divide is often magnified.

Educational programmes should be offered on an individualised basis taking into account the needs of the prisoner to ensure the 'best fit' for them (Rule 28.1). Prisoners should be fully informed of the educational opportunities open to them, including in accessible formats,

<sup>181</sup>. PRI and OSCE/ODIHR, *Protecting Human Rights in Prisons while Preventing Radicalization Leading to Terrorism or Violence, A Guide for Detention Monitors*, 2021.

<sup>182</sup>. CPT, *11th General Report on the CPT's activities covering the period 1 January to 31 December 2000*, CPT/Inf (2001) 16, 3 September 2001, para. 32.

<sup>183</sup>. PRI, *Global Prison Trends 2020*, 12 May 2020.

and the benefits of participation. The EPR note that prisoners with literacy and numeracy needs and those who lack basic or vocational education should be prioritised (Rule 28.2). Accordingly, prison authorities should take positive steps to identify those prisoners through a needs assessment and prioritise them in educational programmes.

Personal learning plans for each prisoner can be beneficial as they can lay out educational programmes, future career goals, additional learning needs and details of assessments undertaken. The plans should be subject to regular review and sequenced with the sentence plan, shared with key partners and shared on a central record.

Partnerships with educational institutions, NGOs and other voluntary bodies can support and promote education in prisons. Prison education programmes should be integrated into the wider educational system in the country so that prisoners can, if they wish, continue their education on release (Rule 28.7 a).

Education in prison can take many forms including school-based studies, distance learning courses, higher education, open university or e-learning courses. Prison authorities should work closely with external education providers and provide them with appropriate facilities, including meeting rooms and materials, in prison to enable them to deliver their educational programmes. Educational activities may also be delivered through more informal methods, such as peer-to-peer support groups, by prison staff or volunteers.

The EPR state that every institution should have a library for the use of all prisoners which should be adequately stocked with recreational and educational resources, books, newspapers, magazines, materials suitable for foreign nationals and those people with low literacy and other disabilities (Rule 28.5). The library should, wherever possible, be organised in cooperation with community library services (Rule 28.6). Prison libraries may also be able to support prisoners through reading groups which are beneficial to those with mental health issues, older prisoners and emergent readers. The EPR state that certain prisoners should be prioritised, namely young prisoners and those with special needs (Rule 28.3). Prisoners with learning difficulties and disabilities should be provided with tailored support to meet their needs.



#### PROMISING PRACTICE: MOBILE LIBRARY FOR PRISONS IN SLOVENIA

**Bibliobus is a travelling library in Ljubljana with over 40 different stops, largely focused on those groups or communities who cannot visit the library for various reasons including disability and remoteness. Since 1998, the mobile library has serviced the Correctional Facility Ig (CFI), Slovenia's only correctional facility for women in prison. An independent unit of the Ljubljana City Library, it includes books, CDs and DVDs, and prisoners are exempt from membership fees, late charges or fines.<sup>184</sup> The mobile library visits to the prison are arranged for after dinner time when the women (currently only those in open regime) are allowed to leave the communal areas. The Bibliobus visited Ig prison 10 times in 2021, and also served the male facility on the same days.<sup>185</sup>**

### Individualised activities and programmes

Certain groups of prisoners may face particular challenges in terms of meeting their rehabilitation needs and are unlikely to receive the support they need. These common challenges include limited ranges of rehabilitation programmes and accessibility issues. Prison authorities are often reluctant to invest resources into rehabilitation programmes for certain groups of prisoners such as those serving life or short sentences. Prison authorities should undertake an individualised needs-based assessment to create a tailored rehabilitation programme suitable for each prisoner.

<sup>184</sup>. Lisa Krolak, *Books beyond bars: the transformative potential of prison libraries*, UNESCO Institute for Lifelong Learning, 2019, p. 25.

<sup>185</sup>. The mobile library's operating hours are available at [www.mkj.si/en/mobile-library-stop/ig-open-unit-prison-mobile-library-stop](http://www.mkj.si/en/mobile-library-stop/ig-open-unit-prison-mobile-library-stop).



In order to make rehabilitation programmes available to all prisoners, prison administrations can:

- Ensure that educational options are flexible and varied for prisoners;
- Shorten or adapt existing courses tailored to the needs of the particular group of prisoners (for example prisoners serving short sentences);
- Prioritise non-formal learning opportunities designed to promote personal development and increase self-confidence;
- Adapt programmes to suit the individual needs of the prisoner including age and health;
- Ensure that programmes are accessible (e.g. in Braille, audio or translated for foreign nationals or minorities);
- Ensure that prisoners with learning difficulties and disabilities can access materials that have been designed and adapted to suit their specific needs;
- Work in conjunction with specialised external bodies to provide tailored support to individuals with learning difficulties and disabilities;
- Ensure that prisoners can attend rehabilitation programmes in a safe environment.

In some countries people in prison serving short-term sentences are excluded from vocational programmes. Moreover, prisoners may lack the motivation to undertake educational or work programmes given their short time in prison. In order to make rehabilitation programmes attractive to them, prison authorities can take a number of measures:

- Ensure that educational options are flexible and varied for prisoners serving short-term sentences;
- On admission, fully assess such prisoners for their formal and non-formal education experience and attainment so that they are offered appropriate courses and programmes;
- Shorten or adapt existing courses to tailor them for the needs of prisoners serving short sentences;
- Introduce short-term educational activities that allow for continued education after release, including modular or unit-based courses that help prisoners gain credit for continuing education;
- Make use of short-term motivational activities such as music, drama and art courses.

Prisoners serving long term or life sentences are often excluded when it comes to rehabilitation programmes. They are often forgotten by prison authorities, who see little or no point in investing resources in rehabilitation programmes for this group of prisoners.<sup>186</sup> However, all prisoners must be given the opportunity to be rehabilitated, regardless of the length of the sentence, and international standards affirm that every prisoner should have the opportunity to be rehabilitated back into society.<sup>187</sup> The CPT has emphasised that 'life sentenced prisoners should have access to as full a regime of activities as possible, and normally in association with other prisoners.'<sup>188</sup> This is particularly important given the fact that sentences may be commuted or reviewed, and all prisoners may be considered for pardons or amnesties. Prisoners serving long term or life sentences may not, on release, obtain work easily; in such instances, prison authorities should consider and prioritise non-formal learning opportunities designed to promote personal development and increase self-confidence.

In order to support prisoners serving long-term or life sentences, prison administrations can assess the individual needs and risks of each life-sentenced prisoner and develop a tailor-made sentence plan; this plan should identify appropriate rehabilitation and treatment programmes. The plan should be reviewed at regular intervals, and new targets and objectives should be set. They should ensure that long-term and life-sentenced prisoners are not subject to any additional restrictions, including barriers to rehabilitation programmes.

<sup>186</sup> For more information, see Smit, Dirk van Zyl and Appleton, Catherine, *Life Imprisonment: A Global Human Rights Analysis*, Harvard University Press, 2019.

<sup>187</sup> See Nelson Mandela, Rules 91 and 92.

<sup>188</sup> CPT, *Situation of life sentenced prisoners*, CPT/Inf (2016) 10, para. 74.




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**PROMISING PRACTICE: CAFÉ EXIT: SUPPORTING LIFE-SENTENCED PRISONERS IN DENMARK**

Café Exit, a church-based social project, based in Denmark, supports life-sentenced prisoners with tailored services to help them when they leave prison. The organisation provides employment counselling, debt advice, therapy services (including psychologists), cultural activities and activity groups ('Monday club' and a club for women based in prison). The organisation takes a holistic and customised approach to supporting former offenders.<sup>189</sup>

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Ethnic or religious minorities must have equal access to rehabilitation and reintegration programmes. Prison authorities should ensure that individuals from these groups are able to attend culturally appropriate rehabilitation programmes and can meaningfully participate in such activities. However, many prisoners from minority communities have had poor experiences in terms of accessing rehabilitation services.<sup>190</sup> Ethnic, racial minority and indigenous women prisoners are particularly likely to have multiple needs unmet due to their economic and social marginalisation.<sup>191</sup>

It is important to ensure that prison staff have a full understanding of individuals' cultural backgrounds, differences and rehabilitative needs and how it might impact their engagement with rehabilitative work. Consultation with prisoners and gender-sensitive assessments on the challenges faced by people from ethnic and religious minorities and foreign nationals should be undertaken, with input from community organisations to ensure programme design and delivery is gender and culturally relevant.

In the case of foreign nationals, in many instances they are excluded from rehabilitation and release programmes, particularly if they are likely to be deported on release. As good practice, prison authorities should organise information sessions for foreign nationals in prison to address their specific needs on release regardless of whether they are to be deported or remain in the country. In addition, foreign nationals should not be excluded from the prison workforce and should be allowed to transfer at least part of their earnings to family members who are in country or reside abroad, in line with the Nelson Mandela Rules.<sup>192</sup> In order to assist with a foreign national's return to society after release, the prison authorities and other agencies should ensure that identification papers and other documents are in good order and ready to hand over to the prisoner on release.

Vocational and work programmes in prison may not be relevant to most older prisoners because many will not be looking for employment on release. Prison programmes should be adapted to the individual needs and circumstances of older prisoners, including age- and health-related needs and length of sentence. Special programmes for older prisoners can be arranged without significant additional resources. For example, prison authorities can develop initiatives such as day care or activity centres for older prisoners that provide a space for these individuals to meet and socialise. On a policy level, prison administrations can create an older prisoner strategy to identify the population, their needs and how to engage them in a meaningful way.

Prisoners with physical disabilities or other health problems may have difficulties undertaking work or vocational programmes. Prison authorities should ensure that there are alternative measures in place to enable these individuals to meaningfully participate in these programmes. For example, information and materials should be available in alternative formats such as Braille or audio.

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<sup>189</sup>. 'About Café Exit', *Café Exit*, [cafeexit.dk/om-os/about-cafe-exit](http://cafeexit.dk/om-os/about-cafe-exit).

<sup>190</sup>. 'Minority ethnic prisoners' experiences of rehabilitation and release planning: A thematic review', *HM Inspectorate of Prisons*, October 2020, [www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2020/10/Minority-ethnic-prisoners-and-rehabilitation-2020-web.pdf](http://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2020/10/Minority-ethnic-prisoners-and-rehabilitation-2020-web.pdf).

<sup>191</sup>. Bangkok Rules, Rules 54 and 55.

<sup>192</sup>. Under Nelson Mandela Rule, Rule 103(2), prisoners are allowed to send a part of their earnings to their family.

# Chapter 7

## Prison management





# Prison management

## 7.1 Information



### Relevant rule

#### Rule 30:

1. At admission, and as often as necessary afterwards, all prisoners shall be informed in writing and orally in a language they understand of the regulations governing prison discipline and of their rights and duties in prison.
2. Prisoners shall be allowed to keep in their possession a written version of the information they are given.
3. Prisoners shall be informed about any legal proceedings in which they are involved and, if they are sentenced, the time to be served and the possibilities of early release.

The EPR set down guidance on ensuring prisoners' right to information about their imprisonment and the modalities of receiving such information.

Prisoners are entitled to know about their rights and obligations in prison so that they are empowered to assert these rights and know what to expect from prison authorities. Moreover, prisoners who are well-informed about the rules and regulations will be less likely to infringe them, particularly if they are aware of the consequences of doing so. Prisoners may often feel disempowered in the prison setting and providing them with details of their rights and obligations gives them a sense of agency and knowledge that they continue to be rights-holders while in prison.

Prisoners, whether pre-trial or sentenced, should be notified, on admission, of the rules and regulations of the prison they are to be housed (Rule 30.1). If prison staff cannot provide this information immediately on arrival, it should be communicated as soon as possible thereafter. The EPR state that prisoners should be provided with the 'regulations governing prison discipline and their rights and duties in prison', which is expansive and would encompass different types of regulations like prison orders, guidance, instructions, rules or legislation. For example, this would include rules and practicalities relating to visits, phone calls, the prison regime, programmes they can participate in, where to seek support, requests and complaints processes, as well as disciplinary measures.

Newly arrived prisoners should be met with on an individual basis and explained rules and processes, with an opportunity for questions and clarifications. As stated in the EPR, prison services should provide written materials such as an induction pack for new arrivals in an accessible format which explains the relevant information in full detail (Rule 30.2). This pack should be given to prisoners during their induction meeting with prison staff. Peer mentors provide a valuable service to newly arrived prisoners and can help with communication and support but should not replace official induction meetings with prison staff.

Prisoners may find the early days in custody very distressing, worrying and overwhelming, so prison staff should be sensitive to their needs at this time. Indeed, prisoners may not be able to process information clearly, so prison staff may need to repeat this information again soon after arrival and during the course of imprisonment. Prison staff should be given appropriate training on how to deliver information to prisoners in a gender-sensitive and culturally appropriate way, with due regard to the specific needs of prisoners.

Prisoners should also be kept informed of any developments relating to legal proceedings be it progress in their case, updates on dates of release or other important milestones. This information should be provided by prison staff and not left solely to a prisoner's legal representative.

Any changes to the prison rules or regulations or other major developments relating to the prison laws should be conveyed to all prisoners during their detention. In all cases, prisoners should be given the opportunity to ask questions or clarify issues at a later stage after arrival.




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#### **PROMISING PRACTICE: PROVIDING HEALTHCARE INFORMATION TO PRISONERS IN LUXEMBOURG DURING THE COVID-19 PANDEMIC**

In Luxembourg, the Department of Prisons of the Ministry of Justice of Luxembourg published Frequently Asked Questions on their website where they provided healthcare information for prisoners during the COVID-19 pandemic. The authorities also published information sheets about the virus and preventive measures which were displayed across prisons in the country.<sup>193</sup>

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### **Accessibility of information**

The EPR state that relevant information should be communicated to prisoners 'in writing and orally in a language they understand' (Rule 30.1). Prison authorities should ensure that prisoners with accessibility issues (such as those who are illiterate or have low literacy, foreign nationals, people with learning or other disabilities or mental health issues) are given the opportunity to have information explained to them in the most appropriate way.

Foreign nationals, for example, may require the assistance of an interpreter, or sight impaired people might require a copy of the rules in Braille or large print. Prison authorities may also need to rely on the services of other prisoners who share a common language to communicate information to their peers; if this is the case, prison authorities should be mindful of the risk of using non-accredited interpreters who may not provide accurate and impartial translation.

### **Access to information for families**

The families of prisoners may be very concerned and anxious about the fate of their relative in prison. Authorities should also provide key information including rules to family members so that they are fully informed of prison processes and procedures, particularly around contact.

Information should include the practicalities around visitation, including frequency, security measures and what to expect during a visit; sending items to prison; phone calls and video conferencing facilities. The approach to accessible information for the groups described above should equally apply to materials sent to family members of prisoners.




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#### **PROMISING PRACTICE: SPAIN'S HOTLINE FOR PRISONERS' FAMILIES DURING THE COVID-19 PANDEMIC**

In the early months of the COVID-19 pandemic, the Secretariat for Criminal Measures, Reintegration and Victim Care in Spain set up a hotline to answer families' questions regarding measures being taken to protect prisoners' health, delivery of packages to prison and ways to deposit funds for prisoners.<sup>194</sup>

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<sup>193</sup>. 'Prevention Measures in European Prisons against COVID-19: Luxembourg', *EuroPris*, 24 March 2020, [www.europris.org/ministry-of-justice-department-of-prisons-lu](http://www.europris.org/ministry-of-justice-department-of-prisons-lu).

<sup>194</sup>. See European Prison Observatory, *COVID-19: What is happening in European Prisons?*, March 2020.

## 7.2 Prisoners' property



### Relevant rules

#### Rule 31:

1. All property that prisoners are not allowed to retain under the rules governing the prison shall be placed in safe custody on admission to the institution.
2. A prisoner whose property is taken into safe custody shall sign an inventory of the property.
3. Steps shall be taken to keep such property in good condition.
4. If it has been found necessary to destroy any such property, this shall be recorded and the prisoner informed.

#### Rule 33:

4. On the release of a prisoner, all articles and money belonging to the prisoner that were taken into safe custody shall be returned except insofar as there have been authorised withdrawals of money or the authorised sending of any such property out of the institution, or it has been found necessary to destroy any article on hygienic grounds.
5. The prisoner shall sign a receipt for the property returned.

The EPR provide comprehensive guidance on the handling and safe custody of prisoners' property to avoid it being lost, damaged or destroyed. While the EPR do not include an explicit definition of 'property', the Nelson Mandela Rules stipulate that property includes, 'money, valuables, clothing and other effects.'<sup>195</sup> It has also been suggested that medical files are deemed to be the property of a prisoner not the prison.<sup>196</sup>

Prison authorities should have clear guidance on the handling and management of prisoners' property which is accessible to all prison staff and prisoners.

The protection of property starts from the moment a prisoner is committed into custody (Rules 31.1, 31.2). On admission, prison staff should ensure that all property that is not permitted under the prison rules is confiscated and retained in 'safe custody' by the authorities. Prisoners should be made fully aware of, and comply with, the rules on what property can be held in possession or storage. These rules should be properly explained to prisoners in a language and format they understand. On confiscation, prisoners should sign an inventory of the property so that they are fully aware of the property in possession of the authorities (Rule 31.2).

Prisoners should be entitled to retain any disability aids, and women in prison who are pregnant or residing with their children should be allowed to keep items such as maternity clothing and infant feeding equipment.

Property should be stored in a safe and secure place (such as a property box), accessible solely to prison staff with authorisation and be clearly identifiable in terms of ownership. An inventory should be stored alongside it and entered into the prisoner's file. Prison authorities should take steps to ensure the property is kept in 'good condition' while in their custody (Rule 31.3). The area should be dry, free from vermin and in a secure location.

Most importantly, prison authorities should always treat a prisoner's belongings with care and respect, recognising the potential personal and emotional significance of these items. The poor handling of property by prison staff can lead to resentment, frustration and complaints by prisoners. The Nelson Mandela Rules also provide clear guidance on the management of prisoners' property.<sup>197</sup>

As a safeguard against theft or damage to property held by authorities, it is important that clear and accurate records are kept of all property retained, damaged, destroyed and returned to the prisoner on release (Rules 31.2, 31.4, 33.4). If property is damaged or lost while in the custody of the prison service, it may raise legitimate concerns, and steps should

<sup>195</sup> Nelson Mandela Rules, Rule 67(1).

