

Torture Prevention Modules

— for —

Prison Guards in Timor-Leste 2021



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture

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Foreword (APT)

‘The cornerstone of a humane prison system will always be properly recruited and trained prison staff who know how to adopt the appropriate attitude in their relations with prisoners and see their work more as a vocation than as a mere job.’¹

Over the years, there is a growing awareness and commitment around the world on the importance of equipping prison guards and staffs with knowledge and skills regarding humane treatment of prisoners and prevention of torture, in line with Rule 1 of the 2015 Nelson Mandela Rules².

Such awareness is due to the increasing needs and issues to be tackled by the prison management, staff, and population. These issues include overcrowding, limited access to basic facilities, sanitation and care, healthcare, and psychosocial support particularly for prisoners in situations of vulnerabilities as well as risky practices for example, solitary confinement, judicial whipping and bullying of new prisoners. Prison guards and managers need to have the right knowledge, and skills to play their roles to provide humane care and ensure a safe and responsive prison environment for the prisoners.

Timor-Leste has demonstrated a firm commitment to prevent and prohibit torture. It is prohibited under the Constitution and in addition, torture and ill-treatment are an offence under the Penal Code. The Office of the Provedor for Human Rights and Justice (PDHJ) is a leading oversight body in monitoring detention places and the Ministry of Justice (MOJ) of Timor-Leste remains committed to train law enforcement with human rights knowledge.

In 2020, the APT, PDHJ and the MOJ entered a Memorandum of Understanding to strengthen our collaboration in the country and this includes building the capacities of prison guards in Timor-Leste to prevent torture. The Torture Prevention Modules for Prison Guards in Timor-Leste are the results of this cooperation. The modules are built from close consultations with PDHJ and MOJ teams as well as the prison guards in three of Timor-Leste’s main prison centers over the last two years. Thanks to the inputs and reflections from all partners, the modules have been designed to be practical, easy-to-follow and engaging while providing substantive thematic knowledge on torture prevention that are informed by Timor-Leste’s contexts.

The modules cover key areas for prison staff and guards’ daily roles. These include implementing laws and regulations that prohibit torture and ill-treatment against persons deprived of liberty, building a safe and responsive prison, caring, and protecting prisoners in situation of vulnerabilities from risks of torture and ill-treatment as well as working together with different national stakeholders to prevent torture.

We would like to warmly thank Deputy Provedora, Benícia Eriana Magno, Mr, Flaviano Moniz Leão from Ministry of Justice and Ms. Shazeera Zawawi from the APT as well as the whole project team at PDHJ, MOJ and the APT for their commitment and contribution in developing the modules. We would also like to dedicate these modules to Ms. Rosalina Pires Savio, who sadly and shockingly passed away in June 2021, for her perseverance, kindness, and tenacity in completing the modules.

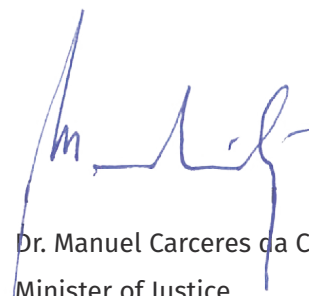
It is hoped that prison guards, staffs, managers and other relevant stakeholders in Timor-Leste will find the modules a useful contribution to their work. We look forward to continuing our collective efforts to prevent torture in detention places as well as paving a culture for respect and empathy towards persons deprived of liberties in the country.



Barbara Bernath
Secretary General Association
for Prevention of Torture



Jesuina Maria Ferreira Gomes
Provedora PDHJ
Timor-Leste



Dr. Manuel Carceres da Costa
Minister of Justice
Timor-Leste

-
1. Developments concerning CPT standards in respect of imprisonment, Extract from the 11th General Report of the CPT, published in 2001 CPT/Inf(2001)16-part.
 2. 'Rule 1 All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.' United Nations Standards Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).



Introduction to the modules

In 2020, the Association for the Prevention of Torture, the Provedor of Justice and Human Rights (PDHJ) of Timor-Leste and the Ministry of Justice of Timor-Leste signed a Memorandum of Understanding to strengthen their tripartite cooperation on preventing torture in Timor-Leste. One of the efforts jointly spearheaded under this agreement is the enhancement of training for prison guards, with the aim of increasing their capacity, understanding of their responsibilities, and clarity on their role in preventing torture and ill-treatment.

While prison guards in Timor-Leste undergo professional training and capacity-building on a regular basis, this does not routinely deal with the subject of torture and ill-treatment. However, the PDHJ has consistently emphasized the importance of torture prevention training considering the following problems identified during their prison visits:

- A culture in prisons of new prisoners being physically bullied and/or being subjected to “raging” (physical bullying by prison guards that can have humiliating and degrading effect on those bullied) as a form of social orientation.
- Reports of prison wardens using excessive force and/or corporal punishment to discipline prisoners.
- A lack of understanding among prison wardens on how their actions could amount to torture and/or ill-treatment, and which actions are particularly likely to pose a problem in this regard.

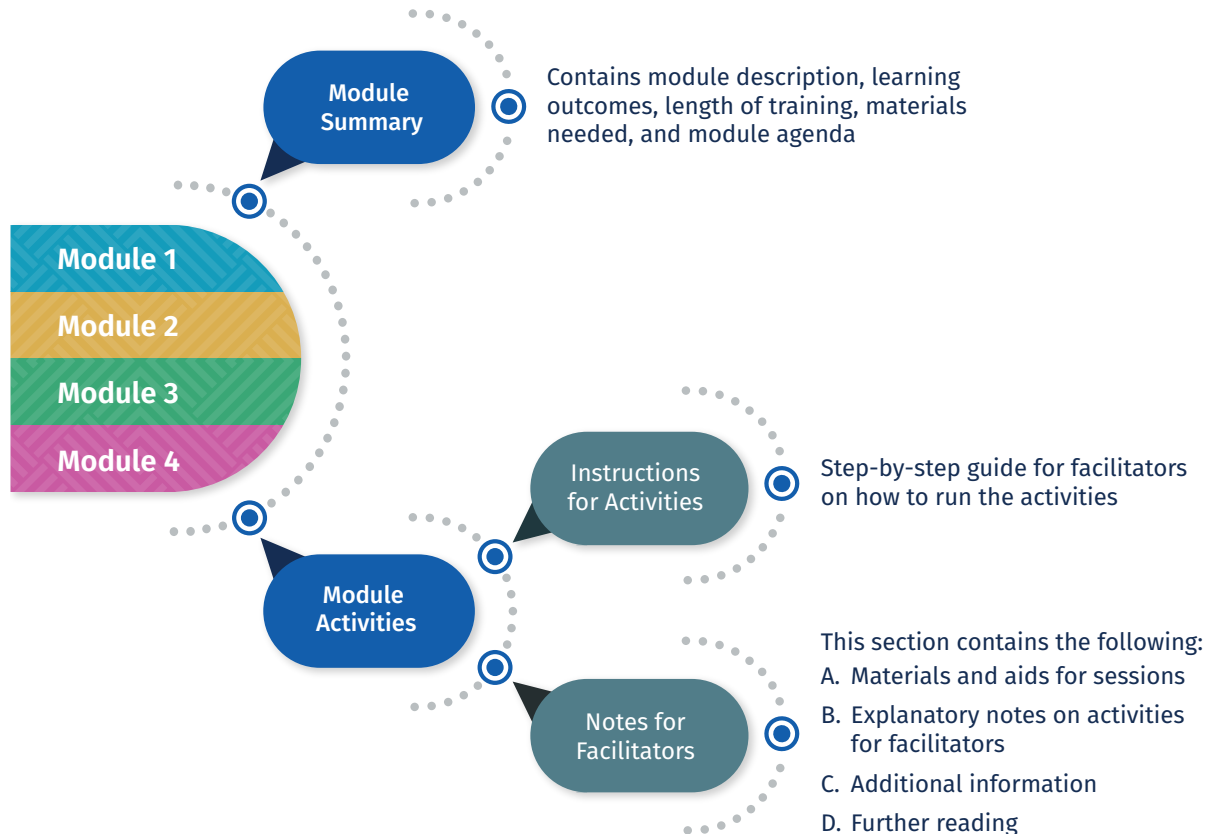
In response to the PDHJ’s recommendations, the APT (with support from its partners in Timor-Leste) developed four modules that can be used to train prison guards.

The modules provide a range of activities and information to help trainers deliver the modules with ease. The development and design of the modules was informed by three focus-group discussions with prison guards (conducted by the PDHJ and MOJ in November 2020), in addition to the PDHJ’s report on prison conditions and United Nations treaty body reports relating to Timor-Leste released in 2020.

The learning activities in the modules are designed to be practical, participatory, and appreciative of prison guards’ experience and need for personal development. It is hoped that these modules will be integrated into prison staff syllabuses and expanded into the training programs of other law enforcement agencies in Timor-Leste.

How to use the modules

The Torture Prevention Modules for Prison Guards in Timor-Leste contains several sub-sections:



Each module is colour-coded as above for easy reference. Facilitators are encouraged to follow the instructions for the sessions as much as possible. However, depending on context and participants' level of knowledge, facilitators may need to be creative and flexible in adjusting the training.

In each module, the **Explanatory notes for facilitators** section is designed to provide concise sample responses, information, and sample explanations about activities for facilitators to use or integrate into a presentation/handouts.

Facilitators may need to explore different methods for assessing participants' level of knowledge and skills before commencing the training. This could include requesting participants to fill in a survey, engaging participants, and prison management before the training, and learning more about participants' previous training.

These modules have been designed to capture and integrate as much Timorese context as possible to ensure that training is conducted in a manner that is informed, practical and realistic.