<sup>196</sup> PRI and Essex University, *Essex paper 3: Initial guidance on the interpretation and implementation of the Nelson Mandela Rules*, February 2017, p. 69.

<sup>197</sup> Nelson Mandela Rules, Rule 67.



be taken by the authorities to trace persons with access to the property. In so doing, prison authorities protect themselves from any allegations of impropriety or illegal behaviour with respect to prisoners' property.

Any complaints about loss, theft or damage to property should follow the usual complaints procedure set down in prison rules. Such investigations should be carried out promptly and thoroughly and with appropriate reimbursement for lost or damaged items [see [Requests and complaints](#)].

Prison authorities will, as part of their security regime, conduct regular searches of prisoners' cells (Rule 54.1a). During such searches, there is a risk that prisoners' property may be damaged or destroyed so it is important that prison staff conduct any searches with care and treat property with respect, especially that with legal, sentimental, religious or similar value.

### **Release, confiscation and destruction of property**

On release, prisoners should be reunited with their property 'except insofar as there have been authorised withdrawals of money or the authorised sending of any such property out of the institution, or it has been found necessary to destroy any article on hygienic grounds' (Rule 33.4). The prison authorities should follow strict safeguards on confiscating and destroying a prisoner's property. Prior to the destruction of property, prisoners should be given a full explanation of destruction protocols and an opportunity to make any appropriate representations. The prison administration should, as a minimum, have a policy in place governing the confiscation and disposal of prisoners' property. This policy should provide guidance on items suitable for confiscation and destruction, authorisation and powers of destruction (usually prison director level) and avenues of appeal (including complaint mechanisms). Prisoners should sign a receipt for property returned (Rule 33.5).

On transfer, a prisoner's property should accompany the prisoner. The property should be transferred in a secure and safe way that protects them from loss or damage (such as the use of a property bag with secure seals). The property should be clearly labelled.

In cases of deaths in custody, the deceased's property should be returned to a nominated person, ordinarily the next of kin, in line with Rule 67 of the Nelson Mandela Rules on the retention of property.

## 7.3 Transfer of prisoners



### **Relevant rule**

#### **Rule 32:**

**1.** While prisoners are being moved to or from a prison, or to other places such as court or hospital, they shall be exposed to public view as little as possible and proper safeguards shall be adopted to ensure their anonymity.

**2.** The transport of prisoners in conveyances with inadequate ventilation or light, or which would subject them in any way to unnecessary physical hardship or indignity, shall be prohibited.

**3.** The transport of prisoners shall be carried out at the expense and under the direction of the public authorities.

Prisoners are regularly transported for different reasons, including to attend court hearings, for hospital treatment or to be moved to another facility with a different security classification, in response to a specific emergency or to alleviate prison overcrowding. Prisoners may also be transferred to another country under extradition orders or as part of a prisoner transfer agreement, allowing the sentence to be completed in their home country [see [Foreign nationals](#)].

In addition to the rules on prison transfer, all the protections in the EPR continue to apply to prisoners during transfer and transportation both in-country or when a prisoner is transferred abroad.

Prisoner transfers pose a high risk of human rights violations. This is largely because there is a lack of oversight of conditions of transfer and the treatment of detainees during this time, and lack of witnesses to any abuse. In addition, prisoners usually have no means to contact their families or lawyers when they are being transported. Prisoner transport also carries risks to both physical and mental health.

The Council of Europe has noted that, during transfer, prisoners may find themselves confined in extremely small spaces within the transport vehicle, shared with an excessive number of other prisoners, in poor and unsafe conditions, sometimes for prolonged periods.<sup>198</sup>

Prisoner transport can also be a particularly stressful time, especially if people are being moved to another facility, are being taken to a court hearing or hospital appointment.

Prisoner transport is also a high-risk time for escort staff with an increased risk of violence, escape and coordinated attacks.

### **Means of transport and conditions of transfers**

The means, quality and availability of prisoner transport differ from country to country, depending on resources available, and the climate and geography of the country. Prisoner transport might include travel by air, road, rail, or boat. The CPT has frequently reported adverse findings on material standards of prison vehicles.<sup>199</sup>

Prisoners should not be subject to any physical hardship or indignity during transportation (Rule 32.2). The Council of Europe has made it clear that unacceptable conditions of transfer may amount to inhuman or degrading treatment or punishment.<sup>200</sup> In all cases, transportation should be carried out in a humane, secure and safe way. It is important that the means of transportation comply with safety standards and meet all health requirements in relation to adequate personal space, lighting, heating and ventilation. Access to sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene and healthcare should apply to all prisoners without exception, including when they are being transported.<sup>201</sup> This must include consideration of women who are menstruating.

In practice, prison authorities need to ensure that sufficient and suitable transportation is available and that contingency plans are in place for unplanned transfers. This involves careful planning of transport and staffing resources. For example, staff rotas should take transport duties into account.

Vehicles must be subject to regular safety checks, including safety belts, and systems of lighting, heating and ventilation. All vehicles need to be stocked with a first aid kit and any necessary medical supplies. They should be designed so that prisoners can communicate with escort staff if needed and emergency exits must be available.

Vehicles should also be suitably equipped for prisoners with special needs, including considerations for transporting pregnant women, prisoners with mental health issues and prisoners with disabilities. In these cases, it may be necessary to transport prisoners in ambulances, or at least in medically equipped and physically accessible vehicles.

When a prisoner is transferred, their medical files and any necessary medication must be transferred with them.<sup>202</sup> If necessary, a healthcare professional should accompany the prisoner. It is important to ensure that any mode of transport does not exacerbate or worsen any existing physical or mental health issues or cause pain to the prisoner. Those in need of medical treatment should be transported by ambulance wherever possible.

<sup>198</sup>. Committee on Legal Affairs and Human Rights, *Protecting human rights during transfer of prisoners Report*, AS/Jur (2019) 07, 21 January 2019.

<sup>199</sup>. See, for instance, CPT reports on visits to Azerbaijan (2002 and 2006), Bulgaria (1995), Greece (2005), Ireland (2006), Romania (2006), Spain (2003) and Ukraine (1998 and 2000).

<sup>200</sup>. Committee on Legal Affairs and Human Rights, *Protecting human rights during transfer of prisoners Report*, AS/Jur (2019) 07, 21 January 2019.

<sup>201</sup>. Nelson Mandela Rules, Rule 42.

<sup>202</sup>. Nelson Mandela Rules, Rule 26(2).

The CPT has held that individual cubicles used to transport prisoners should never be less than 0.6 square metres for short journeys and should be ‘much larger’ for longer journeys. When prisoners are transported communally, they should have at least 0.4 square metres of personal space for short journeys and at least 0.6 square metres for longer journeys.<sup>203</sup> The number of prisoners transported should not exceed the capacity of the vehicles being used.

People should not be held in transportation vehicles for longer than necessary. It is good practice to have holding cells in courthouses and secure waiting areas in hospitals so that prisoners do not need to remain confined in escort vans while waiting.

In light of the right to privacy, the EPR require authorities to ensure that prisoners being transferred are exposed to as little public view as possible and that safeguards are in place to protect their anonymity (Rule 32.1). Prisoners’ belongings should be transferred with them and be protected from loss or damage.

### Safeguards

There are specific safeguards that authorities can put in place to protect prisoners’ human rights during transportation. It is important to pay particular attention to these because many of the usual safeguards are more difficult to apply during transportation. Authorities should ensure that laws and policies related to prisoner transfers reflect international standards and are applied in practice.

The EPR are clear that the transport of prisoners shall be carried out at the expense and under the direction of the public authorities (Rule 32.3). This means that prisoners should never be expected to pay for their transfer. Even where prisoner transfer falls under the responsibility of other agencies or private companies, the State retains ultimate responsibility for protecting the rights of prisoners and ensuring their safety. Regardless of who carries out the transfer, the same regulations and safeguards must apply. Staff responsible for transfers should receive the same level of training as prison staff, adhere to the same rules and be held equally accountable.

During transportation, prisoners must be separated in accordance with Rule 18.8 of the EPR. This means that men and women, children and adults, pre-trial detainees and convicted prisoners, should be kept separately from each other. Separation of prisoners should also depend on security classification and individual risk and needs assessments. Ideally, such categories of prisoner should be transported in separate vehicles.

Some prisoners are difficult to handle and may need to be transferred to another facility. However, the CPT cautions against continuous moving of such prisoners from one prison to another as this can have ‘very harmful effects’ on their psychological and physical well-being. Such continuous movement will also make it more difficult for the prisoner to maintain appropriate contacts with family and lawyers.<sup>204</sup>

Restraints should only be used during transfer as a precaution against escape. They must be removed when a prisoner appears before a judicial or administrative authority. If required, they should be used only as strictly necessary and for the shortest period of time. Any use of restraints should be based on individual risk assessments, and, therefore, no blanket rule on use of restraints for the purposes of transfers should be in place [see [Instruments of restraint](#)].

Any staff involved in prisoner transportation should receive specialised training on the rules and regulations around transfers and specific human rights considerations. Female staff should accompany women who are being transferred and, where necessary, specialist staff such as those trained to work with children should be available. Before each transfer, staff should be briefed on any specific security, health or other concerns, based on individual risk and needs assessments.

<sup>203</sup> CPT, *Factsheet – Transportation of detainees*, Inf (2018) 24, June 2018.

<sup>204</sup> CPT, *2nd General Report*, CPT/Inf (92) 3, 13 April 1992.

The Parliamentary Assembly of the Council of Europe has emphasised that monitoring should extend to the conditions of prisoners when they are transported.<sup>205</sup> This includes access to independent monitoring bodies [see [Inspection and monitoring](#)]. Prisoners should also be able to make requests and complaints about transfers and conditions of transfer.



#### PROMISING PRACTICE: PRE-TRANSFER RISK ASSESSMENTS IN COUNCIL OF EUROPE MEMBER STATES

Some Council of Europe member States, including Belgium, Finland, France, Georgia, Greece, Montenegro, Netherlands, the Slovak Republic, Sweden and Ukraine have reported that their national legal framework includes the requirement to carry out pre-transfer risk assessments of health statuses and any other special considerations before undertaking any transfer of prisoners. These assessments are used to determine whether individualised plans are required to be in place before the transfer takes place, including the provision of medical escorts if needed. In Greece, Presidential decree 141/1991 states that transfers of men and women with the same escort should be avoided, but if it is necessary, women should be detained separately and should be accompanied by female police officers. Minors under the age of seventeen must be accompanied by specially trained police officers.<sup>206</sup>

## 7.4 Release of prisoners



### Relevant rules

#### Rule 33:

1. All prisoners shall be released without delay when their commitment orders expire, or when a court or other authority orders their release.
2. The date and time of the release shall be recorded.
3. All prisoners shall have the benefit of arrangements designed to assist them in returning to free society after release.
4. On the release of a prisoner, all articles and money belonging to the prisoner that were taken into safe custody shall be returned except insofar as there have been authorised withdrawals of money or the authorised sending of any such property out of the institution, or it has been found necessary to destroy any article on hygienic grounds.
5. The prisoner shall sign a receipt for the property returned.
6. When release is pre-arranged, the prisoner shall be offered a medical examination in accordance with Rule 42 as close as possible to the time of release.
7. Steps must be taken to ensure that on release prisoners are provided, as necessary, with appropriate documents and identification papers, and assisted in finding suitable accommodation and work.
8. Released prisoners shall also be provided with immediate means of subsistence, be suitably and adequately clothed with regard to the climate and season, and have sufficient means to reach their destination.

#### Rule 107:

1. Sentenced prisoners shall be assisted in good time prior to release by procedures and special programmes enabling them to make the transition from life in prison to a law-abiding life in the community.
2. In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society.
3. This aim may be achieved by a pre-release programme in prison or by partial or conditional release under supervision combined with effective social support.
4. Prison authorities shall work closely with services and agencies that supervise and assist released prisoners to enable all sentenced prisoners to re-establish themselves in the community, in particular with regard to family life and employment.
5. Representatives of such social services or agencies shall be afforded all necessary access to the prison and to prisoners to allow them to assist with preparations for release and the planning of after-care programmes.

<sup>205</sup>. Committee on Legal Affairs and Human Rights, *Protecting human rights during transfer of prisoners Report*, ASJ/Jur (2019) 07, 21 January 2019.

<sup>206</sup>. *Ibid.*

Most people are released from prison after they have served their sentence, or a part of their sentence if granted probation or early release. However, there will also be those who are released because their detention was found to be unlawful, as well as those who are found not guilty at trial or given a non-custodial sentence.

It is important that all prisoners are released on time, and the date and time of release must be recorded (Rule 33). The requirement to avoid the unlawful detention of anyone past their due release date relates closely to good prisoner file management.

In all cases of release, there needs to be careful planning in place to ensure a smooth transition from prison to community. This is important for all people in prison, regardless of the time served and whether the person has been convicted or not. This is because any period of detention can be extremely harmful for individuals and their families in terms of physical and mental health, family and community relations, and professional and socio-economic status. Particular consideration needs to be given to release planning for specific groups of prisoners, including women, victims of domestic violence, foreign nationals and older persons.

Those who have served long sentences may also need specific support in their return to society after a long absence (Rule 107.2). These people are more likely to have become institutionalised and to have experienced changes to family situations and loss of community and support links during their long imprisonment.

Preparation for a prisoners' release should begin from the first day of their imprisonment. The fundamental principles in the EPR, in particular, Rules 5,6 and 7 [see **Fundamental principles**] lay the ground for this. Reintegration into society will be easier when life in prison resembles aspects of community life, where detention is managed with a focus on reintegration and where there is good cooperation with outside services and civil society. Coordination with outside services is critical to ensure continuity of specific reintegration, care and support needs (Rule 107.4).

The Nelson Mandela Rules are also clear that the purposes of imprisonment can only be achieved if the period of imprisonment is focused on reintegrating people back into society and by minimising differences between prison life and life at liberty.<sup>207</sup>

### **Safeguards and preparations for release**

There are many concerns around prisoner release, including the possibility of reoffending, return to an unsafe environment, mental health concerns and substance dependencies, lack of access to continual healthcare, poverty, homelessness and unemployment. There is also a high risk of suicide and self-harm in the period immediately following release.<sup>208</sup> To this end, the EPR require prison authorities to put in place measures to assist people being released from prison and returning to society (Rule 33.3). This includes providing them with appropriate documents and identification papers (Rule 33.7), or at a minimum facilitating and supporting referrals and contact with agencies who provide such documentation. Foreign prisoners should be provided with appropriate documents and identification papers to assist them with any travel.

There are many things that prison authorities can do to help a prisoner prepare for release, both psychologically and practically. This can involve prison staff talking to individuals pre-release to understand any concerns they might have around their release and assessing what information prisoners need to facilitate their reintegration into society. This might include facilitating reunification with family or support networks, information about local transport or providing funding for transport and initial costs in the first few days of release, contact details for support organisations, legal advice contacts, advice on housing, employment and other practical information.

<sup>207</sup> Nelson Mandela Rules, Rules 4 and 5.

<sup>208</sup> See, for example, Borschmann, Rohan et al. 'Self-harm following release from prison: A prospective data linkage study', *Aust N Z J Psychiatry*, March 2017, 51(3), pp. 250-259. (2016).

The EPR state that prisoners to be released should be assisted in finding suitable accommodation and work (Rule 33.7). In practice this refers both to rehabilitation programmes offered during the course of detention and providing information about local employers and accommodation providers. There are also specific pre-release programmes that can be put in place to help ease the transition back into the community, including on practical daily tasks, improving self-confidence, communication and job interview skills. It is good practice to ask prisoners individually what they need to help them prepare for release.

People in prison should be given clear, accessible information about what they should expect on release and practical information about the support they can receive. Some prisons provide released prisoners with a small amount of money to help them in the first few days after release and the EPR encourage prison administrations to provide prisoners with means of subsistence, transport costs and adequate clothing upon their release (Rule 33.8).

Prisoners should also be offered a medical examination upon release and given medication needed for the initial period post-release, so they have time to seek healthcare and prescriptions in the community (Rule 33.6).

Rule 107 deals more specifically with the release of sentenced prisoners. The requirements of this rule in pre-release planning incorporate the obligation to provide suitable activities to prisoners, such as work and training opportunities to facilitate their rehabilitation [see **Prison regime**] but may also incorporate other types of programmes and services as part of rehabilitation programming. Programmes for sentenced prisoners should be focused on enabling them to live a law-abiding life on their release to the community. This might include psycho-social support and counselling, violence reduction initiatives and substance dependency programmes.

A period of short-term release, with supervision if necessary, to spend time with family and in the community can also be extremely useful in preparing sentenced prisoners for their actual release date (Rule 107.3). This allows a gradual return to life outside of prison, especially if combined with appropriate social support. In cases where temporary home leave is not possible, rehabilitation and reintegration can be aided by 'bringing the outside in', that is allowing representatives of relevant agencies to enter the prison to work with specific prisoners on their pre-release preparation needs (Rule 107.5).

Open prison regimes which allow those nearing release to live under reduced security and supervision, and which might also allow prisoners to leave during the day for work placements, can also be an extremely useful way to gradually prepare sentenced prisoners for life in the community.




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#### **PROMISING PRACTICE: OPEN PRISON IN THE CZECH REPUBLIC**

Jirice prison is an open prison in the Czech Republic that prepares prisoners for life in the community by focusing on their abilities and skills to assess, plan and make decisions about everyday life tasks and issues. The prison imitates life in the community through employment, duties after return from work, home life and leisure time. The facility also combines innovative forms of treatment, guidance and coaching from professional staff members. Practice in the facility has shown that when prisoners are able to define the problem and find an appropriate solution by themselves, they will probably be able to do so after release, and the risk of reoffending significantly decreases.<sup>209</sup>

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<sup>209</sup> 'Prison Achievement Award 2023', *EuroPris*, [ip.constantcontactpages.com/cu/iFNU58s](https://ip.constantcontactpages.com/cu/iFNU58s).



## 7.5 Requests and complaints



### Relevant rule

#### Rule 70:

1. Prisoners shall have ample opportunity to make requests or complaints, without censorship as to the substance, to the director of the prison or other authority within the prison system and to a judicial or other independent authority with reviewing and remedial power.
2. If an informal alternative method of resolving a request or complaint seems appropriate, this should be tried first.
3. When complaints are made regarding ill-treatment or other serious human rights violations, informal methods shall not be considered.
4. Practical information about request and complaint procedures shall be communicated effectively to all prisoners.
5. Complaints relating to death or ill-treatment in prison shall be dealt with without delay and shall result in an effective investigation in accordance with Rule 55.
6. All requests and complaints shall be dealt with as soon as possible and through a process that ensures, to the maximum possible extent, the prisoners' effective participation.
7. If a request or a complaint is rejected, reasons shall be provided to the prisoner without delay and, if the decision was made by the director or other authority within the prison system, the prisoner shall have the right to appeal to a judicial or other independent authority with reviewing and remedial power.
8. Measures shall be in place to ensure that prisoners can make requests or complaints confidentially, if they choose to do so.
9. Prisoners shall not be exposed to any sanction, retaliation, intimidation, reprisals or other negative consequences as a result of having submitted a request or complaint.
10. Prisoners may make a request or complaint personally or through a legal representative and are entitled to seek legal advice about complaints and appeal procedures and to legal assistance when the interests of justice require.
11. No complaint by a legal representative or organisation concerned with the welfare of prisoners may be brought on behalf of a prisoner if the prisoner concerned does not consent to it being brought.
12. The competent authority shall take into account any written complaints from relatives of a prisoner or any other person or organisation concerned with the welfare of prisoners.
13. The relevant prison authority shall keep a record of requests and complaints made, with due consideration to the principles of confidentiality and safety.

All prisoners have the right to make requests and complaints (Rule 70). When prisoners do not have this opportunity, they may feel powerless to change anything about their situation and this can lead to poor mental health, unrest and a lack of engagement in rehabilitation programmes, among other things. An effective request-and-complaint system is an important tool in the prevention of torture and other-ill-treatment. They can also help authorities identify and deal with specific and systematic problems, aid prison management and improve prisoner-staff relations. Good complaint systems can also protect staff from false allegations.

Prisoners may raise requests and complaints about many different issues, and some will be more serious or urgent than others and so require different levels of response. Authorities must distinguish between requests and complaints:

#### 1. Requests:

Requests concern favours or facilities to which [prisoners] are not entitled by right but which may be granted by prison management or other competent authorities.<sup>210</sup> This might include, for example, requests for additional visits or telephone calls. Many requests can be dealt with by prison management, though some may need judicial or ministerial involvement including home visits and compassionate temporary release.<sup>211</sup>

<sup>210</sup> European Committee on Crime Problems, *Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules Commentary*, CM(2020)17-add2, 1 July 2020.

<sup>211</sup> See, for example, 'Temporary release schemes', Northern Ireland Department of Justice, [www.justice-ni.gov.uk/articles/temporary-release-schemes](http://www.justice-ni.gov.uk/articles/temporary-release-schemes).

## 2. Complaints:

Complaints are 'formal objections against decisions, actions or lack of action of the prison administration or other competent authorities'.<sup>212</sup> Complaints may relate to issues like violence, food quality, noise levels, the prison regime, privacy concerns and problems communicating with families. If appropriate, prisoners can raise these issues informally with staff before putting in a formal complaint (Rule 70.2), and it may be possible to resolve the problem relatively easily. This can be the most effective way of preventing problems from escalating and works well in facilities which operate under a dynamic security approach and where trust is already established between prisoners and staff.

If complaints cannot be dealt with informally, or if they are more serious, complex or sensitive, they should be raised through formal procedures which can escalate through different stages as needed. The EPR clarify that any alleged criminal act committed in prison should be investigated as it would be in free society in accordance with national law (Rule 55).

Complaints relating to death, torture, ill-treatment and other serious human rights violations should never be dealt with informally (Rule 70.3). Instead, they should follow special procedures as set out in the UN Convention against Torture and the Istanbul Protocol.<sup>213</sup> These types of complaints are particularly urgent and must be acted upon without delay (Rule 70.5). Investigations into allegations of torture or other ill-treatment should take place irrespective of whether a formal complaint has been lodged whenever there are reasonable grounds to believe that an act of torture or other ill-treatment has been committed.

The Nelson Mandela Rules specify that such complaints should be handled by an independent body that can conduct prompt, impartial and effective investigations (Nelson Mandela Rules, Rule 71). The commentary to the EPR also notes that such investigations must be open to public scrutiny. It is the responsibility of prison authorities to cooperate fully with the investigating body and to secure any evidence, including any witness testimony.

Prisoners should have various mechanisms available to make a request or complaint, including both internal and external complaint mechanisms:

### 1. Internal mechanisms:

The EPR state that prisoners should have the opportunity to make a request or complaint to the director of the prison or other prison authority. The Nelson Mandela Rules foresee that complaints might be made to the central prison administration (Nelson Mandela Rules, Rule 56 (3)).

### 2. External mechanisms:

It is important that prisoners can also make requests and complaints to bodies which are independent of the prison administration, such as a judicial or other independent authority. This is a key safeguard to ensure that all prisoners can exercise their right to an effective remedy, under Article 13 of the ECHR.

There should be no requirement to exhaust internal mechanisms before raising complaints externally. This is particularly important if prisoners lack trust in internal complaints procedures or fear for their own safety. Prisoners may also choose to escalate their complaints to an external body if the internal complaint failed or if they feel the mechanism is weak or ineffective.

If external complaints mechanisms are not seen to be independent, prisoners are unlikely to approach them. Information about these bodies should explain clearly that they are separate from all agencies responsible for prisons.

<sup>212</sup> See the Council of Europe, *Commentary on Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules*, p.88, [rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae](http://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae).

<sup>213</sup> UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

External mechanisms to deal with prisoner requests and complaints vary from country to country and might also include bodies such as the inspector of prisons and national ombuds institutions. The CPT has noted that external mechanisms might also include specialised agencies, such as independent police-complaint bodies and special complaint boards or commissions, but that it is inadvisable for NPMs and other monitoring bodies to deal directly with formal complaints.<sup>214</sup>

The EPR make it clear that any independent authority set up to deal with requests and complaints must have reviewing and remedial power (Rule 70.1). The CPT has noted that effective complaints mechanisms must be able to contribute to preventing further human rights violations. When the decisions of such bodies are not binding, they face problems in having their recommendations or opinions followed up by authorities.<sup>215</sup>

It is the responsibility of prison authorities to facilitate prisoners' access to requests and complaints mechanisms at all levels without discrimination. This means ensuring that such mechanisms are available and accessible to all without censorship (Rule 70.1) and ensuring confidentiality and safety (Rule 70.8). It also means that there should be a clear set of procedures defining how requests and complaints can be made and the time frame and steps to be followed in response.



#### PROMISING PRACTICE: SYSTEMS OF COMPLAINTS IN THE NETHERLANDS

The CPT has noted that the Dutch complaint system in prisons is positive and could be replicated in other countries.<sup>216</sup> There are several avenues of complaints available, including a complaint committee for each prison and a supervisory committee at the national level. Every facility also has a prisoners' committee which meets regularly with the director and can raise concerns on behalf of prisoners and propose possible improvements.

Under the Dutch Custodial Institutions Act, prisoners are able to file complaints with the complaint committee against any decision taken by or on behalf of the prison director. The complaint committees are independent, consisting of members of the general public and independent representatives of society. Complaints may be resolved via mediation or, if this does not resolve the issue, a closed hearing can be held in which each side can present their case and the complainant is entitled to free legal assistance. Any decision and recommendation from the complaint committee should be communicated within four weeks. If the complaint is upheld, compensation may be awarded, including extra visits, telephone calls or financial compensation.

### Provision of information

Prisoners need to be informed about the different types of request-and-complaint procedures available and how they can access them (Rule 70.4). They should be provided with this information as soon as possible after they arrive to prison and throughout the course of their detention, including for instance with posters. Prisoners should be given the opportunity to ask any questions to ensure they fully understand what to expect from such procedures.

Prison staff can pay particular attention to ensuring that all groups of prisoners are aware of their right to make requests and complaints and that they know how to do so. This includes ensuring that all people in a situation of vulnerability such as illiterate or low literate prisoners, those with mental health issues or intellectual disabilities, people with sensory disabilities, younger prisoners and foreign nationals have access to information in a format they can understand, including in foreign languages, Braille and sign language. Prison staff can be proactive in their communications by talking to prisoners about any problems they might have and reminding them of their right to make requests and complaints.

<sup>214</sup>. CPT, *27th General Report of the CPT*, CPT/Inf (2018) 4, April 2008, para. 71.

<sup>215</sup>. CPT, *27th General Report of the CPT*, CPT/Inf (2018) 4, para. 71.

<sup>216</sup>. CPT, *Report to the Government of the Netherlands on the visit to the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, CPT/Inf (2017) 1, 19 January 2017.

## Accessibility

Request and complaint procedures must also be accessible to all prisoners. This could mean locating secure complaint boxes or telephone hotlines so that all prisoners can access them, allowing illiterate prisoners to submit requests and complaints orally and providing prisoners with the means to make complaints, including, if needed pens and paper and electronic forms of communications. Requests and complaints procedures must also be available to people who are separated or those undergoing medical treatment.

Some requests and complaints will be made directly by the prisoner or prisoners concerned. However, lawyers, relatives, consular representatives, external organisations and others can also make requests on behalf of prisoners if necessary (Rules 70.10 and 70.12). Prisoners are entitled to seek legal advice and assistance in relation to complaint procedures (Rule 70.10). This may be particularly relevant for younger prisoners, those with mental health issues, foreign nationals, prisoners from minority groups or in situations where prisoners do not feel comfortable to make complaints directly. It is important however, that no complaint be brought on behalf of a prisoner without their consent (Rule 70.11).

Prison authorities should make proactive efforts to understand and tackle any barriers that prevent prisoners or their representatives from making requests and complaints, including understanding why some groups of prisoners are less likely to make complaints than others. Common barriers to making complaints include distrust or lack of faith in the procedures available, fear of retaliation or reprisals, and the perception that prisoners are powerless to make any changes. These can be tackled by gathering prisoners' feedback on how complaints are handled and how procedures might be improved. Records of prisoner complaints can also highlight deficiencies within the procedures.

## Timely and appropriate responses

Prisoners are unlikely to make requests or complaints if they do not trust that there will be a swift, thorough and effective follow up and response or if they perceive the systems as unfair. The CPT has noted that where complaints mechanisms often display many shortcomings, including delays in initiating the examination and lack of thoroughness of the investigation.<sup>217</sup> All types and levels of requests must be taken seriously and should be dealt with as soon as possible, within a clearly defined time frame, with the participation of the prisoner concerned (Rule 70.6). If there are any delays, the prisoner should be kept informed of the reasons and provided with an interim response detailing the action being taken.

It is important that prisoners or their representatives are kept informed of the progress and outcome of their requests or complaints, including if the complaint is rejected. In this case, they should be provided, without delay, with clear reasons for the rejection, and should be given the opportunity to appeal to an independent authority (Rule 70.7).

Depending on the type and level of complaint, some will be resolved informally, while others may lead to formal investigations, prosecutions or other sanctions. Complaints which reach national courts or the ECtHR might also result in compensation for any loss or damage sustained. Importantly, any complaint that is upheld must be followed by prompt and effective action to resolve the problem and tackle any underlying causes.

## Record keeping

Prison authorities should keep confidential records of requests and complaints made, including any outcomes (Rule 70.13) and follow up on remedial action taken. It is also good practice for authorities to keep records and analyse statistics on the numbers and types of requests and complaints made as this can help them with future planning, reform and prisoner communications. All such records should be made available to monitoring bodies.

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<sup>217</sup> CPT, 27th General Report of the CPT, CPT/Inf (2018) 4, para. 71.

### Protection against reprisals

It is essential that prisoners are not subject to any sanctions, retaliation, intimidation, reprisals or other negative consequences on account of having made a request or complaint (Rule 70.9). This links closely to the requirement to maintain confidentiality and privacy in all available procedures. Prisoners are unlikely to make complaints if they do not feel assured of confidentiality, their own safety and if they do not trust the staff assigned to deal with complaints.

Retaliation and retribution are particular concerns in relation to complaints of torture or ill-treatment or when prisoners have made complaints about other prisoners or specific staff members. Where there is any risk to the safety of the complainant or any witnesses, immediate steps should be taken to avoid contact between perpetrators, victims, witnesses and family members. This might include transferring the complainant or implicated personnel to a different facility or putting in place enhanced protective supervision.

Prison authorities can also limit the risks of adverse negative consequences by making it clear to all prisoners and staff that any kinds of threats, intimidation or retaliatory actions will not be tolerated and will be the subject of disciplinary action. Additionally, only designated, properly trained staff should be allowed to read and follow up on complaints.

## 7.6 Management and staff



### Relevant rules: Selection of prison staff

#### Rule 76:

Staff shall be carefully selected, properly trained, both at the outset and on a continuing basis, paid as professional workers and have a status that civil society can respect.

#### Rule 77:

When selecting new staff, the prison authorities shall place great emphasis on the need for integrity, humanity, professional capacity and personal suitability for the complex work that they will be required to do.

#### Rule 78:

Professional prison staff shall normally be appointed on a permanent basis and have public service status with security of employment, subject only to good conduct, efficiency, good physical and mental health and an adequate standard of education.

#### Rule 79:

1. Salaries shall be adequate to attract and retain suitable staff.
2. Benefits and conditions of employment shall reflect the exacting nature of the work as part of a law-enforcement agency.

#### Rule 80:

Whenever it is necessary to employ part-time staff, these criteria shall apply to them as far as that is appropriate.



### Relevant rules: Training of prison staff

#### Rule 81:

1. Before entering into duty, staff shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.
2. Management shall ensure that, throughout their career, all staff maintain and improve their knowledge and professional capacity by attending courses of in-service training and development to be organised at suitable intervals.
3. Staff who are to work with specific groups of prisoners – foreign nationals, women, juveniles or mentally ill prisoners, etc. – shall be given specific training for their specialised work.

4. The training of all staff shall include instruction in the international and regional human rights instruments and standards, especially the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), as well as in the application of the European Prison Rules.



### Relevant rules: Prison management

#### Rule 82:

Personnel shall be selected and appointed on an equal basis, without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### Rule 83:

The prison authorities shall introduce systems of organisation and management that:

- (a) ensure that prisons operate at consistently high standards and are adequately staffed at all times in order to maintain a safe and secure environment in prison and to meet the requirements of national and international law including the provisions of these rules;
- (b) education;
- (c) are capable of withstanding operational emergencies and returning to ordinary standards at the earliest opportunity; and
- (d) facilitate good communication between prisons and between the different categories of staff in individual prisons and proper co-ordination of all the departments, both inside and outside the prison, that provide services for prisoners, in particular with respect to the care and reintegration of prisoners.

#### Rule 84:

1. Every prison shall have a director, who shall be adequately qualified for that post by character, administrative ability, suitable professional training and experience.

2. Directors shall be appointed on a full-time basis and shall devote their whole time to their official duties.

3. The prison authorities shall ensure that every prison is at all times in the full charge of the director, the deputy director or other authorised official.

4. If a director is responsible for more than one prison there shall always be in addition an official in charge of each of them.

#### Rule 85:

Men and women shall be represented in a balanced manner on the prison staff.

#### Rule 86:

There shall be arrangements for management to consult with staff as a body on general matters and, especially, on matters to do with their conditions of employment.

#### Rule 87:

1. Arrangements shall be in place to encourage the best possible communication among management, other staff, outside agencies and prisoners.
2. The director, management and the majority of the other staff of the prison shall be able to speak the language of the greatest number of prisoners, or a language understood by the majority of them.

#### Rule 88:

Where privately managed prisons exist, all the European Prison Rules shall apply.





### Relevant rules: Specialist staff

#### Rule 89:

1. As far as possible, the staff shall include a sufficient number of specialists such as psychiatrists, psychologists, social and welfare workers, teachers and vocational, physical education and sports instructors.

2. Wherever possible, suitable part-time and voluntary workers shall be encouraged to contribute to activities with prisoners.

The EPR and other human rights standards related to imprisonment cannot be effectively implemented without prison managers and staff who are able to perform their jobs well. While those who work in prisons need good laws and policies to implement their work within a human rights framework, their ability to do so depends heavily on their competencies, skills and training and the quality of prison management.

Prison staff and managers perform an essential service in protecting society and maintaining good order and security in prisons. However, their function is not solely about security. They also perform a key role in the rehabilitation and reintegration of prisoners (Rule 72.3). The way in which staff interact with prisoners, command their respect and perform their duties can make a significant difference not only in daily prison life, but also in prisoners' future life chances. The EPR also note that staff conduct can influence prisoners by good example (Rule 75).

This section covers different aspects of prison management, including prison leadership and organisation, staff recruitment, training and their terms and conditions of service.

### Staff recruitment

Insufficient staffing levels, badly selected or poorly trained staff will lead to an insecure environment where prisoners might exercise power unchecked, creating an unsafe environment.

Recruitment procedures must be designed to ensure that those employed as prison staff have the right skills and qualities to perform their job to high professional and personal standards (Rule 72.4). These include good interpersonal and communication skills. The Council of Europe has provided that basic grade prison staff should have entry educational equivalent to Level 4 of the European Qualifications Framework or a nationally recognised apprenticeship or vocational equivalent.<sup>218</sup> Additional educational criteria for higher level staff should be specified.<sup>219</sup> The commentary to the EPR makes it clear that where prisons are managed by private contractors, staff should be approved by the prison administration before working with prisoners.

In practice, job advertising and recruitment materials need to be clear about what the role of prison staff entails, the required competencies, selection criteria and assessment processes. Selection should prioritise consideration of individuals' professional and personal suitability for prison work, including their integrity and humanity (Rule 77). Personal skills and values useful for work in prison services include motivation, flexibility, assertiveness, maturity, capacity for reflection, integrity, teamwork and social and communication skills.<sup>220</sup> Recruitment of prison staff might also include an assessment of candidates' health and fitness.

<sup>218</sup>. European Committee on Crime Problems, *Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff*, October 2019.