General tips for running effective torture prevention workshops

- ✓ Start the training with a round of introductions. Introduce yourself and allocate some time for participants to interact and learn each other's names too.
- ✓ Develop, through discussion with the participants, some ground rules for the training. These might include that everyone in the training is equal and/or that all discussions taking place during the training should not be shared beyond the training rooms.
- ✓ At the start of every activity or session, explain to participants what you will cover and provide a brief overview of the main points.
- ✓ Keep your session on track: try to start on time and finish on time. Do not wait for late arrivals. Run the class according to the schedule and do not get too far off course.
- ✓ Involve participants as much as possible in the training. For example, ask participants to share their experiences on the relevant topic. Participants have valuable information to contribute, and all participants will get more out of sessions by hearing about their co-workers' experiences, not just the facilitator's lecture points. Hearing different voices also keeps sessions varied and interesting. Structure interaction time into all sessions.
- ✓ Use as much hands-on training as possible. The most effective training uses all the senses to enhance learning. Demonstrate the application of teaching points to create greater understanding and knowledge.
- ✓ In using multimedia or audio-visual resources, always explain what participants are going to see or hear before playing it for them. This practice creates a better learning environment by guiding trainees to know what to look for and what to remember. Explaining the purpose of the multimedia resource ensures more effective reception and retention of information.
- ✓ Be observant and mindful of how the session is going. Always be on the lookout for what works best. When you discover a new technique or method that clicks with the group, note it on your training materials so it can be incorporated into training outlines for future sessions.
- ✓ Solicit feedback from trainees regularly during the training. As a rule, it is most effective to invite feedback on an anonymous, written basis, unless a trainee volunteers to discuss his or her thoughts in person. Trainee input is vital for making the next session—and the overall training program—more effective.
- ✓ Put yourself in the trainees' shoes. Give frequent breaks, especially for half-day or all-day sessions. If participants seem anxious, lose interest or hesitant to engage or interact, be empathetic and try to find out the reasons behind these responses. Address these issues one-to-one and not in the larger crowd if the situation persists.

Preparation before training



Here is a handy checklist to make sure everything is ready for your training session:

- ☐ Dress appropriately. In general, match your manner of dress to that of your participants—or adopt a slightly more professional style.
- ☐ Arrive early. Give yourself time to check last-minute arrangements and get yourself mentally prepared for the session.
- ☐ Check seating arrangements. Make sure the set-up is ideal for the training style you want to use. Ensure extra chairs are available for any last-minute participants.
- ☐ Ensure that there are sufficient supplies of snacks and beverages for everyone as the training takes time to complete.
- ☐ Check the temperature of the room. Adjust it for the number of people who will be in the room and the size of the space.
- ☐ Check that any audio-visual equipment, both the hardware and any software, is working correctly. Conduct one last run-through to make sure everything is running smoothly, even if you have already done a check in advance.
- ☐ Check electrical outlets. Make sure all your connections are safe. Do not trail cords across walkways or overload surge-protector strips.
- ☐ Check light switches. Know which switches work which lights so you can achieve the ideal lighting for playing audio-visual materials and for effective notetaking by participants.
- ☐ Make sure any blinds or shades are working properly.
- ☐ Make sure you have everything you need.
- ☐ Double check that the training space is booked/allocated to you for the entire time needed for the session.
- ☐ Lay out classroom supplies. If you will be demonstrating tools or equipment, make sure you have everything you need.
- ☐ Lay out the course materials. Decide whether to put handouts on a table for the participants to pick up or whether to set them out ready. Prepare the training kit.
- ☐ Maintain a positive and an engaging vibe and learning environment throughout the training, particularly when concluding a session. This will help reinforce the importance of the training to the participants.

Module 1: International Human Rights Norms: A Duty to us All



José's diary excerpt:

08:00 am - At home

Reading the newspaper this morning, I came across an article about Timor-Leste's recent ratification of an international treaty. The article mentioned Timor-Leste had taken a decisive step in eradicating torture in the country by ratifying the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Several authorities were quoted in the article, including the Minister of Justice. He mentioned that one of the obligations of the State under the treaty is to train and inform law enforcement personnel.

I wonder what the impact will be on my daily work as a prison guard – and, indeed, whether Timor-Leste ratifying the treaty will have any impact in practice! Perhaps it is an issue that only pertains to government authorities, rather than individual prisons. Anyway, I hope my colleagues and I receive the comprehensive training that the article said was meant to follow on from ratification.



Module 1	International human rights norms: a duty to us all
Description of the module	This module provides an overview of the international human rights standards relevant to torture prevention and explores how these standards should be adopted and applied in Timor-Leste.
Learning outcomes	<p>Participants will learn and get acquainted with:</p> <ul style="list-style-type: none"> ➤ international human rights standards relevant to persons deprived of liberty, such as the right to life, physical security and dignity, and the right to contact with the outside world. ➤ international human rights treaties and norms relevant to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. ➤ the nature of Timor-Leste's international commitments and obligations, including which human rights treaties it has ratified.
Time required to deliver the module as a training session	2 hours and 20 minutes
Instructional materials and aids needed	<p>1. For the facilitator:</p> <ul style="list-style-type: none"> ➤ Powerpoint presentation ➤ Factsheets and scenarios <p>2. For participants:</p> <ul style="list-style-type: none"> ➤ A set of TRUE/FALSE cards for each group of three participants ➤ A handout of the Universal Declaration of Human Rights in Tetum for each participant ➤ A handout with relevant articles from Timor-Leste's Constitution for each participant ➤ A copy of exercise handout with short scenarios and questions ➤ Four copies of the Nelson Mandela Rules in Tetum/Portuguese. ➤ Four copies of the Bangkok Rules in Tetum/Portuguese. ➤ Four copies of the UNCAT in Tetum/Portuguese ➤ Four copies of the OPCAT in Tetum/Portuguese ➤ Four copies of Timor-Leste's Penal Execution Code (Regime de Execução Penal) ➤ Four copies of Timor Leste's Constitution
Agenda for the training session	<p>Content outline:</p> <p>What are human rights and what is the responsibility of the State on human rights? Activities: Icebreaker 'TRUE or FALSE' game (25 mins)</p> <p>What is the prohibition of torture and other ill-treatment in international human rights law, and how does it translate and apply in Timor-Leste's prisons? Activities: Drawing exercise (40 mins), class discussion (20 mins), short scenarios (80 mins)</p>

Instructions for Activities

What are human rights and what is the responsibility of the State on human rights?

.....

Activity 1: Icebreaker 'TRUE or FALSE' game

Time: 25 minutes

1. The facilitator will start the session by introducing the learning objectives of the module: "This module provides an overview of the international human rights standards relevant to torture prevention and explores how these standards should be adopted and applied in Timor-Leste's context."
2. The facilitator will divide the participants into groups with three people in each.
3. The facilitator will explain that this activity aims to engage participants in learning and/or reviewing key international human rights law concepts by presenting a series of TRUE or FALSE statements for discussion.
4. The facilitator will hand out two cards for each group: one will say TRUE, and the other FALSE.
5. The facilitator will read aloud the statements from the list below. After each statement, the groups will have 1 minute to discuss amongst themselves in order to decide whether the statement is TRUE or FALSE. Each group should share their response with the rest of the class by displaying the relevant TRUE or FALSE card, at the moment indicated by the facilitator.

The TRUE or FALSE statements to be read aloud are as follows:

Human rights first became internationally recognised after the Second World War.

International human rights treaties are not relevant for Timor-Leste's state officials as these treaties are not part of the country's domestic legal framework.

Every person has human rights, simply because they are human.

Human rights are not the same for all people or for all categories of people. For instance, prisoners may lose some of their human rights because they have committed crimes. Similarly, human rights may apply differently to men and women, depending on the situation.

Because human rights apply equally to all people, it is discriminatory for some groups to be afforded additional or 'special' protections and safeguards.

As long as the state does not directly infringe on a person's human rights, it does not have to take active steps to protect or fulfil human rights.

A state doesn't have to protect the human rights of its people until it has sufficient resources.

The primary role of prison guards is to manage prisons effectively and ensure the good order of the prison, not to protect or ensure human rights.

6. Facilitators will review the responses to each question by inviting learners to reflect on their answers. For example, facilitators might ask learners to
 - explain why they have chosen their answer. What are their reasons?
 - discuss their understanding of each statement, as well as of the meaning of human rights generally.
 - identify issues in their day-to-day work lives that they believe are relevant to human rights.
 - identify the norms, sources, and standards (international, regional and/or domestic) that give rise to the relevant concepts and human rights obligations.

(For sample answers, please refer to Notes for Facilitators and Training Materials below.)

7. At the end of the session, the facilitator will provide a handout for each participant of the Universal Declaration of Human Rights and also extracts of Timor Leste's Constitution.
8. The facilitator will ask different participants to read aloud the following articles of the Universal Declaration of Human Rights: Article 1, Article 3, Article 5 and Article 9.
9. The facilitator will ask different participants to read aloud the following articles of Timor Leste's Constitution: Article 16, Article 17, Article 23, Articles 29.1 and 29.2, and finally Article 30.1-2 and 30.4 (read by one participant as they are short).
10. The groups will be dissolved as the following activity will use a plenary (i.e. full class) format.

What is the prohibition on torture and other ill-treatment in international human rights law, and how does it translate and apply in Timor-Leste's prisons?

.....

Activity 2: Drawing to understand the concepts of torture and ill-treatment

Time: 40 minutes

1. The facilitator will distribute blank poster boards (or large pieces of paper), and also pens/markers, to all participants.
2. The facilitator will ask learners to draw a picture of what the word 'torture' suggests to them or what comes to their mind when they hear the word. Five minutes will be allowed for drawing.
3. After five minutes, the participants will expose their drawings: ideally, they should be stuck to a wall where all the participants can view them.
4. Looking at the drawings, the facilitator will raise elements that link to components of the definition of torture according to the UNCAT (e.g. causing/inflicting pain, the purpose of any acts causing pain, and who commits these acts). The facilitator should also raise the following aspects of the definition of torture to the discussion with the group.
 - Torture is not restricted to physical pain or suffering. Psychological pain or suffering can also amount to torture.
 - Women can also be tortured, sometimes in a distinct manner from men. Sexual violence (against a person of either sex) can amount to torture. Facilitators should note that drawings made during this exercise generally depict men torturing other men; women tend not to appear in people's minds when they are asked about what torture is, so it is important to challenge the assumptions underpinning this.
 - Torture is not only used for punishment or to obtain a confession/information, but also for discriminatory reasons due to sex, gender stereotypes, race, sexual orientation, disability and so forth.
 - Torture is not only committed by public officials, but also any person who acts with the consent or acquiescence of a public official.

5. After this discussion, the facilitator will show a Powerpoint presentation giving the definition of torture according to the UNCAT and exploring all the elements critical to understanding the concept (see slides 1 and 2 below). During this presentation, the facilitator should make links to the discussion of the drawing activity.

United Nations Convention Against Torture (Article 1)

"any act by which

- severe pain or suffering,* whether physical or mental (Element 1)

- in intentionally inflicted on a person (Element 2)

- for such purposes as obtaining from him/her or a third person information or a confession, punishing him/her for an act he/she or a third person committed, or is suspected of having committed, or intimidating or coercing him/her or a third person for any reason based on discrimination of any kind (Element 3)

- when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" (Element 4)

**does not include pain or suffering arising from, inherent or incidental to lawful sanctions (such as imprisonment)*

1

Torture is the intentional infliction of severe mental or physical suffering by a public official (who is directly or indirectly involved) for a specific purpose

How to analyze the elements in four questions

- *Element 1:* Did the treatment/act cause severe pain and suffering to the prisoner (whether physical, mental or both)?

- *Element 2:* Was it intentional (e.g. conscious vs negligent)?

- *Element 3:* Was there a purpose (e.g. discrimination, punishment, intimidation or coercion)?

- *Element 4:* (a) Was the treatment/act committed by a public official, or with their consent, acquiescence, or instigation?

(b) If the perpetrator of the act is a private person, did state officials fail to exercise due diligence (e.g. did the State officials know, or should they have known, about the occurrence, and did they take affirmative action to prevent it from occurring)?

2

6. Next, the facilitator will initiate a discussion of what “cruel, inhuman, or degrading treatment or punishment” encompasses. Although not specifically defined in the UNCAT, other forms of ill-treatment have been authoritatively interpreted as fully prohibited by the Convention. (See Powerpoint slides 3 and 4 below.)

Cruel, inhuman or degrading treatment or punishment

Article 16 – UN Convention Against Torture:

“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

3

How this is relevant to you?

There is no precise definition of what constitutes cruel, inhuman or degrading treatment; however, all such ill-treatment is equally prohibited by the Convention.

Actions that do not meet the definition of torture can still amount to cruel, inhuman or degrading treatment.

There is a thin line between torture and ill-treatment.

4

Activity 3: Group discussion moderated by the facilitator

Time: 20 minutes

1. Following on from the previous discussion, the facilitator will give the group a new question to discuss: “Is preventing torture and ill-treatment a state obligation or a choice?” (Refer to following slide.)

Is preventing torture and ill-treatment a
State obligation or a choice?

5

2. The facilitator will write up salient answers and major points from several participants (usually between three and five) on a flipchart-sheet or whiteboard, then wrap up the discussion by highlighting the following three key points:
 - It is an obligation: state officials have an obligation to take positive measures to prevent the torture and other ill-treatment.
 - The UN Convention against Torture establishes that states have an obligation to implement measures to prevent torture and other ill-treatment.

(Here, the facilitator will show slide 6 below, which refers to Articles 2.1 and 16 of the UN Convention against torture. The facilitator will ask one participant to read the Articles aloud (by providing a copy of the Convention for such reading).)

Article 2.1 –
UN Convention Against Torture

Article 16 –
Un Convention Against Torture

6

- This obligation on states is two-fold: it covers a **DON'T DO** (i.e. a negative obligation to refrain from acts of torture or other ill-treatment) and a **DO** (i.e. a positive obligation to be diligent in order to guarantee rights as well as avoid violations). (The facilitator will show slide 7.)

DON'T DO	DO
Prohibition of committing acts of torture or acts that may violate personal integrity	Positive obligation to be diligent and act to guarantee rights and avoid violations

7

3. Next, the facilitator will show and read slide 8 (below). The facilitator will then ask the learners whether, 'When we speak about states' responsibilities to prevent torture and other ill-treatment, whose responsibility it is concretely?'

**When we speak about states'
responsibilities to prevent torture and
other ill-treatment, whose responsibility is
it concretely?**

8

4. After hearing responses from several participants (usually between three and five), the facilitator will wrap up the discussion with the following points. (The facilitator will also show slide 9 below.)

"YOURS"

- » the state does not exist in isolation: it is not an empty entity.
- » the state is made of the set of actions and omissions of those who represent it.
- » Therefore, when we say that the state has to comply with series of measures and obligations, and must ensure the human rights of all its citizens (including of those who are deprived of their liberty), we refer to a vast array of state officials and authorities. Among those are, prison guards, prison staff and prison management.

9

- The objective here is to make learners reflect on their role as agents of the state and the fact that, when we talk about state obligations, we are talking about their own duties and responsibilities. In other words, the learning objective is to ensure participants perceive themselves as state actors who must put into practice the obligations and responsibilities of the state with regard to preventing torture and other ill-treatment. They should also understand that this must happen independent of their individual rank, as these duties and obligations apply to all state actors.
- The facilitator should seek to ensure that participants do not confuse 'the state' with its high-level authorities. Prison guards, prison directors, and prison staff all represent the state: they are also obliged to carry out the state's obligations to prevent acts of torture and other ill-treatment, and also to implement positive measures, both to guarantee rights and to inhibit violations.

Activity 4: Short scenarios

Time: 1 hour and 20 minutes

1. The facilitator will divide the participants into four groups. Each group should choose who in the group will fulfil the following two:
 - Team leader – he or she will moderate the group discussion.
 - Rapporteur – he or she will write notes on the group's discussion (on a flipchart sheet or using a laptop/computer with a projector). Later, he or she will present the conclusions/responses of the group to the rest of the class.

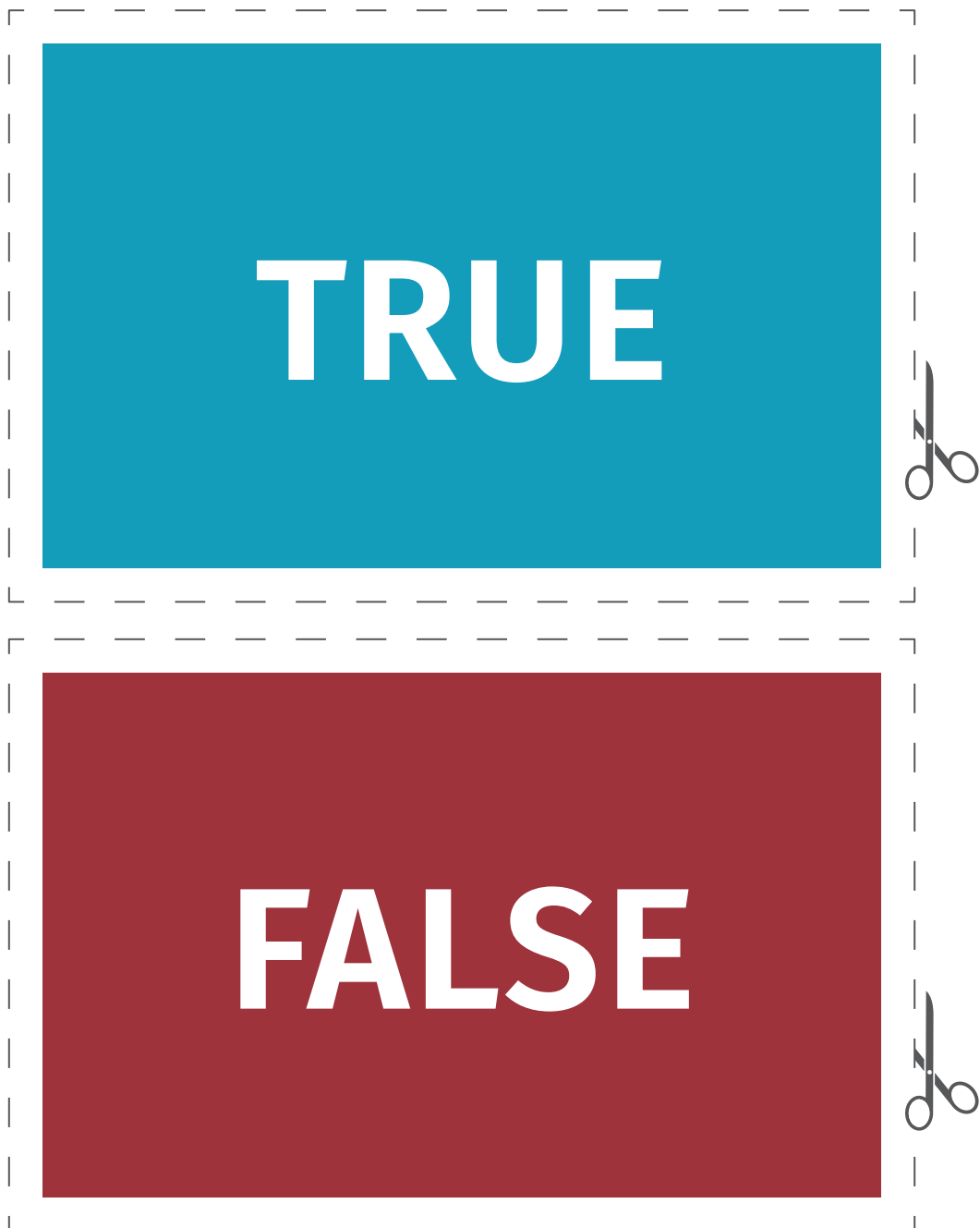
(5 minutes will be allowed for assigning the groups and choosing the roles.)