<sup>219</sup>. UNODC, *Handbook for prison leaders*, 2010.

<sup>220</sup>. European Committee on Crime Problems, *Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff*, October 2019.

UNODC has recommended that testing for situational judgement and personal ethics be included in prison staff recruitment processes, to ensure selection of the most appropriate people.<sup>221</sup>

One of the basic principles of the EPR (Principle 4) requires there to be sufficient resources within prison systems to ensure that prisoners' human rights are not violated (Rule 83.a). This includes the requirement to ensure sufficient quality and quantity of staff. In all prisons, the prisoner-staff ratio should be sufficient to ensure safety and security while also maintaining a high standard of care for prisoners (Rule 8) and guaranteeing the provision of basic services. An essential element of this is to provide sufficient numbers of female staff (Rule 85) in line with Rule 81(3) of the Nelson Mandela Rules, which requires that women prisoners should be attended and supervised only by female staff.

Recruitment for prison staff should emphasise the positive role that prison staff play, and the important public service they fulfil, as well as the challenges associated with the job. This is important to counteract any negative stereotypes associated with prison work, and to attract the right applicants. Prisoners respond better to staff members who share common interests or experiences, and authorities should make particular efforts to recruit a diverse workforce. While it is expected that the prison director, and most staff speak the majority language in the prison (Rule 87.2), ideally, the composition of the staff will reflect the diversity of the prison population itself. This could include members of minority racial and ethnic groups, staff of different religious backgrounds, LGBTQI+ staff, and those who speak different languages and have good inter-cultural skills, including an understanding of different religions and traditions. Recruitment, selection and appointment should be managed without discrimination of any kind (Rule 82).

In practice, this means advertising jobs as widely as possible on platforms which will reach diverse audiences, ensuring that the recruitment panel is itself composed of a diverse group of people with a range of different experiences and who have been trained to make sure the recruitment process is fair and unbiased.

There are also specific considerations for recruiting or training staff who will be working with particular groups of prisoners, including special recruitment and selection procedures for staff working with juveniles and their families. All new potential staff members should undergo a background check for safeguarding purposes.

### **Staff training**

Prison staff should receive training in their general and specific duties before they enter active service, but it is also important that they receive continuous and updated in-service training and development opportunities throughout the course of their employment. This is important to maintain and improve their knowledge and professional capacity (Rules 76 and 81.2) but also to ensure they are up to date with changes in policies. Training should include a mix of theory, practice and scenario-based training, and candidates should be required to pass tests on the content of the training (Rule 81.1).

Effective training requires sufficient time and resources. This includes enough budget for good training facilities, equipment, suitably qualified and knowledgeable training providers and a training of sufficient length to cover all relevant topics. The training curriculum should be thorough, reflect international human rights standards and regional instruments (Rule 81.4) and be regularly updated to reflect good practice and any legal or policy developments. It is good practice to supplement in-house training with joint training with other relevant agencies as well as courses organised by international organisations and specialised NGOs.

Specialised training needs to be provided to staff working with specific groups of prisoners (Rule 81.3), including foreign nationals, juveniles, people with mental health issues, violent extremist prisoners and sexual offenders. This is in line with the requirement for prison administrations to take into account the individual needs of all prisoners and to protect and promote the rights of prisoners with special needs.

<sup>221</sup> UNODC, *Handbook for prison leaders*, 2010.

International standards specify that prison staff should be trained in dynamic security approaches (Nelson Mandela Rules, Rule 76 (c)), including how to engage positively with prisoners, build effective relationships, understand the different types of prisoners and their personal backgrounds, and identify potential triggers and respond appropriately.

In terms of specialisations, the EPR are also clear that, as far as possible, the prison workforce should include psychiatrists, social and welfare workers, teachers and vocational, physical education and sports instructors (Rule 89.1). Where this is not possible, authorities should consider working with external service providers and NGOs to provide such services.

The Bangkok Rules specify that staff working in women's prisons should receive training relating to the gender-specific needs and human rights of women prisoners, including the main issues related to women's health and HIV/AIDs (Bangkok Rules, Rule 34). This should include training to detect mental healthcare needs and risk of self-harm and suicide (Bangkok Rules, Rule 35). Capacity building should also enable them to address the special social reintegration requirements of women prisoners (Bangkok Rules, Rules 29 and 33). Where children are in prison with their mothers, staff should also receive training on the healthcare of children and awareness-raising on child development (Bangkok Rules, Rule 33 (3)). Female and male staff should receive equal access to training (Bangkok Rules, Rule 32).

It is important that prison staff undergo a regular performance appraisal to identify any additional or refresher training needs, enhance their professional development and facilitate career progression. It is also good practice to evaluate overall staff training needs throughout the prison service and revise and update training plans accordingly. Training priorities may need to be adapted in response to changes in prison population profiles, emerging problems within specific facilities and changes in laws and policies.



#### **PROMISING PRACTICE: TRAINING OF PRISON STAFF IN DENMARK**

In Denmark, all newly recruited prison officers undertake a three-year education and training programme, alternating between time at the Training Centre of Probation and Prison Service and a longer period of time each year working as an apprentice within a prison facility. The five main themes covered in the training are, ethics and professionalism; clients and the institutions; change, support and motivation; legislation rules and procedures; and conflict resolution, control and safety.<sup>222</sup>



#### **PROMISING PRACTICE: COUNCIL OF EUROPE TRAINING MATRIX**

The Council of Europe has developed an education and training matrix<sup>223</sup> which provides an overview of training components that could be incorporated into the training of prison staff who work directly with prisoners to equip them to carry out their role effectively. This matrix reflects the recommendations in the EPR, the European Code of Ethics for Prison Staff and other Council of Europe recommendations. Suggested training elements include the mission of the prison service; practice in a legal context; policies, procedures, rules and regulations; human rights in context; professional ethics; static, procedural and dynamic security; safety and use of force; suicide and self-harm; psychological, social work and criminological approaches; risk assessment; sentence planning and implementation; report writing; confidentiality, use of social media, data protection; use of IT; working with juvenile and young adults; gender responsiveness; mental health, intellectual disabilities and substance misuse; anti-discriminatory practice; and staff support and development.

<sup>222</sup> 22nd Council of Europe Conference of Directors of Prison and Probation Services, *Information about the training of the prison and probation staff in some Council of Europe member states provided by the national prison and probation services*, 24 May 2017.

<sup>223</sup> European Committee on Crime Problems, *Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff*, Appendix 1, October 2019.

## Staff terms and conditions

Many prison systems face difficulties recruiting and retaining prison staff, with low levels of applications and high staff turnover. This is linked to staff terms and conditions, as well as negative perceptions about prison work and the role of prison staff. To attract staff and improve staff retention, prison authorities need to ensure that staff salaries, benefits and terms and conditions are attractive enough to attract and retain suitable staff, and that the status of prison staff reflects the important role they play in protecting society (Rule 76).

There are many things that prison administrations can do to remove the barriers to staff recruitment and retention. In practice, this means providing staff with security of employment (Rule 78), salaries which reflect their skill and responsibilities and the difficult nature of the job (Rules 79.1 and 79.2). Staff should be offered career development and promotion opportunities, with female and male staff having equal opportunities to progress. Prison authorities can also work with the media and the public to promote the positive role of prison staff [see [Public awareness](#)].

Staff working hours should allow a good work-life balance, and any overtime requirements should be regulated and properly compensated. When staff are required to work long hours, this can lead to high levels of stress, burn out and sick leave. This will in turn affect the overall running of the prison facility, will be detrimental to prisoner-staff relations and ultimately affect prisoner rehabilitation.

Staff health and well-being is an essential element in successful prison systems. This includes ensuring a safe physical work environment, reducing health risks to prison staff and promoting good mental health. In the course of their daily work, prison staff may encounter many difficult and distressing situations, including self-harm and suicide, poor mental health and prisoner violence. They may also be targeted directly with physical violence, verbal abuse, threats and intimidation. It is crucial that staff can access support services to help them cope with such situations and that they receive the full backing of their managers when they need such support. Services provided to staff might include individual counselling, confidential support hotlines, peer support groups and general health and well-being services.




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### PROMISING PRACTICE: WORLD HEALTH ORGANIZATION'S CHECKLIST FOR PRISON STAFF HEALTH

The World Health Organization has set out a checklist providing concrete suggestions for initiatives to maintain and improve the health and well-being of prison staff, increase their understanding and help them promote their own health and well-being.<sup>224</sup> These are:

- setting up health promotion groups;
  - introducing information and health days focusing on drug use, alcohol, nutrition, infectious diseases, violence and gender-specific issues;
  - conducting non-smoking training;
  - improving nutrition during working hours, such as fruit during canteen meals;
  - ensuring that colleagues can consult on problems and crises;
  - setting up regional working groups for exchanging experience;
  - setting up help structures after special incidents and stress-related illness (contact with colleagues and debriefing).
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## Systems of organisation and prison management

The smooth running of prison facilities relies on good prison management, a clear statement of purpose and a positive institutional culture. Managers need to be carefully selected for their commitment to ensuring a high standard of prison management. Both the EPR and the

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<sup>224</sup> Møller, Lars et al., *Health in prisons: a WHO guide to the essentials of prison health*, WHO Regional Office for Europe, 2007.

Nelson Mandela Rules specify that this includes their character, administrative ability and their professional training and experience (Rule 84.1 and Nelson Mandela Rules, Rule 79). Prison managers must be held publicly accountable for their actions.

The EPR are clear that to perform their functions well, managers need to be appointed on a full-time basis (Rule 84.2) and that there are designated officials to take charge of the facility when the director is not available or if the director has responsibility for more than one facility (Rules 84.2 and 84.4). As with prison staff, the terms and conditions of appointment of prison directors need to be sufficient to attract suitably qualified and motivated individuals to perform the role.

The institutional culture of a prison facility will impact the way staff perceive their role and how they perform their function. This will, in turn, influence individuals' experience of life in prison. It is important for prison staff to feel valued, trusted and rewarded for their work and this will be reflected in the way they treat prisoners. Authorities should promote a policy of zero tolerance towards bullying and corruption and the consequences of such actions should be made clear. The Bangkok Rules require a commitment by prison management to prevent gender-based discrimination (Bangkok Rules, Rule 30) and clear policies aimed at preventing gender-based physical violence, abuse and sexual harassment (Bangkok Rules, Rule 32).

Prison staff will feel more valued and engaged with their work if they are consulted on matters which impact them, including prison planning and operating procedures. They should also be consulted and given the opportunity to provide feedback on their training needs, development plans, employment conditions and support services available (Rule 86). It is also good practice for prison staff to have the opportunity to join a trade union to represent their views and negotiate with management over their pay and conditions of employment.

Good communication is key to effective prison management (Rule 87.1). This applies to communication within facilities themselves, between staff and prisoners, but also between different categories of staff and including management-staff communications. It also applies to ensuring good communication and coordination with relevant outside agencies, including healthcare providers, probation and social services, education providers and specialised support agencies (Rule 83.c). This is important for good provision of services during the period of detention but also to ensure continuity of services at arrival to prison and in the pre- and post-release periods.

Prisons need to be able to function well on a regular basis but must also be equipped to continue operations effectively during times of emergencies of any type (Rule 83.b). There are many different emergency situations that prison authorities might face, including natural disasters, health emergencies, infrastructural problems, war or civil unrest, crises with staffing levels or prison overcrowding. All of these will disrupt day-to-day prison management and impact the safety and security of all. Effective contingency planning for such situations requires strong management and a flexible workforce, with good disaster risk reduction plans in place and sufficient budget to respond effectively and efficiently.




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#### **PROMISING PRACTICE: GUIDANCE ON PRISON CRISIS PREPAREDNESS AND RESPONSE**

Penal Reform International (PRI) has provided guidance to authorities on protecting the human rights of people in prison in disaster prevention, response and recovery.<sup>225</sup> Recognising that people in prison are among the most vulnerable to suffering from the negative effects of natural hazards, PRI offers practical solutions on planning for mitigating the impacts of natural hazards, including risk assessments and prevention measures. The organisation also suggests practical responses to emergency situations and the process of recovery. While identifying immediate response needs, PRI highlights the importance of systematic reform for good crisis preparedness, including in relation to prison overcrowding, infrastructure, the funding of prison systems and processes of accountability.

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<sup>225</sup> PRI, *Natural hazards and prisons*, 2021.





# Chapter 8

## Safety and security



# Safety and security

## 8.1 Good order



### Relevant rules: Selection of prison staff

#### Rule 49:

Good order in prison shall be maintained by taking into account the requirements of security, safety and discipline, while also providing prisoners with living conditions which respect human dignity and offering them a full programme of activities in accordance with Rule 25.

#### Rule 50:

Subject to the needs of good order, safety and security, prisoners shall be allowed to discuss matters relating to the general conditions of imprisonment and shall be encouraged to communicate with the prison authorities about these matters.

Maintaining good order and discipline in prison facilities is a primary aim of prison management. Good order ensures the safety and security of all those within the prison, facilitates the promotion and protection of human rights and helps to achieve effective and reintegration and rehabilitation of prisoners (Rule 49).

A well-ordered prison environment requires a balance between upholding safety and security and adhering to the principles of fairness, justice and equality. All measures taken by prison authorities to achieve good order should respect the rights and dignity of the person and be guided by the principles of proportionality, legality, necessity and non-discrimination. A security-heavy prison environment can be counterproductive as it can create tension and distrust between staff and prisoners. On the other hand, insufficient control can lead to a situation where staff lose effective control of a facility.

A number of key principles apply to measures for the maintenance of good order in prisons:

- **Proportionality:** Measures taken must be a proportionate means of achieving a legitimate aim. Before putting a particular security measure in place, prison management and staff should consider whether the action will resolve the problem at hand, whether there are other, less restrictive ways of dealing with the issue effectively, and what safeguards need to be in place to reduce any risks to the individuals concerned. In other words, measures to uphold security need to be flexible enough to allow for situations to be treated differently based on individual circumstances and assessments.
- **Necessity:** Prison authorities should consider whether measures and specific actions are necessary to achieve the aims of safety and security or whether other actions can be taken to meet the same aims. Security measures such as the use of force, arms and restraints should be used only as measures of last resort once other methods have been tried and failed [see [Safety and security](#)]. When security measures are deemed necessary, it is important to determine the level and time frame of any action taken to ensure the minimum necessary intervention. All security measures taken should be the minimum needed to be considered effective and should be stopped once the objective has been achieved or can no longer be achieved using those means.
- **Legality:** Any security measures taken in prisons must be based in domestic legislation or procedures and should serve a legitimate objective as defined by the law. These laws and procedures must be in line with international human rights standards.

- **Non-discrimination:** Authorities have a duty not to discriminate in any safety and security measure taken. Domestic legislation and policies should affirm that the use of these actions is to be carried out without any discriminatory bias and safeguards need to be in place to ensure against their discriminatory use.

The use of all types of security measures needs to be defined in a clear set of rules and regulations and these need to be well communicated to both prisoners and staff. It is important that prisoners understand the rules and the consequences of breaking them and related processes. It is equally important that staff members understand when and how different forms of security measures can be used, the safeguards that need to be in place, reporting requirements and any consequences of their misuse or overuse.

Good order is best achieved in facilities where dynamic security approaches are employed. These approaches allow prison staff to become more aware of what is going on in a prison, anticipate potential problems and threats to security at an early stage and be more responsive when specific issues arise. Staff who have regular contact with prisoners will also be better informed as to how effective specific security measures will be and will identify any associated risks.

Rule 50 of the EPR encourages authorities to consult with prisoners about their conditions of imprisonment. Facilitating a positive dialogue, listening to prisoners' ideas and suggestions and taking action as appropriate can lead to a safer prison environment and reduce the risk of violence and unrest. Forums to enable prisoner consultation might include suggestion boxes, prisoner representatives and open consultations between management, staff and prisoners. As noted by the Council of Europe, successful consultation processes rely on good prison leadership, and require authoritative guidance on how they should be run.<sup>226</sup>

## Security and safety



### Relevant rules

#### Rule 51:

1. The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.
2. The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners under their control.
3. As soon as possible after admission, prisoners shall be assessed to determine:
  - (a) the risk that they would present to the community if they were to escape;
  - (b) the risk that they will try to escape either on their own or with external assistance.
4. Each prisoner shall then be held in security conditions appropriate to these levels of risk.
5. The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

#### Rule 52:

1. As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison, or whether they are likely to harm themselves.
2. Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.
3. Every possible effort shall be made to allow all prisoners to take part fully in daily activities in safety.
4. It shall be possible for prisoners to contact staff at all times, including during the night.
5. National health and safety laws shall be observed in prisons.

Prisons need a clear set of rules and regulations in place to protect the safety and security of all within the facility. Safety measures include necessary equipment and procedures to deal with riots, fires, floods and other natural disasters.<sup>227</sup> This involves good contingency

<sup>226</sup>. Bishop, Norman, 'Prisoner participation in prison management', *Champ pénal/Penal field* Vol. III/2006, 18 April 2006.

<sup>227</sup>. For practical guidance on prisons and natural hazards, see PRI, *Natural hazards and prisons*, 2021.

planning, risk assessments and mitigation strategies, as well as practical response measures such as emergency evacuation procedures or remain in place orders. Safety and security procedures must also be in place for prisoner transfers.

Security measures are necessary in prisons to prevent escape, unrest, violence or to uphold rules and regulations. On a day-to-day level, good security also allows prisoners to access prison services and activities safely which will, in turn, contribute to their successful rehabilitation. Basic health and safety considerations are important for all aspects of prison life (Rule 52.5), including places where prisoners work or receive training, such as technical workshops, kitchens and gardens.

Prison security encompasses many things, including physical security measures such as bars, locks, perimeter security, CCTV, alarm systems and systems for prisoners to communicate with staff at all times of the day and night (Rule 52.4). It also encompasses security procedures such as the use of prisoner searches, disciplinary measures, restraints, and the use of force or arms. Dynamic security approaches are also crucial for maintaining safety and security.

### **Risk and needs assessments**

Assessments of security risks must be based on individualised risk and needs assessments, and any security measures imposed should be informed by these assessments, including the potential health implications of different measures. These individual assessments should be carried out as soon as possible after a person arrives to prison but must also be updated on a regular basis thereafter.