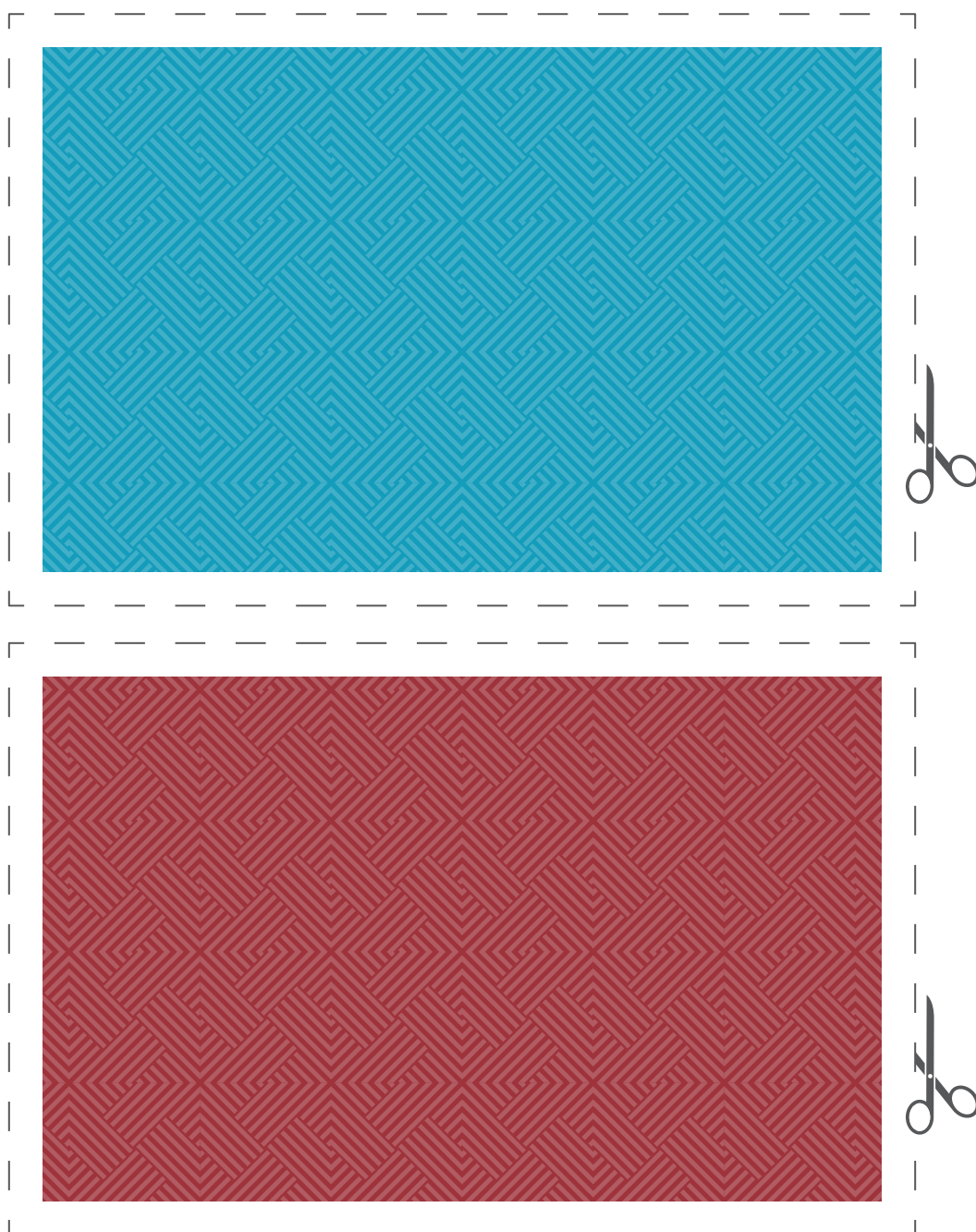
2. The facilitator will hand out two short scenarios, with accompanying questions, for each group. (The worksheets laying out the scenarios and questions are available in the *Notes for Facilitators and Training Materials* below). The groups will discuss and respond to the questions presented in the worksheets, referring to Powerpoint Slide 2 (above) as a reference. The groups will have 30 minutes for this task.
3. After 30 minutes, the facilitator will invite the groups to volunteer to present their answers and conclusions. Each group will have 5 minutes to present and another 5 minutes for Q&A with the rest of the class. The facilitator will debrief after each group's presentation, emphasising the key messages outlined in the *Notes for Facilitators and Training Materials* (below) and acknowledging the points already brought up by participants in their responses.

Notes for Facilitators and Training Materials

Training materials and aids for sessions

Activity 1: Icebreaker – cards for the ‘TRUE or FALSE’ game





Activity 1: Icebreaker – Universal Declaration of Human Rights handout for the 'TRUE or FALSE' game

ARTIGO 1°

Todos os seres humanos nascem livres e iguais em dignidade e em direitos. Dotados de razão e de consciência, devem agir uns para com os outros em espírito de fraternidade.

ARTIGO 2°

Todos os seres humanos podem invocar os direitos e as liberdades proclamadas na presente Declaração, sem distinção alguma, nomeadamente de raça, de cor, de sexo, de língua, de religião, de opinião política ou outra, de origem nacional ou social, de fortuna, de nascimento ou de qualquer outra situação. Além disso, não será feita nenhuma distinção fundada no estatuto político, jurídico ou internacional do país ou do território da naturalidade da pessoa, seja esse país ou território independente, sob tutela, autônomo ou sujeito a alguma limitação de soberania.

ARTIGO 3°

Todo indivíduo tem direito à vida, à liberdade e à segurança pessoal.

ARTIGO 4°

Ninguém será mantido em escravidão ou em servidão; a escravidão e o trato dos escravos, sob todas as formas, são proibidos.

ARTIGO 5°

Ninguém será submetido a tortura nem a penas ou tratamentos cruéis, desumanos ou degradantes.

ARTIGO 6°

Todos os indivíduos têm direito ao reconhecimento, em todos os lugares, da sua personalidade jurídica.

ARTIGO 7°

Todos são iguais perante a lei e, sem distinção, têm direito a igual proteção da lei. Todos têm direito a proteção igual contra qualquer discriminação que viole a presente declaração e contra qualquer incitamento a tal discriminação.

ARTIGO 8°

Toda a pessoa tem direito a recurso efetivo para as jurisdições nacionais competentes contra os atos que violem os direitos fundamentais reconhecidos pela Constituição ou pela lei.

ARTIGO 9°

Ninguém pode ser arbitrariamente preso, detido ou exilado.

ARTIGO 10°

Toda a pessoa tem direito, em plena igualdade, a que a sua causa seja equitativa e publicamente julgada por um tribunal independente e imparcial que decida dos seus direitos e obrigações ou das razões de qualquer acusação em matéria penal que contra ela seja deduzida.

ARTIGO 11°

Toda a pessoa acusada de um ato delituoso presume-se inocente até que a sua culpabilidade fique legalmente provada no decurso de um processo público em que todas as garantias necessárias de defesa lhe sejam asseguradas. Ninguém será condenado por ações ou omissões que, no momento da sua prática, não constituam ato delituoso à face do direito interno ou internacional. Do mesmo modo, não será infligida pena mais grave do que a que era aplicável no momento em que o ato delituoso foi cometido.

ARTIGO 12°

Ninguém sofrerá intromissões arbitrárias na sua vida privada, na sua família, no seu domicílio ou na sua correspondência, nem ataques à sua honra e reputação. Contra tais intromissões ou ataques toda a pessoa tem direito a proteção da lei.

ARTIGO 13°

Toda a pessoa tem o direito de livremente circular e escolher a sua residência no interior de um Estado. Toda a pessoa tem o direito de abandonar o país em que se encontra, incluindo o seu, e o direito de regressar ao seu país.

ARTIGO 14°

Toda a pessoa sujeita a perseguição tem o direito de procurar e de beneficiar de asilo em outros países. Este direito não pode, porém, ser invocado no caso de processo realmente existente por crime de direito comum ou por atividades contrárias aos fins e aos princípios das Nações Unidas.

ARTIGO 15°

Todo o indivíduo tem direito a ter uma nacionalidade. Ninguém pode ser arbitrariamente privado da sua nacionalidade nem do direito de mudar de nacionalidade.

ARTIGO 16°

A partir da idade núbil, o homem e a mulher têm o direito de casar e de constituir família, sem restrição alguma de raça, nacionalidade ou religião. Durante o casamento e na altura da sua dissolução, ambos têm direitos iguais. O casamento não pode ser celebrado sem o livre e pleno consentimento dos futuros esposos. A família é o elemento natural e fundamental da sociedade e tem direito à proteção desta e do Estado.

ARTIGO 17°

Toda a pessoa, individual ou coletiva, tem direito à propriedade. Ninguém pode ser arbitrariamente privado da sua propriedade.

ARTIGO 18°

Toda a pessoa tem direito à liberdade de pensamento, de consciência e de religião; este direito implica a liberdade de mudar de religião ou de

convicção, assim como a liberdade de manifestar a religião ou convicção, sozinho ou em comum, tanto em público como em privado, pelo ensino, pela prática, pelo culto e pelos ritos.