The outcome of individual assessments will determine many aspects of an individual's life in prison, so it is crucial that assessment tools are well designed and applied correctly. Staff conducting the assessments need to be carefully selected and well trained, and it must be possible for prisoners to challenge the outcome of their assessment.

Good security classification allows prison management to plan budgets, staffing and other resource allocation, and organise day-to-day prison life more efficiently. Over-classification can be detrimental to prisoners' human rights especially where prisoners are subject to more security measures than necessary. Over-classification can also be a strain on prison budgets because higher security measures are generally more costly and require more staffing.

Risk and needs assessments should consider many different factors. To enable authorities to house prisoners in appropriate facilities equipped to meet their needs, assessments should include:

- individuals' specific needs and vulnerabilities;
- physical or mental healthcare needs;
- substance dependency;
- protection from violence;
- the prevention of self-harm or suicide;
- the offence committed;
- the risk of escape;

any danger the individual might pose to themselves, to others or to the overall safety and security of the prison facility or the community (Rule 51.3);

in the case of pre-trial detainees, any risk they may pose to any witnesses.

The commentary to the EPR notes that risk assessments should take account of assessments made by other appropriate agencies such as the police. These should also include any assessments by specialists such as social workers, psychologists and medical specialists.



Assessments are used to determine a prisoner's security classification which may determine their allocation. Even where the security classification is initially determined by the sentencing judge, this classification can change over time based on the decisions of prison and other designated authorities. Over-classification is common in systems which lack the flexibility to change a person's classification based on their progress and behaviour.

Prisoners who are admitted to higher security regimes may have security restrictions eased over time, while others may be transferred to higher security facilities in response to specific incidents. A prisoner's security classification often determines their sentence planning, including rehabilitation programming and access to education and training. It might also impact the time they are allowed to spend outside their cells, recreation opportunities and the types of family visits allowed.

Because of the wide-ranging impact of classification, prisoners should never be held under stricter security measures than is necessary to secure their safe custody (Rule 51.1). Any reduction in actual security risk should be recognised and reflected in treatment and conditions of detention.

### The problem of overclassification

It is important that a prisoner's assessment and classification is never based solely on their offence or sentence length. Some groups of prisoners are frequently over-classified and subject to regimes more restrictive than required. In particular, prisoners on death row and those serving life sentences are frequently subject to harsh security regimes based only on the nature of their sentence rather than on any risk they may present.

People with mental health issues are also regularly given a higher security classification than is required. In these cases, poor classification can make it difficult for prison staff to understand and respond to specific risks and triggers for poor mental health or potential suicide or self-harm risks. UNODC has noted that overclassification is very common in the case of prisoners with special needs.<sup>228</sup>

In some cases, low-risk detainees may be held in a higher security classification than necessary due to the lack of space in, or the location of lower security facilities. Women are often subjected to higher levels of security than necessary considering the generally lower risks they pose. Prison administrations should develop and use assessment tools which address women's gender-specific needs and circumstances in line with the requirements of Rules 40 and 41 of the Bangkok Rules.

The CPT has raised particular concerns about overly restrictive measures used for pre-trial detainees,<sup>229</sup> and it is important to note that thorough risk and needs assessments are equally important for this group.

### Special high security or safety measures



#### Relevant rule

##### Rule 53:

1. Special high security or safety measures go beyond those referred to in Rules 51 and 52 and are measures imposed on prisoners who pose a particular threat to security or safety.
2. Such measures shall only be applied in exceptional circumstances and only for as long as security or safety cannot be maintained by less restrictive means.

3. Such measures may include the separation of a prisoner from other prisoners. Such separation shall be subject to the requirements of this rule and, additionally, of Rule 53A.
4. The nature of any such measures, their duration and the grounds on which they may be applied, as well as the procedures to be followed in imposing and implementing them, shall be determined by national law.

<sup>228</sup>. UNODC, *Handbook on prisoners with special needs*, 2009.

<sup>229</sup>. CPT, *Report to the Swedish Government on the visit to Sweden carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, CPT/Inf (2021) 20, 9 September 2021.



### Relevant rule (continued)

#### Rule 53:

5. The application of such a measure shall be approved by the competent authority for a specified period of time and a copy of the written decision shall be provided to the prisoner along with information on how to challenge the measure.

6. Any decision to extend the approved duration of such a measure shall be subject to a new approval by the competent authority and a copy of the written decision shall be provided to the prisoner along with information on how to challenge the measure.

7. Such measures shall be applied to individuals and not to groups of prisoners.

8. Such measures shall only be based on the current risk that a prisoner poses, shall be proportionate to that risk and shall not entail more restrictions than are necessary to counter that risk.

9. Any prisoner subjected to such measures shall have a right of complaint in the terms set out in Rule 70.

Special high security or safety measures may be necessary in prisons to manage risks in relation to individual prisoners, in particular parts of a prison, or in response to specific situations. These measures should always be based on individual assessments and never applied based on the crime committed, sentence length or as a pre-trial detention measure. Such measures should never be used to punish or intimidate individual prisoners or groups of prisoners.

Those held in high security detention must be afforded all their rights, including access to healthcare, contact with the outside world and opportunities for education, training and recreation. Staffing levels, expertise and other resourcing available should reflect security requirements as the management of higher security prisoners requires closer supervision, specialised training and additional financial and technical resources.

Additional security measures are outside the parameters of regular security and should be considered exceptional in nature. As such, there are additional safeguards that need to be in place for their use. In particular, the use of additional security measures and any decision to extend the duration of such measures (Rule 53.6) must be approved by a competent authority, and a copy of the written decision must be given to the prisoner (Rule 53.3). The principles of proportionality, necessity and legality must apply equally in relation to the use of any exceptional measures (Rule 53.2).

Risk assessments of high security prisoners will, by necessity, need to be more comprehensive than those undertaken for lower security prisoners. The Council of Europe has set out guidance on steps to be undertaken in relation to risk assessments of higher security prisoners, reiterating that assessments must be periodically reviewed to allow for a dynamic re-assessment of risk and that assessments should be coupled with opportunities for offenders to change their attitudes and behaviours.<sup>230</sup> This must apply to all prisoners, including those who are deemed exceptional security risks.

In crisis situations or other emergencies, any measures taken must be limited to the purpose of responding to the situation at hand. They should be timebound and subject to regular review, lasting only as long as needed to protect the health and safety of prisoners, staff and the broader community. Any measures taken, the grounds for their use, permitted durations and all procedures to be followed, must be defined by law (Rule 53.4). This is crucial to ensure that such measures are not used to punish or intimidate prisoners. Special security measures might include lockdowns, additional searches and the separation of prisoners.

Prisoners must be able to challenge the use of exceptional security measures and any decision to extend their duration (Rules 53.4 and 53.5) and to make complaints about any security measure imposed (Rule 53.9) [see [Requests and complaints](#)]. Authorities should ensure effective oversight of high security detention, including the provision of unimpeded access to independent monitors.

<sup>230</sup> Council of Europe, *Recommendation CM/Rec(2014)3 of the Committee of Ministers to Member States concerning dangerous offenders*, 19 February 2014, [pjp-eu.coe.int/documents/41781569/42171329/CMRec+%282014%29+3+concerning+dangerous+offenders.pdf](http://pjp-eu.coe.int/documents/41781569/42171329/CMRec+%282014%29+3+concerning+dangerous+offenders.pdf).



## Separation of prisoners



### Relevant rule

#### Rule 53A:

The following provisions apply to the separation of a prisoner from other prisoners as a special high security or safety measure:

- (a)** prisoners who are separated shall be offered at least two hours of meaningful human contact a day;
- (b)** the decision on separation shall take into account the state of health of the prisoners concerned and any disabilities they may have which may render them more vulnerable to the adverse effects of separation;
- (c)** separation shall be used for the shortest period necessary to achieve its objectives and shall be regularly reviewed in line with these objectives;
- (d)** prisoners who are separated shall not be subject to further restrictions beyond those necessary for meeting the stated purpose of such separation;
- (e)** cells used for separation shall meet the minimum standards applicable in these rules to other accommodation for prisoners;

**(f)** the longer a prisoner is separated from other prisoners, the more steps shall be taken to mitigate the negative effects of their separation by maximising their contact with others and by providing them with facilities and activities;

**(g)** prisoners who are separated shall be provided, as a minimum, with reading materials and the opportunity to exercise for one hour per day, as specified for prisoners in Rules 27.1 and 27.2;

**(h)** prisoners who are separated shall be visited daily, including by the director of the prison or by a member of staff acting on behalf of the director of the prison;

**(i)** when separation is adversely affecting a prisoner's physical or mental health, action shall be taken to suspend it or to replace it with a less restrictive measure;

**(j)** any prisoner who is separated shall have a right of complaint in the terms set out in Rule 70.

In exceptional situations it may be necessary to separate individual prisoners from the general prison population for reasons of security or safety (Rule 53A). Even in high security prisons this should only apply to a small number of cases. Such separation should never constitute normal practice, for instance application to a whole group, and must be fully justified. In most cases separation is done as an involuntary measure, but in some situations, prisoners might be separated as a protective measure, sometimes on a voluntary basis. The CPT has noted that this may be because of the nature of their offence, their cooperation with the criminal justice authorities, inter-gang rivalry, debts outside or inside the prison, or the general vulnerability of the person. The CPT adds that authorities should resort to solitary confinement for protection purposes only when there is absolutely no other way of ensuring the safety of the prisoner concerned.<sup>231</sup>

When separation is determined to be necessary, it is important that all affected prisoners are protected from human rights violations and that their conditions of detention meet all standards of decency. All the protections and minimum standards related to treatment and conditions of detention in the EPR and other human rights standards must apply equally to prisoners who are separated. At the same time, all measures necessary for the protection of separated prisoners apply to those segregated for reasons of security and those held in solitary confinement [see [Solitary confinement](#)].

Any separation of a prisoner from the general prison population needs to be determined by individual assessments and based on the principles of proportionality, necessity and legality. In respect of the proportionality principle, the type and restrictions imposed are likely to depend on the reasons for the separation. For example, those separated for their own protection should not be subject to the same restrictions as those separated because they pose a security risk.

Any period of separation should be used for the shortest period necessary and reviewed on a regular basis at senior level. Assessments should include any risks to the individual, including any physical or mental health issues or disability that might make them more vulnerable to being separated, with due regard for the particular risks of separation for women and other potentially vulnerable groups, including those with existing mental health issues or

<sup>231</sup> CPT, 21st General Report of the CPT, CPT/Inf (2011)28, para. 54.

intellectual disabilities. The Nelson Mandela Rules and the CPT have made it clear that any form of involuntary separation, whether as a disciplinary measure or for the maintenance of order and security, must be subject to authorisation by law or regulation.<sup>232</sup>

### Meaningful human contact

The EPR specify that any separated prisoner must have at least two hours of meaningful human contact a day. This is to avoid the negative impacts of separation and to protect against human rights violations. If someone does not have this amount of human contact, their treatment will amount to solitary confinement which is strictly limited [see **Solitary confinement**]. Meaningful human contact is best determined on a case-by-case basis but can generally be understood according to the following definition drafted by a group of independent experts and used by the CPT:

*the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and wellbeing. Such interaction requires the human contact to be face-to-face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.*<sup>233</sup>

Human contact may consist of visits by family and others as well as interactions with prison staff. While face-to-face contact is necessary, this should not preclude additional means of communication including telephone and video calls.

### Protective and mitigating measures

There are many protective and mitigating measures that can be put in place to reduce the potential negative impact of separation on individual prisoners. The EPR note that the longer a person is separated from others, the more steps need to be taken to mitigate the impact of separation and particularly the impact on their mental health. This might require increasing their contact with the outside world or enhancing access to services and activities.

Fundamentally, prisoners should not be subject to restrictions other than the separation itself. This means authorities should ensure separated prisoners still have access to toilets and showers, adequate food and drinking water, reading materials, services and activities, including the opportunity to exercise for at least one hour per day. Those separated must have equal means and ability to make requests and complaints [see **Requests and complaints**].

The EPR note that any separated prisoner should be visited on a daily basis, including by the prison director or his or her representative. It is also important that those held in involuntary separation are visited daily by healthcare staff in order to assess the impact of separation on their physical and mental health, including any suicide or self-harm risk, and to detect any signs of ill-treatment [see **Healthcare**]. This requires healthcare staff to be informed whenever a person is separated and to be able to meet with separated prisoners privately in full confidentiality. The Nelson Mandela Rules (Rule 33) require healthcare staff to report to the prison director if a prisoner's physical or mental health has been adversely impacted by conditions of imprisonment. The EPR stipulate that if this is the case, authorities must take action to suspend the separation or use a less restrictive measure.

<sup>232</sup>. Ibid.; Nelson Mandela Rules, Rule 37.

<sup>233</sup>. PRI and Essex University, *Essex paper 3: Initial guidance on the interpretation and implementation of the Nelson Mandela Rules*, February 2017, pp. 88, 89.

## Searches and controls



### Relevant rule

#### Rule 54:

1. There shall be detailed procedures which staff have to follow when searching:
  - (a) all places where prisoners live, work and congregate;
  - (b) prisoners;
  - (c) visitors and their possessions; and
  - (d) staff.
2. The situations in which such searches are necessary and their nature shall be defined by national law.
3. Staff shall be trained to carry out these searches in such a way as to detect and prevent any attempt to escape or to hide contraband, while at the same time respecting the dignity of those being searched and their personal possessions.
4. Persons being searched shall not be humiliated by the searching process.
5. Persons shall only be searched by staff of the same gender.
6. There shall be no internal physical searches of prisoners' bodies by prison staff.
7. An intimate examination related to a search may be conducted by a medical practitioner only.
8. Prisoners shall be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibit this.
9. The obligation to protect security and safety shall be balanced against the privacy of visitors.

Searches of prisoners, cells, staff, and visitors are an important tool of prison security. They may be necessary to prevent smuggling of prohibited items such as drugs, weapons or items which could aid escape, and they also act as a deterrent against the smuggling of such items. However, searches can be intrusive, distressing and humiliating, and their use must be well regulated, carefully monitored and clearly explained to staff, prisoners, and visitors. As with all security procedures, searches should be used in accordance with the principles of proportionality, legality and necessity and must never be used to deliberately harass or threaten.

There are different types of searches in use in prisons, and this differs from country to country and between different facilities, depending on security levels and specific risk factors. High security facilities are likely to utilise more frequent and intrusive search techniques, while regular searching is likely to be used less frequently in lower security prisons. In all cases, the types of searches permitted, their frequency and methods to be used should be clearly set out in prison procedures.

Many facilities conduct searches of prisoners when they first arrive at prison, including following a transfer. Searches may also take place after prison visits, or when prisoners return from an outside appointment such as a court appearance or hospital appointment. It may also be necessary to search prison visitors and staff to prevent smuggling of contraband items.

It is good practice for prisoner searches to be conducted based on individual risk assessments rather than as a blanket policy. It may not, for example, be necessary for all prisoners to be searched after receiving visitors; instead, authorities can search only those who have been identified as a specific risk. This is important to prevent unnecessary or overuse of search procedures and to ensure they are not used in a discriminatory way.

### Safeguards

There are specific safeguards that can be put in place to ensure that searches are conducted in a dignified and humane manner and that persons being searched do not feel humiliated at any stage of the process. Staff assigned to conduct searches should be appropriately trained to ensure the procedures are both effective and respectful of the rights and privacy of those being searched whether they are prisoners, staff or visitors.

There are three main types of body searches, pat down or frisk searches, strip searches and body cavity searches. There are different safeguards that need to be in place based on the type of search procedure being used. In all cases, searches should be carried out only by staff of the same gender as the person being searched (Rule 54.5). Where possible LGBTQI+ people should be given a choice of being searched by a male or female staff member.

All forms of body search carry a risk of abuse and humiliation. Protections are particularly important for strip and body cavity searches and such searches should never be carried out in public view. A person should never be required to be fully naked during strip searches, with the two-step search, whereby upper and lower clothes are removed at different stages, constituting good practice. The CPT has also asserted that it is preferable for more than one officer to be present during strip searches as a form of protection for both prisoners and staff.<sup>234</sup> Alternatives to such intrusive searches should be utilised wherever possible, including the use of appropriate technology.

The EPR make it clear that body cavity searches should not be carried out by prison staff (Rule 54.6) and should instead be conducted by medical practitioners (Rule 54.7) with due regard for the guidelines in the World Medical Association Statement on Body Searches of Prisoners.<sup>235</sup> The Nelson Mandela Rules clarify that body cavity searches should only be conducted by qualified healthcare professionals other than those primarily responsible for the care of the prisoner (Nelson Mandela Rules, Rule 52 (2)).

Body cavity searches should only be used as a last resort, when there is a clearly defined risk that the person is carrying a prohibited item and where there is no alternative way of detecting any hidden items. They might also be required in exceptional circumstances where there is an immediate health risk to the prisoner caused by an item hidden in their body. The commentary to the EPR clarifies that natural means of expelling items, involving close supervision while waiting for the item to be expelled should be the preferred method.

When searching prisoners' cells and personal property, it is important that prisoners are present to witness the search unless there is a specific security or investigative reason for them not to be there (Rule 54.8). Prisoners' cells and personal belongings must be treated with respect by prison staff. These searches might be needed to look for contraband or to check that security has not been compromised. In some cases, it may be necessary to search cells to check for any suicide or self-harm risk factors.

Rule 51 of the Nelson Mandela Rules provides another safeguard for the conduct of searches, requiring that prison administrations keep appropriate record of all searches as well as the reason for the searches, the identity of those who conducted them and any results of the searches.

### Searches of women and children

Special protections need to be in place when conducting intrusive searches of women and children as they are at particular risk of humiliation and ill-treatment during searches given their anatomy, power dynamics between men and women, and any previous abuse. The Bangkok Rules clarify that personal searches of women and girls should 'only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures' and call on authorities to develop alternative methods to avoid the harmful psychological and possible physical impact of invasive body searches on women (Bangkok Rules, Rules 19-20). Vaginal searches should never be used on pregnant women and girls.