ARTIGO 19°

Todo o indivíduo tem direito à liberdade de opinião e de expressão, o que implica o direito de não ser inquietado pelas suas opiniões e o de procurar, receber e difundir, sem consideração de fronteiras, informações e ideias por qualquer meio de expressão.

ARTIGO 20°

Toda a pessoa tem direito à liberdade de reunião e de associação pacíficas. Ninguém pode ser obrigado a fazer parte de uma associação.

ARTIGO 21°

Toda a pessoa tem o direito de tomar parte na direção dos negócios, públicos do seu país, quer diretamente, quer por intermédio de representantes

Toda a pessoa tem o direito de fundar com outras pessoas sindicatos e de se filiar em sindicatos para defesa dos seus interesses.

ARTIGO 24°

Toda a pessoa tem direito ao repouso e aos lazeres, especialmente, a uma limitação razoável da duração do trabalho e a férias periódicas pagas.

ARTIGO 25°

Toda a pessoa tem direito a um nível de vida suficiente para lhe assegurar e à sua família a saúde e o bem-estar, principalmente quanto à alimentação, ao vestuário, ao alojamento, à assistência médica e ainda quanto aos serviços sociais necessários, e tem direito à segurança no desemprego, na doença, na invalidez, na velhice ou noutros casos de perda de meios de subsistência por circunstâncias independentes da sua vontade. A maternidade e a infância têm direito a ajuda e a assistência especiais. Todas as crianças, nascidas dentro ou fora do matrimônio, gozam da mesma proteção social.

ARTIGO 26°

Toda a pessoa tem direito à educação. A educação deve ser gratuita, pelo menos a correspondente ao ensino elementar fundamental. O ensino elementar é obrigatório. O ensino técnico e profissional deve ser generalizado; o acesso aos estudos superiores deve estar aberto a todos em plena igualdade, em função do seu mérito. A educação deve visar à plena expansão da personalidade humana e ao reforço dos direitos do homem e das liberdades fundamentais e deve favorecer a compreensão, a tolerância e a amizade entre todas as nações e todos os grupos raciais ou religiosos, bem como o desenvolvimento das atividades das Nações Unidas para a manutenção da paz. Aos pais pertence a prioridade do direito de escolher o gênero de educação a dar aos filhos.

ARTIGO 27°

Toda a pessoa tem o direito de tomar parte livremente na vida cultural da comunidade, de fruir as artes e de participar no progresso científico e nos benefícios que deste resultam. Todos têm direito à proteção dos interesses morais e materiais ligados a qualquer produção científica, literária ou artística da sua autoria.

ARTIGO 28°

Toda a pessoa tem direito a que reine, no plano social e no plano internacional, uma ordem capaz de tornar plenamente efetivos os direitos e as liberdades enunciadas na presente declaração.

ARTIGO 29°

O indivíduo tem deveres para com a comunidade, fora da qual não é possível o livre e pleno desenvolvimento da sua personalidade. No exercício deste direito e no gozo destas liberdades ninguém está sujeito senão às limitações estabelecidas pela lei com vista exclusivamente a promover o reconhecimento e o respeito dos direitos e liberdades dos outros e a fim de satisfazer as justas exigências da moral, da ordem pública e do bem-estar numa sociedade democrática. Em caso algum estes direitos e liberdades poderão ser exercidos contrariamente e aos fins e aos princípios das Nações Unidas.

ARTIGO 30°

Nenhuma disposição da presente declaração pode ser interpretada de maneira a envolver para qualquer Estado, agrupamento ou indivíduo o direito de se entregar a alguma atividade ou de praticar algum ato destinado a destruir os direitos e liberdades aqui enunciados.

DECLARAÇÃO UNIVERSAL DOS DIREITOS HUMANOS



metro

FONTE: ORGANIZAÇÃO DAS NAÇÕES UNIDAS

Source: <https://www.metrojournal.com.br/foco/2018/12/10/declaracao-universal-direitos-humanos-70-anos.html>

Activity 1: Icebreaker – Handout with key provisions from Timor-Leste’s Constitution for the ‘TRUE or FALSE’ game

PARTE I PRINCIPIOS FUNDAMENTAIS

Artigo 1.º

(A República)

1. A República Democrática de Timor-Leste é um Estado de direito democrático, soberano, independente e unitário, baseado na vontade popular e no respeito pela dignidade da pessoa humana.
2. O dia 28 de Novembro de 1975 é o dia da Proclamação da Independência da República Democrática de Timor-Leste.

PARTE I PRINCIPIOS FUNDAMENTAIS

Artigo 9.º

(Recepção do direito internacional)

1. A ordem jurídica timorense adopta os princípios de direito internacional geral ou comum.
2. As normas constantes de convenções, tratados e acordos internacionais vigoram na ordem jurídica interna mediante aprovação, ratificação ou adesão pelos respectivos órgãos competentes e depois de publicadas no jornal oficial.
3. São inválidas todas as normas das leis contrárias às disposições das convenções, tratados e acordos internacionais recebidos na ordem jurídica interna timorense.

PARTE II DIREITOS, DEVERES, LIBERDADES E GARANTIAS FUNDAMENTAIS

TÍTULO I

PRINCÍPIOS GERAIS

Artigo 16.º

(Universalidade e igualdade)

1. Todos os cidadãos são iguais perante a lei, gozam dos mesmos direitos e estão sujeitos aos mesmos deveres.
2. Ninguém pode ser discriminado com base na cor, raça, estado civil, sexo, origem étnica, língua, posição social ou situação económica, convicções políticas ou ideológicas, religião, instrução ou condição física ou mental.

PARTE II DIREITOS, DEVERES, LIBERDADES E GARANTIAS FUNDAMENTAIS

TÍTULO I

PRINCÍPIOS GERAIS

Artigo 17.º

(Igualdade entre mulheres e homens)

A mulher e o homem têm os mesmos direitos e obrigações em todos os domínios da vida familiar, cultural, social, económica e política

PARTE II
DIREITOS, DEVERES, LIBERDADES E GARANTIAS
FUNDAMENTAIS

TÍTULO I

PRINCÍPIOS GERAIS

Artigo 18.º

(Protecção da criança)

1. A criança tem direito a protecção especial por parte da família, da comunidade e do Estado, particularmente contra todas as formas de abandono, discriminação, violência, opressão, abuso sexual e exploração.
2. A criança goza de todos os direitos que lhe são universalmente reconhecidos, bem como de todos aqueles que estejam consagrados em convenções internacionais regularmente ratificadas ou aprovadas pelo Estado.

PARTE II
DIREITOS, DEVERES, LIBERDADES E GARANTIAS
FUNDAMENTAIS

TÍTULO I

PRINCÍPIOS GERAIS

Artigo 20.º

(Terceira idade)

1. Todos os cidadãos de terceira idade têm direito a protecção especial por parte do Estado.
2. A política de terceira idade engloba medidas de carácter económico, social e cultural tendentes a proporcionar às pessoas idosas oportunidades de realização pessoal através de uma participação digna e activa na vida da comunidade.

PARTE II
DIREITOS, DEVERES, LIBERDADES E GARANTIAS
FUNDAMENTAIS

TÍTULO I

PRINCÍPIOS GERAIS

Artigo 21.º

(Cidadão portador de deficiência)

1. O cidadão portador de deficiência goza dos mesmos direitos e está sujeito aos mesmos deveres dos demais cidadãos, com ressalva do exercício ou do cumprimento daqueles para os quais se encontra impossibilitado em razão da deficiência.
2. O Estado, dentro das suas possibilidades, promove a protecção aos cidadãos portadores de deficiência, nos termos da lei.

PARTE II
DIREITOS, DEVERES, LIBERDADES E GARANTIAS
FUNDAMENTAIS

TÍTULO I

PRINCÍPIOS GERAIS

Artigo 23.º

(Interpretação dos direitos fundamentais)

Os direitos fundamentais consagrados na Constituição não excluem quaisquer outros constantes da lei e devem ser interpretados em consonância com a Declaração Universal dos Direitos Humanos.

PARTE II
DIREITOS, DEVERES, LIBERDADES E GARANTIAS
FUNDAMENTAIS

TÍTULO II

DIREITOS, LIBERDADES E GARANTIAS PESSOAIS

Artigo 29.º

(Direito à vida)

1. A vida humana é inviolável.
2. O Estado reconhece e garante o direito à vida.
3. Na República Democrática de Timor-Leste não há pena de morte.

PARTE II
DIREITOS, DEVERES, LIBERDADES E GARANTIAS
FUNDAMENTAIS

TÍTULO II

DIREITOS, LIBERDADES E GARANTIAS PESSOAIS

Artigo 30.º

(Direito à liberdade, segurança e integridade pessoal)

1. Todos têm direito à liberdade, segurança e integridade pessoal.
2. Ninguém pode ser detido ou preso senão nos termos expressamente previstos na lei vigente, devendo sempre a detenção ou a prisão ser submetida à apreciação do juiz competente no prazo legal.
3. Todo o indivíduo privado de liberdade deve ser imediatamente informado, de forma clara e precisa, das razões da sua detenção ou prisão, bem como dos seus direitos, e autorizado a contactar advogado, directamente ou por intermédio de pessoa de sua família ou de sua confiança.
4. Ninguém pode ser sujeito a tortura e a tratamentos cruéis, desumanos ou degradantes.

PARTE II
DIREITOS, DEVERES, LIBERDADES E GARANTIAS
FUNDAMENTAIS

TÍTULO II

DIREITOS, LIBERDADES E GARANTIAS PESSOAIS

Artigo 32.º

(Limites das penas e das medidas de segurança)

1. Na República Democrática de Timor-Leste não há prisão perpétua, nem penas ou medidas de segurança de duração ilimitada ou indefinida.
2. Em caso de perigosidade por anomalia psíquica, as medidas de segurança poderão ser sucessivamente prorrogadas por decisão judicial.
3. A responsabilidade penal é insusceptível de transmissão.
4. Os condenados aos quais sejam aplicadas pena ou medida de segurança privativas da liberdade mantêm a titularidade dos direitos fundamentais, salvas as limitações inerentes ao sentido da condenação e às exigências próprias da respectiva execução.

PARTE II
DIREITOS, DEVERES, LIBERDADES E GARANTIAS
FUNDAMENTAIS

TÍTULO III

DIREITOS E DEVERES ECONÓMICOS, SOCIAIS E CULTURAIS

Artigo 57.º

(Saúde)

1. Todos têm direito à saúde e à assistência médica e sanitária e o dever de as defender e promover.
2. O Estado promove a criação de um serviço nacional de saúde universal, geral e, na medida das suas possibilidades, gratuito, nos termos da lei.
3. O serviço nacional de saúde deve ser, tanto quanto possível, de gestão descentralizada e participativa.

Activity 4: Short scenarios – exercise sheets

Scenario 1

New prisoners arriving at a prison are beaten by prison guards, including with sticks. This is part of a systematic practice that happens every time a new prisoner arrives at the institution as a prison initiation procedure.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

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Analyse the scenario using the different elements of the definition of torture (see Power-point slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

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As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

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Scenario 2

A group of male detainees have made a formal complaint alleging that when they first arrived at the prison where they are being held they were stripped naked by the guards and left without clothes for a whole day, as well as being spat on and called a number of offensive terms, such as 'dirty criminals'.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

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Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

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As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

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Scenario 3

A 15-year-old boy is placed in the same cell as adult detainees. He is constantly threatened and intimidated by the other detainees. He feels very afraid.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

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Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

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As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

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Scenario 4

As punishment for a fight between a sub-group of the male prisoners in a particular cell, the guards decide to reduce the daily food allowance of all detainees in the cell to one meal per day for two weeks. The guards also prohibit them from receiving any visits from their relatives.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

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Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

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As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

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Scenario 5

A pregnant woman prisoner is kept in isolation (i.e. without meaningful human contact) in a dark, solitary-confinement cell for 23 hours a day for a period of 17 days.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

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Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

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As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

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Scenario 6

A woman prisoner is kept in a small, dirty, insect-infested cell in an old, typically-unused wing of a prison until space becomes available in the overcrowded main prison. In the side wing, there are very loud, near- constant hissing noises, and artificial lighting is enforced at all times, making it difficult to sleep. Because the wing is far from the main prison, the woman is given access to toilet facilities only once a day.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

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Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

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As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

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Scenario 7

A woman prisoner is stripped naked by several male prison guards for the purposes of a search. The search is done by visual inspection of her body. She has repeatedly asked to be searched by a woman guard, but is told that no women guards are on duty that day.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

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Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

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As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

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Scenario 8

For over a week, a male prisoner has been complaining of severe headaches, intestinal pains, constant dizziness and lack of appetite. Already very frustrated and tired because of the pain, on the tenth day he becomes very nervous in his cell; he screams, breaks his belongings and shouts to be taken to an emergency hospital. He tells the guards that he will file a complaint with the authorities. One of the prison staff tells him to shut up and that he has no right to file complaints or grievances and adds that complaining about prison staff constitutes a disciplinary infraction.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

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Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

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As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

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Notes for facilitators

Activity 1: Icebreaker – cards for the ‘TRUE or FALSE’ game

The following resource lists the statements for the facilitators to read out to the class during the activity, followed by the correct answer (i.e. whether the statement is TRUE or FALSE), then a sample explanation regarding why the statement is TRUE or FALSE.

Human rights first became internationally recognised after the Second World War.	<p>TRUE</p> <p>The ideas behind human rights have been present throughout history in many different societies, cultures and religions. However, the idea that there are basic rights that belong to all people was internationally recognised after the Second World War with the creation of the Universal Declaration of Human Rights.</p>
International human rights treaties are not relevant for Timor-Leste’s state officials as these treaties are not part of the country’s domestic legal framework.	<p>FALSE</p> <p>As stipulated in Article 9 of Timor Leste’s Constitution, the Timorese legal system adopts the principles of general or common international law. Once an international convention, treaty or agreement is approved or ratified by the respective competent State body, and published in the official gazette, it takes effect in the internal legal system of the country and becomes mandatory.</p> <p>[The facilitator should read Article 9 aloud or ask a participant to do so.]</p>
Every person has human rights, simply because they are human.	<p>TRUE</p> <p>These rights ensure that all people can live freely, flourish, reach their potential, and participate in society. They ensure that people are treated fairly and with dignity and respect. You have human rights simply because you are human and they cannot be taken away. Men and women are entitled to the same rights. This is reflected in Article 17 of Timor Leste’s Constitution.</p> <p>[The facilitator should read Article 17 aloud or ask a participant to do so.]</p>
Human rights are not the same for all people or for all categories of people. For instance, prisoners may lose some of their human rights because they have committed crimes. Similarly, human rights may apply differently to men and women, depending on the situation.	<p>FALSE</p> <p>The Universal Declaration of Human Rights recognises that everyone is born free and equal in dignity and rights. Human rights should apply equally to everyone, no matter who they are or where they live. Under international law, the only right that prisoners should be deprived of while detained is the right to liberty and freedom of movement. All the other rights remain: prisoners maintain the right to life, physical and moral integrity, an adequate standard of living, healthcare, contact with the outside world, and the right to complain about ill-treatment. This is reflected in Articles 16 and 32.4 of Timor-Leste’s Constitution.</p> <p>[The facilitator should read these articles aloud or ask a participant to do so.]</p>

<p>Because human rights apply equally to all people, it is discriminatory for some groups to be afforded additional or 'special' protections and safeguards.</p>	<p>FALSE</p> <p>Some groups (e.g. children) can and should be afforded additional, unique and/or special protections due to their heightened vulnerability; this can be necessary to ensure that they are able to enjoy their human rights on an equal footing with others. This is reflected in Timor-Leste's Constitution, which recognises that some specific groups are entitled to additional levels of protection due to their heightened vulnerability: Article 18 includes provisions for the protection of children; Article 20 concerns the protection of elderly persons; and Article 21.2 covers the protection of persons with special needs.</p> <p>[The facilitator should read these articles out loud or ask a participant to do so.]</p>
<p>As long as the state does not directly infringe on a person's human rights, it does not have to take active steps to protect or fulfil human rights.</p>	<p>FALSE</p> <p>States have responsibilities</p> <ul style="list-style-type: none"> ➤ to respect and protect people's human rights (e.g. the right to dignity and freedom of speech), and ➤ to fulfil certain rights (e.g. the right to be free from torture and other ill-treatment, and the right to education and healthcare).
<p>A state doesn't have to protect the human rights of its people until it has sufficient resources.</p>	<p>FALSE</p> <p>International human rights treaties impose immediate obligations on states to take appropriate steps towards the full realisation of the rights they concern. A lack of resources cannot justify inaction or indefinite postponement of measures to fulfil these obligations. States must demonstrate that they are making every effort to improve the enjoyment of economic, social and cultural rights even when resources are scarce.</p>
<p>The primary role of prison guards is to manage prisons effectively and ensure the good order of the prison, not to protect or ensure human rights.</p>	<p>FALSE</p> <p>Both of these roles are crucial – and interdependent.</p>

Activity 4: Short scenarios

For each scenario, the following materials outline the key points facilitators should ensure are raised during discussions with the class and/or in their own summing up.

Scenario 1

New prisoners arriving at a prison are beaten by prison guards, including with sticks. This is part of a systematic practice that happens every time a new prisoner arrives at the institution as a prison initiation procedure.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

- Physical violence
- Purpose is to intimidate/punish
- Practice that happens in a systematic manner
- These types of prison initiation procedure should never be condoned as they are illegal

Analyse the scenario using the different elements of the definition of torture (see Power-point slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

- Severe pain through physical aggression
- Intentional act
- Recurring, systematic practice (i.e. all new prisoners are subjected to it)
- Purpose is to intimidate/humiliate new prisoners on arrival
- Perpetrated by state officials

As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

- Repudiate any kind of initiation procedure among your peers and report any occurrence to superior authorities
- Protect the physical integrity of detainees, and treat them with respect, observing their inherent dignity (as per the Mandela Rules: Rule 1, Regime de Execução Penal: Article 15.2.a, and the Constituição do Timor-Leste: Article 30)

Scenario 2

A group of male detainees have made a formal complaint alleging that when they first arrived at the prison where they are being held they were stripped naked by the guards and left without clothes for a whole day, as well as being spat on and called a number of offensive terms, such as 'dirty criminals'.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

- Degrading and humiliating treatment
- Purpose is to induce fear and intimidate new detainees
- Causes psychological suffering (though it does not involve direct physical aggression)

Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

- Causes severe mental suffering
- Intentional
- Purpose is to intimidate new detainees
- No physical aggression as such, but includes acts that can cause severe psychological pain and fear (e.g. leaving a person naked)
- Undressing generates a situation of powerlessness and imminent threat
- Committed by public officials

As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

- Admission procedures must respect the dignity of all prisoners (as per the Mandela Rules: Rule 1, and Regime de Execução Penal: Article 15.2a)
- Refrain from humiliating prisoners through name-calling, removing their clothes, and leaving them in a degrading situation (as per the Constituição do Timor-Leste: Articles 16.2, 30.1, 30.4 and 36)
- Penitentiaries should strictly follow admission procedures rules and norms
- When conducting a search, penitentiary staff must respect prisoners' dignity, integrity and privacy (as per the Regime de Execução Penal: Article 26.7)