The Council of Europe has provided that, 'Security checks shall be carried out in a child-sensitive manner that respects children's dignity and privacy as well as their right to physical and psychological integrity and safety. Any intrusive searches on children, including body cavity searches, shall be prohibited.'<sup>236</sup>

<sup>234</sup> CPT, *Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo carried out by the European Committee for the Prevention of Torture*, 6 October 2011, CPT/Inf(2011)26, para. 29.

<sup>235</sup> 'WMA Statement on body searches of prisoners', *World Medical Association*, October 2016, [www.wma.net/policies-post/wma-statement-on-body-searches-of-prisoners](http://www.wma.net/policies-post/wma-statement-on-body-searches-of-prisoners).

<sup>236</sup> Council of Europe, *Recommendation CM/Rec(2018)5 of the Committee of Ministers to the member States concerning children with imprisoned parents*, 4 April 2018, para. 23, [edoc.coe.int/en/children-s-rights/7802-recommendation-cmrec20185-of-the-committee-of-ministers-to-member-states-concerning-children-with-imprisoned-parents.html](https://www.edoc.coe.int/en/children-s-rights/7802-recommendation-cmrec20185-of-the-committee-of-ministers-to-member-states-concerning-children-with-imprisoned-parents.html).

## 8.2 Disciplinary measures



### Relevant rules

#### Rule 56:

1. Disciplinary procedures shall be mechanisms of last resort.
2. Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.

#### Rule 57:

1. Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence.
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.

#### 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.

#### Rule 59:

Prisoners charged with disciplinary offences shall:

- (a) be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them;
- (b) have adequate time and facilities for the preparation of their defence;
- (c) be allowed to defend themselves in person or through legal assistance when the interests of justice so require;
- (d) be allowed to request the attendance of witnesses and to examine them or to have them examined on their behalf; and
- (e) have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing.

#### Rule 60:

1. Any punishment imposed after conviction of a disciplinary offence shall be in accordance with national law.

#### Rule 61:

A prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority.

#### Rule 62:

No prisoner shall be employed or given authority in the prison in any disciplinary capacity.

Prison authorities may need to impose restrictions, disciplinary measures and sanctions on prisoners for breaching internal rules and regulations, and to maintain good order. Restrictions, measures and sanctions must not be imposed as an additional punishment on prisoners (see Rules 1 and 2).

Disciplinary sanctions can be detrimental not only to the prisoner themselves but also to the wider prison environment and can lead to distrust and tension between prisoners and staff. They are also an area of high risk for human rights violations. The EPR, therefore, recognise that such measures should be imposed as a last resort and that the authorities should, wherever possible, use alternative measures to resolve issues (Rules 56.1 and 56.2).

Prison staff should use conflict resolution, negotiation or other dynamic security approaches to manage disputes in prison, including inter-prisoner conflicts and conflicts between staff and prisoners. Positive staff attitudes and interactions are critical to supporting a safe prison environment. Prison managers and staff must be fully engaged with, and committed to, the principles of dynamic security and alternative dispute resolution (see Rule 51.2).

Prison staff should receive ongoing training on the concept of dynamic security and preventive and defusing techniques such as negotiation and mediation.






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**PROMISING PRACTICE: TRAINING ON RESTORATIVE PRACTICES IN IRELAND**

The Irish Prison Service (IPS) is collaborating with external restorative practices (RP) experts to integrate RP into training for IPS staff and IPS College Tutors. The College has developed and delivered training materials for Recruit Prison Officers (RPOs). RPOs spend 12 weeks at the College, before being placed in prisons and continuing the Higher Certificate in Custodial Care (HCCC) with South East Technological University (SETU) part-time over two years. In week 2 at the College, RPOs receive a two and a half hour training on RP which includes several elements of RP values and skills. Tutors use discussions, group exercises, videos and role plays. The College also integrated RP into modules on communication and de-escalation.

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What constitutes a disciplinary offence needs to be defined in national law and needs to determine the 'acts or omissions that constitute disciplinary offences', the type of punishment that can be imposed, the body responsible for imposing the punishment ('the competent authority') and appeal mechanisms (Rule 57.2 a – e).

The disciplinary offences and punishments should be precisely defined so that there is no room for ambiguity or misunderstanding on the part of the prison staff or prisoner. Punishments may include recorded warnings, exclusion from work, restriction on movements in prison or restrictions on the use of certain personal possessions.

### Disciplinary procedures

A disciplinary offence should be reported by prison authorities to the competent authority which should investigate the allegation 'without undue delay' (Rule 58). Prisoners should be afforded all the requisite due process safeguards before the disciplinary body including:

- the right to defend themselves and access to legal assistance 'when the interests of justice so require' (Rule 59 c);
- adequate time and facilities to prepare a defence (Rule 59 b), and the right to call and examine witnesses (Rule 59 d);
- the right to free assistance of an interpreter if the prisoner cannot understand or speak the language used at the hearing (Rule 59 e); and
- the right to be informed 'promptly' in a language the prisoner understands and, in detail, of the nature of the accusations against them (Rule 59 a).

Disciplinary proceedings may be governed by Article 6 of the ECHR (the right to a fair trial) depending on whether the infringement is a 'criminal charge'. In such cases, prisoners will be afforded all due process safeguards.

Disciplinary hearings should be convened 'without undue delay.' Each jurisdiction should have its own internal procedures for such hearings, i.e. magistrates, specialist judges, a panel. Most importantly and in line with international standards, the 'competent authority' should be an independent and impartial decision-making body.<sup>237</sup> The CPT has noted the importance of 'the [prisoner's] right to know and be heard' in disciplinary proceedings.<sup>238</sup> In order to participate in the hearing, prisoners should be:

- provided with key information including details of the allegations against them, copies of relevant rules and regulations;
- given the assistance of an interpreter (where necessary);
- given access to a pen, paper or computer to enable them to participate meaningfully in the hearing.

As part of a fair trial and due process, prisoners are entitled to attend the disciplinary hearings in person and to participate in proceedings with or without legal assistance, including cross-examining witnesses, calling evidence and asking questions.<sup>239</sup> The prison

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<sup>237</sup> European Convention of Human Rights, Article 6; International Covenant on Civil and Political Rights, Article 14(1).

<sup>238</sup> CPT, *Report to the Maltese Government on the visit to Malta by the CPT from 26-30 September 2011*, CPT/Inf (2013) 12, 4 July 2013, para. 38.

<sup>239</sup> European Convention of Human Rights, Article 7 (the right to a fair trial).

authorities must make arrangements to provide appropriate assistance to any prisoner who has difficulty understanding the proceedings and presenting a case due to disability, learning difficulties or insufficient command of English.

Like all legal proceedings, the right to legal representation is afforded to prisoners in disciplinary hearings. National law and other regulations should detail the legal aid provisions for disciplinary proceedings and arrangements for interpretation for disciplinary proceedings. The EPR state that a prisoner should be entitled to defend themselves or through a lawyer 'when the interest of justice so requires' (Rule 59 c). The 'interest of justice' should involve an assessment of the complexity of the case, the severity of the allegations, the prisoner's individual circumstances, including their capacity to understand the accusations among other factors. If legal assistance is not available, prisoners should be entitled to ask for assistance from a friend or associate.

### Decisions and sanctions

Prisoners should be informed, in writing, of the outcome of any disciplinary proceedings and have access to appeal mechanisms, such as judicial review. The right to appeal against the decision is an important element of a fair trial and due process. Prisoners should be fully informed of their rights of appeal and able to exercise that right if they so wish (Rule 61). Prison authorities should not implement the disciplinary measures until all avenues of appeal have been exhausted.

In terms of the sanction itself, the EPR require that any punishment should be 'in accordance with national law' and 'proportionate to the offence' in terms of its severity (Rules 60.1 and 60.2). This should include an examination of the nature and severity of the alleged offence, the role of the individual in that offence, any mitigating or aggravating factors and the likely impact of any sanctions against them. Decision-makers should consider each case on its own merits and also pay particular attention to any contributory factors such as mental ill health or developmental disability that might have been the cause of the infraction.<sup>240</sup>

The EPR prohibit prisoners from reporting on or recommending appropriate disciplinary measures for their peers (Rule 62). Prisoners should not have any authority over prisoners in punishment or segregation units.

### Prohibited sanctions and restrictions



#### Relevant rules

##### Rule 60:

2. The severity of any punishment shall be proportionate to the offence.
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.

4. Punishment shall not include a total prohibition on family contact.

5. Instruments of restraint shall never be applied as a punishment.

##### Rule 63:

Only A prisoner shall never be punished twice for the same act or conduct.

The EPR provide a comprehensive list of punishments and restrictions that are prohibited as they may amount to torture or other ill-treatment contrary to international law. These include collective punishments, corporal punishment or placing an individual in a dark cell '...and all other forms of inhuman or degrading punishment' (Rules 60.3, 60.4 and 60.5). However, this list should not be seen as exhaustive, and other treatment may reach the threshold of torture or ill-treatment.<sup>241</sup> The Nelson Mandela Rules note that decent material conditions including light, ventilation, nutrition, drinking water should be available to all prisoners without exception.<sup>242</sup>

<sup>240</sup>. See Nelson Mandela Rules, Rule 39(3).

<sup>241</sup>. The term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of punishment, intimidation or coercion, discrimination or to obtain a confession. See UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.

<sup>242</sup>. Nelson Mandela Rules, Rule 42.

Similarly, instruments of restraint should never be applied as a punishment (Rule 60.5; see also Rule 68). Punishment should not include the total prohibition on family contact (Rule 60.4).

A full record of restrictions and disciplinary sanctions imposed on prisoners must be kept in the individual prisoner file. This provides an important safeguard against the unfair imposition of sanctions and the informal use of punishments. The information recorded should include details of the infringement, the details and outcome of the disciplinary proceedings and nature of the sanction imposed.

Separately, prison authorities should establish centralised data on disciplinary sanctions to analyse trends and patterns in relation to the use and effectiveness of the existing disciplinary regime and to detect any discriminatory practices, bias or issues between various staff. This data will also be useful for monitoring bodies.

Prison staff should receive full training on the disciplinary regime in particular the conduct that constitutes an offence, the disciplinary process and the attendant sanctions associated with each infraction. The training should cover the relevant legislation, regulations and policies, preventive and defusing techniques, human rights principles and medical considerations. Prison staff should have a full understanding of the disciplinary process and preventive and defusing techniques so they can ensure that prisoners are able to exercise their right to a fair trial [see [Management and staff](#)].

Any changes to the disciplinary regime including any new rules or regulations should be fully communicated to all staff and prisoners in a timely manner. It is important that both prisoners and staff are fully aware of the current regime to avoid the imposition of unlawful or improper sanctions.

The EPR make clear that a prisoner must not be punished twice for the same infraction (Rule 63). This is particularly relevant in those cases where the prisoner's conduct has been the subject of criminal charges (for example an assault); in such cases, the individual should not receive a 'double punishment' through an internal disciplinary process.

## 8.3 Solitary confinement



### Relevant rule

#### Rule 60:

**6(a).** Solitary confinement, that is the confinement of a prisoner for more than 22 hours a day without meaningful human contact, shall never be imposed on children, pregnant women, breastfeeding mothers or parents with infants in prison.

**6(b).** The decision on solitary confinement shall take into account the current state of health of the prisoner concerned. Solitary confinement shall not be imposed on prisoners with mental or physical disabilities when their condition would be exacerbated by it. Where solitary confinement has been imposed, its execution shall be terminated or suspended if the prisoner's mental or physical condition has deteriorated.

**6(d).** The maximum period for which solitary confinement may be imposed shall be set in national law.

**6(e).** Where a punishment of solitary confinement is imposed for a new disciplinary offence on a prisoner who has already spent the maximum period in solitary confinement, such a punishment shall not be implemented without first allowing the prisoner to recover from the adverse effects of the previous period of solitary confinement.

**6(f).** Prisoners who are in solitary confinement shall be visited daily, including by the director of the prison or by a member of staff acting on behalf of the director of the prison.

The placement of detainees into solitary confinement constitutes a high-risk situation for human rights violations. The EPR, similar to the Nelson Mandela Rules, define solitary confinement as the physical isolation of individuals by confinement to their cell for more than 22 hours per day without meaningful human contact (Rule 60.6 a). These rules should be read in conjunction with Rule 53 A (rules on separation).

The amended EPR make provision for solitary confinement only as a disciplinary sanction. This means that it cannot be used for any of the other purposes of segregation, such as dealing with an outbreak of violence where no one has yet been subjected to a disciplinary process.

There is a wealth of medical research confirming that the denial of meaningful human contact can cause 'isolation syndrome', the symptoms of which include anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia, psychosis, self-harm and suicide, and can destroy a person's personality.<sup>243</sup> In light of the damaging effects of solitary confinement, the EPR place limitations on the use of solitary confinement, including that it should only be imposed as a disciplinary punishment in exceptional circumstances, for the shortest period possible and should never amount to torture or inhuman or degrading treatment or punishment (Rule 60.6.c). This position is confirmed by the CPT in their policy statements.<sup>244</sup>

The decision to place a prisoner in solitary confinement should be taken carefully following a full assessment of the individual's state of health (Rule 60.6 b). Prison doctors should undertake this initial assessment and continue to monitor the mental and physical health of prisoners who are in solitary confinement (Rule 60.6 b). If prison doctors determine that a prisoner's health has deteriorated as a result of the solitary confinement regime, it should be terminated or suspended. Prison doctors or other healthcare officials should, under no circumstances, participate either actively or passively in acts which might amount to torture or other ill-treatment. Allowing a prisoner to remain in solitary confinement when it is not appropriate contravenes medical ethics and international standards.<sup>245</sup>

Usually, a prisoner subject to solitary confinement will be held on their own; however, in some jurisdictions they may be accommodated with one or two other prisoners and, in such cases, the EPR apply equally to this group of individuals.

Both the EPR and the Bangkok Rules<sup>246</sup> state that solitary confinement should be prohibited for pregnant women, women with infants and breastfeeding mothers in prison (Rule 60.6a). This is due to possible health complications that may arise in placing a woman in this regime and to prevent the separation of mother and child.

LGBTQI+ prisoners face risks of being placed in 'protective' solitary confinement as a result of their sexual orientation or gender identity or expression. Such measures should not be used to stigmatise or punish individuals. Where separation from other prisoners is used, prison regimes must ensure that prisoners have meaningful social contact with others by providing meaningful in-cell and out-of-cell activities. Transgender persons undergoing sex reassignment treatment should not be automatically placed in solitary confinement. Prisoners with existing mental health issues should never be placed in solitary confinement given the risks of exacerbating their condition (Rule 60.6b).

Prison authorities should pay particular attention to prisoners with disabilities when imposing disciplinary sanctions or placing them in restrictive regimes. Research suggests that placement in solitary confinement can exacerbate existing disabilities or chronic conditions, particularly where the requisite care and treatment is not available.<sup>247</sup> Prison staff should be available to support these prisoners with everyday tasks such as eating meals, taking showers, getting dressed and other self-care needs. Solitary confinement should not disrupt treatment plans and prisoners should be assured access to medical treatment and therapies as required.

<sup>243</sup> See PRI and Association for the Prevention of Torture, *Balancing security and dignity in prisons: a framework for preventive monitoring*, 2013, p. 14.

<sup>244</sup> CPT, *Solitary confinement of prisoners*, CPT/Inf (2011) 28-part 2.

<sup>245</sup> Nelson Mandela Rules, Rule 32(d).

<sup>246</sup> Bangkok Rules, Rule 22.

<sup>247</sup> UNODC, *Handbook on Prisoners with special needs*, 2009.

### Time limits for solitary confinement

The EPR do not impose a specific maximum period of solitary confinement and defer this decision to national authorities (Rule 60.6d). National authorities, however, have a duty to specify in national law a clear maximum period for which solitary confinement may be imposed. In setting such periods, they should bear in mind the maximum periods set in other standards and those supported by expert bodies such as the World Medical Association,<sup>248</sup> with due regard to the medical evidence in relation to any damage to an individual's mental or physical health. Failure to set appropriately short maximum periods could be regarded as inhuman and degrading, which would infringe EPR Rule 60.6c. An excessive maximum period may also be challenged before the European Court of Human Rights, for it would infringe the prohibition of torture and inhuman or degrading treatment and punishment in Article 3 of the European Convention on Human Rights.

The CPT has advised that a prisoner should not be held in solitary confinement for any longer than 14 days – preferably less – for a given offence.<sup>249</sup> Prolonged solitary confinement (defined as a time period in excess of 15 consecutive days) has been found to have significant adverse health effects and can itself amount to torture or other cruel, inhuman or degrading treatment.<sup>250</sup> For this reason, the Nelson Mandela Rules prohibit the use of indefinite or prolonged solitary confinement.<sup>251</sup>

Any decision to place a prisoner in solitary confinement must respect the principles of legality, proportionality and necessity. International standards reiterate that solitary confinement should be used in exceptional circumstances and for as short a time as possible.<sup>252</sup>

The EPR place a prohibition on the imposition of sequential disciplinary sentences resulting in uninterrupted periods of solitary confinement in excess of the maximum period (Rule 60.6 e). This may happen if prisoners are transferred between prisons and immediately placed in solitary confinement or for the purposes of intimidation, coercion, obtaining information or a confession. In such cases, a prisoner should be allowed to recover from the first period of solitary confinement before being placed in the same regime again.

### Safeguards and oversight

Where solitary confinement is applied, the prison authorities must ensure that prisoners have the same material conditions as prisoners in the wider community. In practice, this means allowing meaningful contact with others, access to social activities with other prisoners, and regular contact with family members through different means of communication, including visits. The prison authorities should also ensure meaningful in- and out-of-cell activities, such as educational, recreational or vocational programmes.

Prisoners may need support with their reintegration back into the wider prison community following a period of solitary confinement. Prison authorities should consider a phased return for these individuals and provide dedicated support and assistance as and where necessary. This may include the creation of 'step-down' programmes to enable prisoners to progress out of solitary confinement.<sup>253</sup>

Prison authorities should also ensure that strict procedural safeguards are in place to protect individuals subject to solitary confinement measures.