Scenario 3

A 15-year-old boy is placed in the same cell as adult detainees. He is constantly threatened and intimidated by the other detainees. He feels very afraid.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

- Prisoner is a child (see Convention on the Rights of the Child: Article 1)
- Heightened situation of vulnerability: owing to children's additional physiological and psychological needs (which render them particularly sensitive to deprivation and treatment), they are more vulnerable to torture and other ill-treatment than adults
- Psychological violence perpetrated by other inmates
- Duty of the state to protect detainees: persons in custody are in a vulnerable position and authorities have a duty to take measures to protect them from acts of intimidation, including violence from other prisoners
- Vulnerability of children imposes a heightened obligation of due diligence on states to take additional measures to ensure their human rights, including their right to life, health, dignity, and physical and mental integrity

Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

- Psychological suffering
- Committed by detainees (not public officials), but could be interpreted as happening with the acquiescence of a public official (i.e. the guards placed the child in the cell with the adult detainees)
- Authorities did not take all steps reasonably expected of them to prevent real and immediate risks to the child's physical integrity, despite having/being in the position to have knowledge of the risks
- Purpose and intention are inconclusive
- Standard of what constitutes torture is lower with children. Therefore, this could be considered torture

As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

- Ensure that child prisoners be kept completely separate from adults (as per the Mandela Rules: Rule 11.d, and the Regime de Execução Penal: Article 18.1.b)
- Keep registry books with up-to-date information regarding the cell allocation of each prisoner
- Pay particular attention to the protection of children who are detained; their vulnerability imposes a heightened obligation of due diligence on state officials to take additional measures to ensure their human rights to life, health, dignity, and physical and mental integrity (as per the Constituição do Timor-Leste: Article 18)

[Further reading: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment, A/HRC/28/68, 5 March 2015: §§ 69, 70, 72 and 76]

Scenario 4

As punishment for a fight between a sub-group of the male prisoners in a particular cell, the guards decide to reduce the daily food allowance of all detainees in the cell to one meal per day for two weeks. The guards also prohibit them from receiving any visits from their relatives.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

- Deprivation of food as a disciplinary sanction
- Restriction of family contact as a disciplinary sanction
- Lack of due administrative process to verify a disciplinary infraction (i.e. the guards decided by themselves how to punish the detainees)
- Collective punishment, including lack of proper verification of involvement and lack of individualised sanctions (i.e. only some of the detainees in the cell were involved in the fight: those who didn't misbehave by joining the fight shouldn't be punished)

Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

- Severe suffering through lack of adequate food/restriction of access to food
- Intentional
- Length of suffering: the length of time over which the pain and/or suffering is inflicted can be a factor in determining whether an act constitutes torture or other ill-treatment
- Purpose is to punish
- Perpetrated by public officials

As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

- Institute a proper, regulated disciplinary inquiry to look into what happened and verify who committed the offence – collective punishments are not allowed (as per the Mandela Rules: Rule 43.1.e)
- Strictly follow disciplinary procedures and sanctions authorised by law and/or by regulation of the competent administrative authorities (as per the Mandela Rules: Rule 37)
- Promptly report any allegations or suspicions of prisoners committing disciplinary offences to the competent authority, which should investigate without undue delay (as per the Mandela Rules: Rule 41)
- Apply disciplinary sanctions only after a disciplinary investigation in which the principles of fairness and due process are observed (as per the Mandela Rules: Rule 41)
- Respect the types and duration of sanctions established in law and/or regulation: corporal punishment, the reduction of a prisoner's food and/or drinking water, and prohibiting family contact are forbidden (as per the Mandela Rules: Rules 43.1.d and 43.3)

Scenario 5

A pregnant woman prisoner is kept in isolation (i.e. without meaningful human contact) in a dark, solitary-confinement cell for 23 hours a day for a period of 17 days.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

- Pregnant woman
- Solitary confinement – due to the harmful effect on physical and mental well-being, solitary confinement should only be used in exceptional circumstances; it should be strictly supervised and used only for a limited period of time (i.e. not more than 15 days)
- Prolonged solitary confinement – 15 days is the limit between ‘solitary confinement’ and ‘prolonged solitary confinement’: according to research, after 15 days some of the harmful psychological effects of isolation can become irreversible
- Mental health issues and psychological suffering caused by solitary confinement and isolation

Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

- Psychological pain or suffering caused by prolonged isolation
- Intentional
- Purpose: not clear whether there was a particular purpose or objective
- Prisoner put and kept there by public officials
- Prisoner's status as a pregnant woman demands attention, including medical attention: being put in a situation of isolation and confinement may increase the risk of harm to her physical and psychological integrity

As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

- Do not place pregnant women in isolation and/or solitary confinement (as per the Bangkok Rules: Rule 22)
- Avoid placing any prisoner in solitary confinement as it generates harmful effects on the person's physical and mental well-being (as per the Mandela Rules: Rules 43.1, 44 and 45, and Constituição do Timor-Leste: Articles 30.1 and 30.4)
- Meet the special needs of pregnant women, including with regard to medical attention, conditions of detention, prison regime, and health programmes (the latter to be drawn up and monitored by a qualified health practitioner) (as per the Bangkok Rules: Rules 42.3, 47 and 48)

[Further reading: Report of the UN Special Rapporteur on Torture, A/66/268, August 2011: §§ 26, 88, 89]

Scenario 6

A woman prisoner is kept in a small, dirty, insect-infested cell in an old, typically-unused wing of a prison until space becomes available in the overcrowded main prison. In the side wing, there are very loud, near-constant hissing noises, and artificial lighting is enforced at all times, making it difficult to sleep. Because the wing is far from the main prison, the woman is given access to toilet facilities only once a day.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

- Material conditions of detention
- Overcrowding
- Sanitary conditions
- Sleep deprivation

Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

- Intention is disputable: not clear if the intention of the prison officials is to cause severe pain or suffering
- Series of cumulative factors that amount to ill-treatment (i.e. degrading conditions of detention, lack of access to sanitary facilities, and sleep deprivation)
- Purpose is unclear, but if there were intention and purpose this situation could amount to torture

As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

- Assure minimum conditions regarding health and hygiene in the cell, taking measures to keep the cell clean (as per the Mandela Rules: Rules 12 and 13, and the Regime de Execução Penal: Article 34.2)
- If the cell is used due to overcrowding of the main prison, the prison's administration should guarantee minimum conditions of habitability that are respectful of prisoner's dignity; this should include installing sanitary facilities (as per the Mandela Rules: Rule 15, the Regime de Execução Penal: Articles 15.2 and 25.1, and Constituição do Timor-Leste: Articles 1.1 and 30.1)

Scenario 7

A woman prisoner is stripped naked by several male prison guards for the purposes of a search. The search is done by visual inspection of her body. She has repeatedly asked to be searched by a woman guard, but is told that no women guards are on duty that day.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

- Invasive body search (i.e. strip search) – due to their intrusive nature, all body searches can be degrading, even humiliating: they should only be used when strictly necessary to maintain order or security in the prison for the prisoner, other detainees and staff; searches must be conducted in a manner that is respectful of the detainee's dignity
- Sex of staff members who conduct a search in relation to the sex of the prisoner being searched
- Need for adequate training for officers who conduct searches
- Alternative measures should always be used when possible (e.g. electronic equipment, X-rays and metal detectors)

Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

- Single instances of strip searching can amount to degrading treatment depending on the manner in which the strip search is carried out, the possibility that its aim is to humiliate and debase, and where there is no justification for it
- Psychological suffering
- Purpose not clear, but might be to humiliate or debase
- Justification for the search not clear

As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

- Ensure that women guards carry out searches of women prisoners, and that searches are conducted in private (as per the Mandela Rules: Rule 52, and Regime de Execução Penal: Article 86.2-3)
- Request that the prison administration guarantee that at least one woman officer is on duty at all times in detention facilities with women prisoners
- If there is no woman guard on duty, carry out the body search by other means (e.g. electronic equipment, X-rays or metal detectors)
- Ensure that guards who conduct searches of prisoners receive training in appropriate methods in accordance with established procedures (as per the Mandela Rules: Rule 52, and Bangkok Rules: Rule 19)
- Request that prison administration adopts alternative screening methods to replace strip searches and invasive body searches in order to avoid psychological harm and potential physical harm (as per the Bangkok Rules: Rule 20)

[Further reading: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, § 23]

Scenario 8

For over a week, a male prisoner has been complaining of severe headaches, intestinal pains, constant dizziness and lack of appetite. Already very frustrated and tired because of the pain, on the tenth day he becomes very nervous in his cell; he screams, breaks his belongings and shouts to be taken to an emergency hospital. He tells the guards that he will file a complaint with the authorities. One of the prison staff tells him to shut up and that he has no right to file complaints or grievances and adds that complaining about prison staff constitutes a disciplinary infraction.

What elements of this practice are problematic from the point of view of prevention of torture and other ill-treatment?

- Negligence regarding the provision of medical attention
- Right to life: this implies an obligation on state authorities to provide prisoners with the medical care necessary to safeguard their lives
- Right to healthcare
- At least one public official is aware of the need for medical attention, but does not act to ensure it is provided
- Detainees have a right to file complaints without this being considered a form of disciplinary infraction
- Establish and make available a complaints system for detainees

Analyse the scenario using the different elements of the definition of torture (see Powerpoint slides 1 and 2) to determine whether the situation could amount to torture, other ill-treatment, or neither.