People held in solitary confinement should be visited every day, including by the director of the prison or by a member of staff acting on behalf of the director of the prison (Rule 60.6 f). Prisoners should also receive daily visits from medical staff to assess their physical and mental health, to detect any signs of torture or other ill-treatment

<sup>248</sup> 'WMA Statement on Solitary Confinement', *World Medical Association*, October 2019, [www.wma.net/policies-post/wma-statement-on-solitary-confinement](http://www.wma.net/policies-post/wma-statement-on-solitary-confinement).

<sup>249</sup> CPT, *21st General Report*, CPT/Inf/(2011)28, 10 November 2011, para. 56(b).

<sup>250</sup> UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment*, A/66/268, 5 August 2011; Nelson Mandela Rules, Rule 44.

<sup>251</sup> Nelson Mandela Rules, Rules 43(a)(b).

<sup>252</sup> CPT, *Solitary confinement of prisoners*, CPT/Inf (2011)28-part 2.

<sup>253</sup> A 'step down' programme supports prisoners to make a progressive transition from a restrictive environment such as solitary confinement to the general prison population. This may include a decrease in restrictions, an increase in out-of-cell time, privileges and group activities. Prisoners should be assessed for their suitability for such programmes and their progress continually assessed by a multidisciplinary team.



or suicidal/self-harm risks.<sup>254</sup> Healthcare staff should be kept fully informed of all prisoners admitted to solitary confinement and given unfettered access to visit them in segregation. Medical visits should be undertaken in private and out of sight and hearing of prison staff. Prisoners should also be entitled to request access to a doctor while in solitary confinement.

Prison authorities should undertake regular reviews of the use of solitary confinement and record its use. In particular, prison staff must record reasons for placing a prisoner in solitary confinement in the prisoner's file and should include details of the duration, interactions with prison staff, medical issues or other concerns. Prison authorities should collect disaggregated data including ethnicity, nationality, sexual orientation and other characteristics in order to identify trends and themes in its use and to monitor for potential disproportionate use among particular groups of prisoners.

As another important safeguard, monitoring bodies should be given unfettered access to all prisoners in solitary confinement, the segregation facilities as well as all relevant documentation.

In light of the serious adverse consequences of solitary confinement, prisoners should be entitled to seek an independent review of the decision to impose a period of solitary confinement through the official complaint procedure or appeals process [see [Requests and complaints](#)]. In particular, prisoners should be:

- made fully aware of their right to seek an independent review and complaints process in a language they understand and in an accessible format;
- be given the appropriate support (pens, paper and a computer) to enable them to lodge their complaint;
- enabled to file their challenge.

## 8.4 Use of force



### Relevant rules

#### Rule 64:

1. Prison staff shall not use force against prisoners except in self-defence, in cases of attempted escape, or active or passive physical resistance to a lawful order, and always as a last resort.
2. The amount of force used shall be the minimum necessary and shall be imposed for the shortest necessary time.

#### Rule 65:

There shall be detailed procedures about the use of force including stipulations about:

- (a) the various types of force that may be used;
- (b) the circumstances in which each type of force may be used;
- (c) the members of staff who are entitled to use different types of force;
- (d) the level of authority required before any force is used; and
- (e) the reports that must be completed once force has been used.

#### Rule 66:

Staff who deal directly with prisoners shall be trained in techniques that enable the minimal use of force in the restraint of prisoners who are aggressive.

#### Rule 67:

1. Staff of other law-enforcement agencies shall only be involved in dealing with prisoners inside prisons in exceptional circumstances.
2. There shall be a formal agreement between the prison authorities and any such other law-enforcement agencies unless the relationship is already regulated by domestic law.
3. Such agreement shall stipulate:
  - (a) the circumstances in which members of other law-enforcement agencies may enter a prison to deal with any conflict;
  - (b) the extent of the authority which such other law-enforcement agencies shall have while they are in the prison and their relationship with the director of the prison;
  - (c) the various types of force that members of such agencies may use;
  - (d) the circumstances in which each type of force may be used;
  - (e) the level of authority required before any force is used; and
  - (f) the reports that must be completed once force has been used.

<sup>254</sup> Nelson Mandela Rules, Rule 46(1).

The EPR recognise that, on occasion, prison staff may need to maintain internal order and security in prisons by using force against prisoners. In some cases, it may be the only option for ensuring the safety and well-being of prisoners and staff. However, the inappropriate use of force can have significant legal, health and reputational risks for staff, prisoners and their families, and the State. In some cases, the use of force may constitute cruel, inhuman or degrading treatment, or even torture. The use of force can also lead to fatalities. The ECtHR has acknowledged that it may be necessary to use force in the prison setting, but it must not be excessive and may only be used if it is indispensable.<sup>255</sup>

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide important and authoritative guidance to ensure human rights-compliant use of force and firearms by law enforcement officials, including prison staff.<sup>256</sup> Central prison administrations should use this guidance as a source of support in drafting operational instructions, policies, and procedures.

The use of force includes different methods and techniques from physical restraint to the use of weapons, lethal or non-lethal, including:<sup>257</sup>

- **Firearms:** including automatic and semi-automatic weapons, shotguns and handguns (pistols)
- **'Less lethal weapons':** which are designed to 'subdue or incapacitate' rather than to cause 'serious harm or death' including:
  - Electric-shock weapons (such as Taser-brand weapons), stun guns or stun batons (sometimes referred to as direct contact electric shock weapons). These weapons are designed to deliver their effect by the application of electricity;
  - Kinetic impact weapons and ammunition (sometimes referred to as rubber bullets but can also include plastic, wooden and foam projectiles) and hand-held batons; (These weapons are designed to deliver blunt trauma and pain compliance to subdue the individual.)
  - Chemical irritants (referred to as tear gas or riot control agents) such as CS, OC/Pepper and PAVA. (They can be used as hand-held sprays, grenades and projectiles that are fired from launchers and fixed position dispensers.)
- **Instruments of restraint:** designed to restrict or immobilise the movement of a person's body in whole or in part [see **Instruments of restraint**];
- **Chemical restraints:** defined by the CPT as the 'forcible administration of medication for the purpose of controlling a patient's behaviour'<sup>258</sup>;
- **Physical restraint:** the physical action of restraining an individual, sometimes by several people, in order to immobilise them.

### Threshold for the use of force

The use of force is strictly governed by the EPR and may only be used in limited circumstances, namely self-defence, in cases of attempted escape or active or passive physical resistance to a lawful order, and always as a measure of last resort (Rule 64.1).

The EPR are explicit that use of force employed should be the minimum necessary and used only for the shortest time necessary to restore order (Rule 64.2). As a first step, prison staff should deploy dynamic security techniques (negotiation, persuasion) to de-escalate high risk situations (through verbal and non-verbal communication skills) before resorting to the use of

<sup>255</sup> ECtHR, *Ivan Vasilev v Bulgaria*, No 48130/99, 12 July 2007, para. 63.

<sup>256</sup> Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* available, 07 September 1990.

<sup>257</sup> For more information see Omega Research Foundation, *Monitoring Weapons and Restraints in Places of Detention: A Practical Guide for Detention Monitors*, [omegaresearchfoundation.org/sites/default/files/uploads/Publications/Practical%20Guide%20-%20English%20single%20spread.pdf](http://omegaresearchfoundation.org/sites/default/files/uploads/Publications/Practical%20Guide%20-%20English%20single%20spread.pdf).

<sup>258</sup> CPT, *Means of restraint in psychiatric establishments for adults (Revised CPT standards)*, CPT/Inf(2017)6, March 2017.

force (Rule 51.2)[see [Safety and security](#)]. Prison staff should establish positive relationships with prisoners and get to know them well as this helps them to anticipate and respond effectively to security incidents in prison.<sup>259</sup>

If the authorities decide to use force, prison staff should identify themselves and give a clear warning of their intent to do so; the warnings should be given with sufficient time for it to be observed unless to do so would place prison staff at risk or create a risk of death or serious harm to themselves or others. Use of force incidents should be managed by a supervising officer who is, in turn, accountable to senior prison management. There should be a formal approval and deployment process in place for equipment and weapons.

The use of force should be discontinued as soon as there ceases to be an imminent danger.

As a minimum, the central prison administration should issue detailed use of force policies, protocols, regulations or instructions to prison staff on the use of force. The policies should include key guidance on when force may be used, who is entitled to use it, who is entitled to authorise its use and post-incident procedures. Prison staff should be made fully aware of this guidance as part of their training.

### **Use of special forces units (police or other law enforcement agencies)**

In some instances, the prison authorities may not be able to manage the level of violence or high-risk situation themselves and will need to bring in special forces units, such as the police or other law enforcement agencies, as support. The EPR make specific provision for such situations and note that a formal agreement should be in place between the prison senior management and other law enforcement agencies before the special forces units enter the prison (Rules 67.2, 67.3). This protocol should set out the remit and conduct of these external agencies on entering the prison. All prison staff should be made aware of the contents of this protocol.

### **Record keeping and oversight**

Accountability remains paramount and prison administrations should ensure that robust reporting procedures are in place following any use of force incident. All use of force incidents should be recorded and subject to oversight by the prison director or senior staff. The use of force reports should include the type of force used, the reason for its use, who applied it, who authorised its use, the duration of the incident and any injuries or fatalities sustained as a result of the incident.

Any allegations of the inappropriate use of force (be it through complaints or the review of use of force reports) must be reviewed. Effective systems must be in place to ensure that prisoners can safely raise any complaints around the use of force and that any improper use of force is identified and investigated. It is good practice for prison administrations to create Use of Force Committees or a similar body to oversee and scrutinise the use of force in the establishment.

All data regarding the use of force and use of force incidents should be collected, securely archived and made available for scrutiny, analysis and publication where appropriate.

As a further safeguard, use of force incidents should be recorded by CCTV or body cameras for the purposes of transparency and accountability with due regard to the right to privacy.

Following any use of force incident, prisoners should have the right to be examined and, if necessary, treated by a medical doctor. This examination should be conducted in private (out of sight and hearing of non-medical staff), and the results should be recorded and made available to the prisoner.<sup>260</sup> Ideally, prison staff should have an immediate debrief following any use of force incident, including a debrief with the prisoner to review the circumstances which led to the force being used.

<sup>259</sup>. UNODC, *Handbook for prison leaders – A basic training tool and curriculum for prison managers based in international standards and norms*, 2010.

<sup>260</sup>. CPT, *2nd General Report on CPTs activities covering the period 1 January to 31 December 1991*, CPT/Inf (92)3, 1992 para. 53.

In the case of death following a use of force incident, a criminal investigation should be opened to establish the circumstances of the individual's death.<sup>261</sup> An autopsy should be carried out and investigation conducted in line with international standards.<sup>262</sup>

### Training on use of force

As with all safety and security measures, prison staff should be appropriately trained on the use of force. The training should be fully comprehensive and include modules on use of force techniques, conflict resolution and de-escalation skills, risk assessment, human rights principles, medical considerations including warning signs arising from the use of force, and accountability mechanisms. The central prison administration should ensure that all front-line prison staff have read and understood the use of force policy and promote and monitor compliance with the regulations.

Prison staff should complete refresher training on a regular basis to ensure they are up to date on developments in this area. Only staff who are trained in use of force techniques should be authorised to use them.

### Use of weapons



#### Relevant rule

##### Rule 69:

1. Except in an operational emergency, prison staff shall not carry lethal weapons within the prison perimeter.
2. The open carrying of other weapons, including batons, by persons in contact with prisoners shall be prohibited within the prison perimeter unless they are required for safety and security in order to deal with a particular incident.
3. Staff shall not be provided with weapons unless they have been trained in their use.

The use of weapons in prisons is strictly limited under the EPR (Rules 69.1-69.3). The EPR do not give a definition of 'weapons' but should be read to include conventional firearms (hereafter 'arms'), batons, irritant sprays, electrical discharge weapons (EDW) and kinetic impact weapons.

The UN Guidance on Less-Lethal Weapons in Law Enforcement provides specific guidance on when these weapons may and may not be deployed and the attendant risks.<sup>263</sup> Prison authorities should use such guidance to inform national policies and procedures.

Except in special circumstances, prison staff who are in direct contact with prisoners should not carry firearms or similar lethal weapons (Rule 69.1) given their potentially lethal consequences. However, the EPR do permit prison staff to carry other less-lethal weapons such as sticks or batons which they may use 'for safety and security in order to deal with a particular incident' (Rule 69.2). Any use of batons or similar weapons should be proportionate to the level of threat from disorder and should be considered an exceptional measure.

Similar to the use of force, prison staff should use other means of control before resorting to the use of arms.<sup>264</sup> In practice, prison staff should try to defuse the situation through de-escalation, communication and negotiation.

In line with international standards, lethal weapons (firearms) should not be used against people except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life or to prevent the person presenting such a danger.<sup>265</sup>

<sup>261</sup> See PRI, *Deaths in prison: Examining causes, responses, and prevention*, November 2022.

<sup>262</sup> European Convention on Human Rights, Article 2 – Right to life.

<sup>263</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Guidance on Less-Lethal Weapons in Law Enforcement*, 2020.

<sup>264</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4.

<sup>265</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 16.

### Oversight of weapon use in prisons

The use of firearms should be tightly regulated as there is a risk they may be used in an indiscriminate or discriminatory way. Central prison administrations should establish clear protocols and guidelines for the use of firearms as well as putting in place arrangements for investigations of any incident in which a firearm is used. In every case where a firearm is discharged, prison authorities should complete a full report which should be transmitted to the prison director or senior staff member. The incident should also be recorded in the prisoner file management system and should detail the type of arms used, reason for its use, who applied it, who authorised its use and the duration of the incident. The records should also give details of any injuries sustained as a result of the incident.

In addition, prison administrations should retain a central pool of data on the use of arms which can be used to monitor and analyse their use on a national basis. As a further safeguard, the use of arms should be recorded by CCTV or body cameras for the purposes of transparency and accountability with due regard to the right to privacy.

As a minimum, arms should be stored safely in a locked gun cabinet or other similarly secure container which can only be accessed by trained and authorised members of prison staff. Each time a firearm is removed and returned, it should be fully recorded with details of the user and time of removal and return of the firearm.

Monitoring bodies should have full access to records on the use of firearms, including video and audio recordings.<sup>266</sup>

### Training on use of weapons

Prison staff should be fully trained in the use of all weapons including the conditions and circumstances of use, authorised personnel and chain of command, documenting and record keeping, medical implications of using such weapons and consequences for staff who violate any laws and procedures related to the use of weapons (Rule 69.3). Only prison staff who have been trained in the use of arms may be authorised to use them.

The training should also include specialist training on tactical communication techniques to prevent, defuse and manage conflict situations without using physical force or arms and weapons handling. Prison staff should undertake refresher courses to help them retain and improve their skills and knowledge. Central prison administrations should review the training on a regular basis so that it reflects current practice in this area.

The regulations governing the use of weapons in prisons should be regularly reviewed and updated to reflect new technologies and research in this area.

## 8.5 Instruments of restraint



### Relevant rule

#### Rule 68:

1. Instruments of restraint shall only be used when authorised by law and may only be imposed when no lesser form of control would be effective to address the risks posed by a prisoner.
2. The method of restraint shall be the least intrusive that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed.
3. Instruments of restraint shall be used only for the period required and shall be removed as soon as the risks posed by unrestricted movement are no longer present.  
[...]

<sup>266</sup> For more information see, Omega Research Foundation, *Monitoring Weapons and Restraints in Places of Detention: A Practical Guide for Detention Monitors*, [omegaresearchfoundation.org/sites/default/files/uploads/Publications/Practical%20Guide%20-%20English%20single%20spread.pdf](http://omegaresearchfoundation.org/sites/default/files/uploads/Publications/Practical%20Guide%20-%20English%20single%20spread.pdf).



### Relevant rule (continued)

#### Rule 68:

**4.** 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, prevent injury to others or serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.

**5.** The manner of use of instruments of restraint shall be specified in national law.

**6.** The use of chains, irons and other instruments of restraint which are inherently degrading shall be prohibited.

**7.** Instruments of restraint shall never be used on women during labour, during childbirth or immediately after childbirth.

**8.** The use of instruments of restraint shall be properly recorded in a register.

Instruments of restraint are defined as external mechanical devices designed to restrict or immobilise the movement of a person's body, in whole or in part.<sup>267</sup> They may be necessary to provide security and order in a custodial setting, to protect persons deprived of their liberty from inter-prisoner violence, for self-defence, to prevent self-harm and suicide, and to prevent escape. However, instruments of restraint pose a high-risk for torture and other ill-treatment due to their highly intrusive nature and the risk of causing injury, pain and humiliation, and are often deliberately used as a torture tool.

Some instruments of restraint which are 'designed to inflict torture or other cruel, inhuman or degrading treatment' have been prohibited.<sup>268</sup> Others may be permitted in principle but must only be used exceptionally when other methods have failed, rather than be used as a rule.

The EPR state that instruments of restraints should not be applied other than in exceptional circumstances and as a last resort when no other options are available. The rules set out the two limited situations when restraints may be used:

- to prevent the risk of escape during transfers of detainees; and
- to prevent physical assaults on other detainees or members of staff or on the security of buildings, or to prevent acts of self-harm (Rules 68.4 a and b).

Any use of restraint must be in strict accordance with the principles of legality, necessity and proportionality. Instruments of restraint should only be used for the shortest possible period of time, never as a punishment and should be removed at the earliest possible opportunity (Rule 68.3). Methods of restraint should also be the least intrusive that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed (Rule 68.2).

In those cases where restraints are permitted, the manner in which they are applied must not be degrading or painful including, for example, handcuffing a person tighter than necessary or using handcuffs in humiliating situations when there is no security risk (for example in front of their family or in visiting rooms).

Prison staff should undertake continuous risk assessments to determine the length of time that is necessary for such measures.

<sup>267</sup> Association for the Prevention of Torture and PRI, *Instruments of restraint*, 2013.

<sup>268</sup> The OHCHR Resolution 2001/62 and UN General Assembly Omnibus Torture Resolution recognise the importance of States to introduce measures to prohibit trade in abusive law enforcement equipment. The UN Special Rapporteur has also called on States to prohibit the use of certain forms of equipment 'specially designed for the purpose of torture, whose use is inherently cruel, inhuman or degrading'. See Economic and Social Council, *Civil and political rights, including the questions of torture and detention*, E/CN.4/2005/62, 15 December 2004; Official Journal of the European Union, *Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (codification)*, L 30/1, 31 January 2019.



## Prohibited instruments

The use of restraints that are inherently degrading or painful is not permissible under any circumstances, and the EPR explicitly mention chains, irons and other instruments of restraint. The term ‘instruments of restraint’ is deliberately left open to include the ever-changing nature of these instruments and technological developments in this area (Rule 68.6).

The UN Code of Conduct for Law Enforcement Officials states that 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’.<sup>269</sup> The UN Special Rapporteur on Torture has also condemned the methods of restraint that are inherently inhuman, degrading or painful, or have such effects.<sup>270</sup>

The use of certain restraints including weighted leg cuffs, leg irons, bar fetters, finger-cuffs, thumb-cuffs, thumbscrews and finger-screws are to be strictly avoided on the grounds that they purposefully cause pain, anger or humiliation. The use of body-worn electro-shock restraint devices has been condemned by the CPT who has noted their use as ‘inherently degrading’ and ‘the scope for misuse is particularly high’ and recommended ‘alternative means of ensuring security during the movement of detained persons’.<sup>271</sup> Methods of restraint, which are likely to obstruct the airways partially or wholly or forcing the detainee into positions that risk asphyxia, would also constitute torture or ill-treatment.

The use of fixed restraints (i.e. cuffs that are designed to be anchored to a wall, floor or ceiling) and detaining persons to fixed objects is, in the view of the CPT, a ‘matter of longstanding concern’.<sup>272</sup> The CPT has called on prison authorities to remove fixtures such as metal rings and floor to ceiling bars that are designed for this purpose. The EU has condemned the use of cage beds and net beds stating that they ‘are not an appropriate means of restraining prisoners’, while the CPT has called for their use to be prohibited under all circumstances.<sup>273</sup> The UN Committee against Torture has called for the abolition of restraint chairs, shackle boards and shackle beds (i.e. chairs, boards or beds fitted with shackles or other devices to restrain a human being).<sup>274</sup>

## Safeguards and oversight

The use of instruments of restraint should be regulated and closely monitored given the attendant risks in their use. The EPR note that the use of restraints should be enshrined in national law (Rule 68.5). In practice, clear regulations and policies should be put in place by the central prison administration on prohibited devices, the circumstances under which they may be applied and clarifying the risks linked to their use. Regulations governing the use of restraints should include a formal accountability process as ‘all staff must be accountable for their conduct and decisions and in particular for the use of force and restraints’.<sup>275</sup>

Regulations governing the use of instruments of restraint should be reviewed on a regular basis, taking into account the most recent knowledge including on health risks associated with use of certain restraints. Prison staff should be made aware of the regulations including prohibited items of restraint.

To allow for proper scrutiny, accurate recording of the use of restraints should be mandatory, including the security reason and length of the use of the restraint. The EPR call for the use of instruments of restraint to be properly recorded in a register (Rule 68.8). As a minimum,

<sup>269</sup>. Article 5, UN Code of Conduct for Law Enforcement Officials, 1979, available here

<sup>270</sup>. Report of the Committee against Torture – 23rd/24th session, A/55/44 para 180(c) reiterated by the Special Rapporteur on Torture in the report to the UN General Assembly, August 2013, A/68/295, para 58

<sup>271</sup>. CPT, *20th General Report on the CPT activities covering the period 1 August 2009 – 31 July 2010*, 26 October 2010, p. 3.

<sup>272</sup>. Council of Europe, *Report to the Government of the Slovak Republic on the visit carried out by the CPT from 24 March to 2 April 2009*, CPT/Inf (2010)1, para. 22.

<sup>273</sup>. European Union, *Commission Implementing Regulation No 775/2014 amending council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment*, L 210/1, 16 July 2014; Council of Europe, *Revised CPT Standards for Means of Restraint in Psychiatric Establishments for Adults*, CPT/Inf (2017) 6, 21 March 2017.

<sup>274</sup>. UN Committee Against Torture (CAT), *Report of the UN Committee against Torture: Twenty-third Session (8–19 November 1999) and Twenty-fourth Session (1–19 May 2000)*, 2 January 2000, Supplement No. 44 (A/55/44).

<sup>275</sup>. UN Office on Drugs and Crime (UNODC), *Handbook for Prison Leaders*, 2010, p. 40.

the use of restraints should also be documented in the prisoner's file, including the reasons for its application. Similar to the use of force, prison authorities should undertake a debrief following any use of restraints, preferably with the involvement of the prisoner.

Prison healthcare staff play an important role in monitoring the use of instruments of restraint. International standards prohibit prison healthcare officials from:

*participat[ing] in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical and mental health or the safety of the detainee, his fellow detainees, or his guardians, and presents no hazard to his physical or mental health.*<sup>276</sup>

The CPT has recommended that prisoners should be kept under 'constant and adequate supervision' when prison officers resort to instruments of restraint.<sup>277</sup> Prisoners should be given access to medical care following the use of restraints in order to check whether they have suffered any adverse health effects. Prison healthcare staff should be made fully aware of the medical ethics governing the use of instruments of restraint in prison settings.

Instruments of restraints should not be used on prisoners during visits or during medical appointments, unless the grounds are met, namely exceptional circumstances and as a last resort when no other options are available. Similarly, restraints should be removed before a prisoner appears before a judicial body (for example a court) to avoid humiliation.

### **Training on the use of restraint**

Prison staff should be given comprehensive training on the grounds, processes, limitations and prohibited use of certain instruments of restraint given their potential to inflict serious pain or possible misuse. In particular, prison staff should be given appropriate training on the use of restraints, human rights and the peaceful settlement of conflicts, methods of persuasion, negotiation and mediation.<sup>278</sup> The training should include up-to-date practice and technology in and around the use of restraints and be delivered through case studies and practical exercises. Only staff who have been trained in the use of restraints should be authorised to use them.

### **Prisoners in situations of vulnerability**

Any of the above safety and security measures may be applied in a discriminatory way and affect certain specific groups over and above their alleged level of danger to themselves and others. Prison staff may need to adjust how they interact with prisoners in situations of vulnerability. For example, prison healthcare staff will need to pay closer attention to these individuals in restrictive regimes through regular visits and oversight.

The use of instruments of restraint on women during labour, childbirth and immediately after birth has been prohibited explicitly by the Bangkok Rules.<sup>279</sup> Shackling pregnant mothers may endanger the health and safety of both the mother and the foetus. The CPT has condemned the use of restraints or shackling pregnant women to beds or other types of furniture during gynaecological exams or delivery as 'completely unacceptable and could certainly be qualified as inhuman and degrading treatment'.<sup>280</sup>

In some instances, prisoners with mental health issues may be more likely to break prison rules and, thus, be subject to more disciplinary proceedings than other prisoners. This may be due to a lack of understanding or disruptive and threatening behaviour on the part of the prisoner. Prisoners with mental health issues may need to be restrained or wear protective clothing if they are, for example, actively suicidal or in mental health crisis. In these cases, prison authorities should have strict protocols and procedures in place which clearly detail their use, time limits, safety issues, monitoring and supervision and access to mental

<sup>276</sup> 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 5.

<sup>277</sup> Council of Europe, *2nd General Report of the CPTs activities covering the period 1 January to 31 December 1991*, CPT/Inf (92) 3, 13 April 1992, para. 53.

<sup>278</sup> See UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 20.

<sup>279</sup> Bangkok Rules, Rule 24 and Nelson Mandela Rules, Rule 48(2)

<sup>280</sup> CPT, *10th General Report on the CPT activities covering the period 1 January 31 December 1999*, CPT/Inf (2000) 13, 18 August 2000, para. 27.

health staff.<sup>281</sup> Ideally, prison staff should use preventive and defusing techniques, such as negotiation and mediation. Prison authorities should never use force against someone in mental health crisis, except in self-defence or in cases of attempted escape or physical resistance to an order based on law or regulations.

Disciplinary sanctions should never be taken against prisoners who attempt suicide or self-harm. Instead, these individuals should be provided with appropriate treatment and care.

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**281.** World Health Organization and International Association for Suicide Prevention, *Preventing Suicide in Jails and Prisons*, 2007, p. 17.





# Chapter 9

## Research and public awareness raising



# Research and public awareness raising

## 9.1 Public awareness



### Relevant rule

#### Rule 90:

1. The prison authorities shall continually inform the public about the purpose of the prison system and the work carried out by prison staff in order to encourage better public understanding of the role of the prison in society.

2. The prison authorities should encourage members of the public to volunteer to provide services in prison where appropriate.

Prisons are generally viewed negatively by the public and tend to attract adverse, often sensationalist media coverage, with a disproportionate focus on things that go wrong. This impacts public trust in prison systems, affects recruitment, staff attitudes and the overall prison environment. Such negative attitudes are fuelled by a lack of openness and transparency from within prison systems. In many countries, prisons remain secretive places and it can be hard for the public to understand what happens inside them.

Negative perceptions of prisoners and prison life can also affect individuals' rehabilitation prospects, with high levels of stigma affecting future employment opportunities, housing and reintegration into their communities. Prison staff can also be impacted by these negative attitudes in both their professional and personal lives. By building trust through good communication, openness and transparency, prison managers can foster respect for the work of prison staff in building safer, more secure societies, and increase interest in working for the service.

### Developing a communications strategy

It has been noted that, 'the higher the level of ignorance about crime and crime control, the stronger are fears and higher the demands for harsh punishments.'<sup>282</sup>

To address this, the EPR specify the importance of informing the public about the purpose of prisons and the work of prison staff. The Bangkok Rules also note the importance of raising public awareness, including informing the media and the public about the reasons women come into conflict with the law, publication and dissemination of research and good practice examples, and factual information about the implementation of human rights standards.<sup>283</sup>

Prison authorities can take proactive steps to counter negative views of prisons, including by engaging with the media and the public to share positive information about the work of prison staff and prisons in supporting people in a situation of vulnerability (Rule 90.1). Prison managers and ministry officials can be trained in public relations and working with the

<sup>282</sup>. Bangkok Rules; see also PRI and TIJ, *Guidance document on the Bangkok Rules: Implementing the United Nations Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, December 2021 (2nd Ed.).

<sup>283</sup>. Bangkok Rules, Rule 70.



media, including by developing good links with relevant media and learning how to respond appropriately to media enquiries. This can involve identifying and developing good relations with journalists who are interested in prison issues, providing them with relevant information and being honest and transparent about problems in prisons. Prison administrations can also share examples of good practices and initiatives that led to positive change.

It is important for the public to understand more about daily life within prisons. If they do so, they will better understand the challenges faced by prison staff and appreciate their efforts to support prisoners. It is good practice to invite the media and the public into prisons to see the facilities and routines for themselves. It is important however that such visits are not staged and that prisoners are not coerced into acting a certain way or forced to say certain things during public visits.

It is good practice for prison administrations to also provide regular statistical updates, including prison population trends and other relevant data [see [Research and evaluation](#)].

Prison administrations might also consider using different forms of media to inform the public about life in prison. Some have websites, Facebook, Twitter and other social media accounts to provide regular updates and news items about prison.

### Working with the community

Prison managers can work to develop positive relations with local community groups and to encourage members of the public to visit and volunteer inside prisons (Rule 90.2). In some countries, community groups regularly visit prisons to provide education and training programmes, social and cultural activities or to help with the provision of basic supplies. Community groups might also be able to support prisons by providing targeted support for particular groups of prisoners.

While these types of programmes should not detract from the responsibility of prison administrations to provide for the needs of all prisoners, they also serve to increase trust in prison systems and demystify prison life. This can also be achieved through programmes which promote prisoner involvement in community initiatives. Close cooperation with local communities can also improve prisoners' rehabilitation chances by enabling people to feel part of their community.

Links with academic institutions can also be of great benefit to prisons, not only in promoting prison-based research initiatives but also by engaging prisoners and prison staff in collaborative research initiatives of direct interest to them and engaging the community in the results of such research.



#### PROMISING PRACTICE: 'INNOVATION LAB': LINKING PRISON WITH UNIVERSITY

'Innovation lab' is a unique collaboration between the prison in Veenhuizen in the Netherlands and the Hanze University in Groningen. The lab concept was developed by university researchers and prison staff and is built within the prison as a place for research and experience to interact and a place where students, prison staff, prisoners and researchers meet to develop family approaches to imprisonment. The innovation lab has been operating since 2018 and during this time about 140 students from various disciplines have contributed to the development of family approaches. The students conduct practice-oriented research and, together with prison staff, develop projects and products that can be used to improve the contact between prisoners and their children.<sup>284</sup>

<sup>284</sup> Update on the Prison Achievement Award winners: Veenhuizen prison in Netherlands (2022), *EuroPris*, [www.europris.org/news/update-on-the-prison-achievement-award-winners-veenhuizen-prison-in-netherlands-2022](http://www.europris.org/news/update-on-the-prison-achievement-award-winners-veenhuizen-prison-in-netherlands-2022).

## 9.2 Research and evaluation



### Relevant rule

#### Rule 91:

The prison authorities shall support a programme of research and evaluation about the purpose of the prison, its role in a democratic society and the extent to which it is fulfilling its purpose.

Prison policies need to be evidence-based and, to this end, policy and practice must be monitored, evaluated and adapted to ensure they reflect the reality on the ground and are effective in achieving their stated aims. Prison managers need to understand what works well, what doesn't, and why. Research is also important for effective planning, budgetary and other resource management and to adapt staff training as required.

The profile of prison populations and their rehabilitation needs tend to fluctuate, and the priorities of prison administrations will change accordingly. Guidance on good practice can also change over time based on technological and other developments as well as jurisprudence from the ECtHR and reports of the CPT. Prison authorities should develop a programme of research and evaluation to better understand the role and purpose of prison systems and their ability to fulfil their purpose in society (Rule 91).

UN standards such as the Tokyo Rules, the Beijing Rules and the Bangkok Rules include sections on research, planning, policy formulation and evaluation, with the Bangkok Rules specifying that efforts should be made to organise and promote research on the characteristics of women offenders, the offences they commit and the impact of imprisonment on women and their children. These rules also call for research into programmes designed to reduce reoffending, as a basis for effective planning, programme development and policy formulation (Bangkok Rules, Rules 67 and 68).

The Beijing Rules are equally clear on the importance of organising and promoting research 'as a basis for effective planning and policy formulation' (Beijing Rules, Rule 30), and specify that efforts need to be made to understand the trends, problems and causes of crime among children, as well as the needs of children in prisons. This entails setting up an evaluation mechanism, as well as collecting and analysing data and information.

It is good practice for prison administrations to conduct their own research and to make the results public where appropriate, noting that some findings may need to remain confidential for security reasons. Prison administrations should allocate sufficient budget to ensure that research and data collection can take place on an ongoing basis at the local and national levels. Research carried out by NGOs, academics and others can be supported and facilitated by prison administrations, provided it does not interfere with day-to-day prison management.

When made public, the findings of research into the profile of prison populations – and prison life more generally – can help to reduce the stigma and negative impacts of imprisonment (Bangkok Rules, Rule 69). The results of all research and evaluation projects need to be used to change and improve existing policies and programmes and to develop new initiatives.

Research and evaluation can include both qualitative and quantitative methods, including data collection. All research should be designed according to ethical research principles and include the input of prisoners and their family members, prison staff, NGOs, service providers and other relevant stakeholders.

Some areas that could be prioritised for data collection and thematic research include:

- prison populations statistics and needs;
- prison deaths;
- incidents of self-harm and suicide;
- health trends and healthcare needs;
- frequency and outcomes of the use of restraints, force and arms;
- the use of searches;
- the use of disciplinary measures;
- violent incidents; and
- prisoner requests and complaints.




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#### **PROMISING PRACTICE: WORLD HEALTH ORGANIZATION'S COVID-19 PRISON SURVEILLANCE PROTOCOL**

Reliable information is key for creating evidence-based policies. In 2021, WHO/Europe launched a COVID-19 prison surveillance protocol,<sup>285</sup> a tool developed by its Health in Prisons Programme to help national authorities to gather and report information related to COVID-19 in prisons. The protocol establishes principles and definitions to better monitor the evolution of COVID-19-related epidemiological data in prisons and other places of detention and to report the main measures adopted to prevent, control, and manage the spread of the disease. This includes country specific bulletins that allow countries to benchmark their practices and improve policy responses. The system establishes standards of reporting while allowing countries to adapt approaches to local conditions.

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It will also be useful to prison managers to collect data on staff turnover and absences to help understand staffing problems and help with planning and prioritisation.

Research and data collection is a useful tool in identifying and challenging discriminatory practices and exclusion. To enable this, all data collected should be disaggregated according to the different categories of prisoners, and research projects should consider the impact of prison policies on different groups of prisoners, including the different experiences of men and women and the experiences of ethnic and racial minorities. Data on prison deaths should be disaggregated by age, sex, ethnicity and other factors in order to identify and address disparities in the number, causes or circumstances of death among different segments of prison populations.




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#### **PROMISING PRACTICE: SHARING PRISON INFORMATION ACROSS EUROPE**

The European Prison Information System (EPIS) was created by EuroPris in 2014 to enhance transparency, networking and exchange of best practices among European prison administrations. EPIS is designed to be a one-stop shop for data related to prisons and corrections across Europe and to provide answers to commonly asked questions such as how many prisons, what types of prisons and prisoner populations exist in different EU countries. The Council of Europe use EPIS as a tool to bring together information on European prison establishments. EPIS currently contains data of European prison services and over 550 prison establishments across Europe. The EuroPris Knowledge Management System enables European national prison agencies in Europe to submit questions to other agencies on any topic and EuroPris will then send a note across its network asking for responses. Questions and responses are then posted online. The system is designed to support inter-agency collaboration.<sup>286</sup>

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<sup>285</sup>. WHO Regional Office for Europe, *WHO COVID-19 Prison Surveillance Protocol*, 2021.

<sup>286</sup>. 'Knowledge Management System' and 'European Prison Information System', *EuroPris*, [www.europris.org](http://www.europris.org).



### **About Penal Reform International**

Penal Reform International (PRI) is a non-governmental organisation working globally to promote criminal justice systems that uphold human rights for all and do no harm. We work to make criminal justice systems non-discriminatory and protect the rights of disadvantaged people. We run practical human rights programmes and support reforms that make criminal justice fair and effective.

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