- Torture can occur by omission (e.g. not providing medical attention)
- Medical treatment was sought but refused by a prison official
- Intent to cause harm in both the refusal and the response of the guard
- Purpose is unclear
- Public official

As prison guard/staff, what could you do to prevent such a practice from taking place? Identify the relevant standards on your handouts of the Mandela Rules, Penal Execution Code/Regime de Execução Penal, and/or Constitution of Timor-Leste/Constituição do Timor-Leste.

- Provide medical assistance promptly when a prisoner first requests it or demonstrates being in pain or sick (as per the Mandela Rules: Rules 24.1 and Rule 27.1, Regime de Execução Penal: Article 39.1, and Constituição do Timor Leste: Articles 29.2 and 57.1)
- Violence and distress can usually be prevented by prison staff responding quickly to the needs or requests of prisoners concerning medical care
- Allow prisoners to make requests and issue complaints, as is their right
- Provide prisoners with the necessary tools to file complaints
- Prison staff must not intimidate or threaten prisoners for filing complaints against them (as per the Mandela Rules: Rules 54.b and 56)
- Establish a formal and transparent set of procedures for complaints and make them available to prisoners: prisoners should receive written information about such procedures and how to access them

[Note that complaint systems should have two levels: one internal and one external.]

Additional reading

1. What are human rights? How do states guarantee human rights?

What are human rights?

Human rights are rights and freedoms to which every person is entitled by virtue of being human. Human rights are universal and inherent to all people, regardless of nationality, sex, sexual orientation, age, race, national or ethnic origin, religion, disability, or any other socio-demographic characteristic.

The **Universal Declaration of Human Rights (UDHR)**, adopted by the United Nations General Assembly in 1948, was the first international legal document to set out the fundamental human rights to be universally protected; it is the foundation of all international human rights law. The Preamble to the UDHR speaks of recognizing “the inherent dignity and ... equal and inalienable rights of all members of the human family [a]s the foundation of freedom, justice and peace in the world”.

The recognition of the dignity inherent in every person, independent of his or her personal conditions or legal situation, is the basis of the development and international protection of human rights. Accordingly, the exercise of public power has certain limits that stem from these rights and the need to protect and uphold human dignity.

How do human rights apply at the national level?

International human rights laws (including norms and standards) are binding on all states and their agents (including prison officials) via customary international law and also each state’s international and/or regional treaty obligations.

As stipulated in Article 9 of Timor-Leste’s Constitution, the Timorese legal system has adopted the principles of general or common international law. Thus, the norms contained in international conventions, treaties and agreements take effect in the internal legal system of the country upon approval, ratification or accession by the respective competent state body and after publication in the official gazette.

The international norms of human rights prevail over Timor-Leste’s own national legislation. According to Article 9.3 of Timor-Leste’s Constitution, “All legal norms that are contrary to the provisions of the international conventions, treaties, and agreements incorporated into the internal Timorese legal system shall be invalid.” Therefore, the State has international obligations that it has to comply with as a result of signing international treaties against torture and ill-treatment. Prison guards must know these treaties, and the obligations derived from them, as they are responsible for upholding these in practice through acting within the framework they provide.

Article 23 of Timor-Leste’s Constitution makes an explicit reference to the Universal Declaration of Human Rights, stating that all the fundamental rights enshrined in the Constitution do not exclude any other, and that they must be interpreted in line with the UDHR.

The protection of the dignity of every human being is also a guiding principle consolidated in the first Article of the country's Magna Carta, necessitating that it be taken into account as a key value in all matters:

The Democratic Republic of Timor-Leste is a democratic State based on the rule of law, sovereign, independent and unitary based on the will of the people and **respect for the dignity of the human person**.

The human rights set forth in the Universal Declaration of Human Rights are duly reflected in Timor-Leste's Constitution, which also explicitly provides for the rights to personal freedom, security and integrity, health and life, among others personal rights, freedoms and guarantees. In the framework of addressing torture and torture prevention, the most relevant Articles are 1, 23, 29, 30 and 31.

Rights and obligations

- The obligation to **respect** means that states must refrain from interfering with, or curtailing the enjoyment of, human rights.
- The obligation to **protect** requires states to protect individuals and groups against human rights abuses.
- The obligation to **fulfill** means that states must take positive action to facilitate the enjoyment of basic human rights.

2. What does international law say about deprivation of liberty and human rights? What obligations derive to states?

The right to personal liberty and the lawful deprivation of liberty

Liberty of the person is one of the most precious rights of all human beings. Under international law, "everyone has the right to personal liberty and security" (UDHR, Article 3) and "no one shall be subjected to arbitrary arrest or detention" (UDHR, Article 9). These fundamental rights are also established, in the exact same words, in the International Covenant on Civil and Political Rights (ICCPR, Articles 5 and 9.1).

However, the right to personal liberty is not absolute. Persons may be deprived of their liberty on such grounds, and in accordance with such procedures, as are established by law. For instance, Article 9.1-2 of the ICCPR states that

No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

States' obligations to prisoners

When a person is legally arrested and deprived of his or her liberty, from the arrest flows state obligations to treat that person with humanity, fully observing and respecting his or her inherent dignity. These rights are non-derogable and fundamental. For instance, Article 10.1 of the ICCPR states that

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

Meanwhile, Article 1 of the Mandela Rules dictates that

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

As such, the duty of the state to protect the lives of, and ensure the humane treatment of, any person deprived of liberty includes the positive obligation to take all preventive measures to protect prisoners from attacks or attempted attacks by the state's own agents or third persons, including other prisoners. International human rights law requires states to adopt all measures available to them to guarantee the lives and personal integrity of people held in their custody.

All prison officials and guards play a key role in ensuring respect for the human rights of prisoners. As such, they need to be fully informed and educated about the prohibition of torture and other ill-treatment.

Full implementation of the relevant human rights standards ensures that prisoners' human rights are respected and that they are treated with dignity. This, in turn, creates safer environments for prison staff to carry out their duties effectively. It also means that prison authorities are able to contribute to achieving the primary purpose of criminal justice systems – rehabilitation.

Prisoners and the purpose of prison sentences

When a person is deprived of liberty as a result of being convicted of an offense by judicial authorities, that person can be described as a "prisoner". Article 10.3 of the ICCPR states that "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".

The Mandela Rules expands on this in Rule 4.1:

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

The treatment of prisoners as a benchmark for the rule of law and democracy

One of the greatest tests of respect for human rights is the way in which a society treats those who have broken, or are accused of having broken, the criminal law. Prison staff play a special role, on behalf of the rest of society, in acting with respect for prisoners' dignity, despite any crime they may have committed.

This principle of respect for all human beings, whatever wrong they may have done, was articulated by famous former-prisoner and ex-President of South Africa Nelson Mandela: "It is said that no one truly knows a nation until one has been inside the jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones".

3. What is the prohibition of torture and other ill-treatment? Why and how is it key to ensuring the basic human rights of prisoners?

Absolute prohibition of torture and other ill-treatment

All persons deprived of their liberty must at all times be treated with humanity and respect for the inherent dignity of the human person. No one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment. There are no exceptions to this rule.

Under the UNCAT, torture is defined as any act by which severe physical or mental pain or suffering is intentionally inflicted on a person; to be recognised as torture, this pain or suffering must be other than that which is inherent in, or incidental to, lawful sanctions.

Other ill-treatment is described as comprising any other acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture. Thus, there is a fine line between ill-treatment and torture. Ill-treatment can turn into torture based on

- the purpose of the ill-treatment,
- the specific situation and circumstances of the person it is happening to, and
- its duration.

The conditions of prisons and the situations that can be found there, plus the vulnerability of some prisoners, present numerous risk factors for torture. Thus, situations and actions that constitute torture often do not match the traditional image of torture as only involving physical aggression, often to obtain information or a confession.

States' obligations to prevent torture and other ill-treatment

Under international law, states' obligations to prevent torture and other ill-treatment apply at all times.

Related obligations at the nexus of torture prevention and deprivation of liberty

- All prison authorities/corrections officials must be fully informed and educated about the prohibition of torture and other ill-treatment.
- Any statement made as a result of torture may not be invoked as evidence in any proceedings, except as evidence to bring the perpetrators of the torture to justice.
- Orders from a superior officer may not be invoked as a justification for torture.
- Authorities may use force only when it is strictly necessary.
- Any individual who alleges that he or she has been subjected to torture has the right to complain, and to have the case promptly and impartially examined by competent authorities.
- All deaths in custody, and disappearances of prisoners, must be properly investigated.
- All interrogation rules, instructions, methods and practices pertaining to detained and imprisoned persons must be kept under systematic review with a view to preventing torture and other ill-treatment.
- Persons deprived of their liberty must only be held in places that are officially recognised as places of custody.
- A detailed register must be kept of every person deprived of their liberty and every place of deprivation of liberty.
- On arrival at prison all prisoners must be promptly provided with written information about the regulations that apply to them, and also their rights and obligations.
- The families, legal representatives and, if appropriate, diplomatic missions of prisoners must receive full information about the fact of prisoners' detention, including details of where they are held.
- All prisoners must be offered a proper medical examination, and any treatment necessary, as soon as possible after arrival at a prison.

How does Timor-Leste's Constitution address torture?

Timor-Leste's Constitution explicitly recognises human dignity as a principle and value that guides the functioning and conduct of all State branches and actors.

The absolute prohibition of torture is duly incorporated into Timor-Leste's Constitution in Article 30.4: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment."

Is torture a crime under Timor-Leste's domestic legislation?

Yes: torture is a crime under Timor-Leste's Penal Code. Article 167 defines the crimes of torture and ill-treatment as follows:

Torture, cruel, degrading or inhuman treatment means the infliction of acute physical or psychological suffering, severe physical or psychological fatigue or the use of chemicals, drugs or other means, natural or artificial, with the intention of impairing the decision or free expression of will of the victim.

Prison guards and other detaining officials are explicitly identified among the types of agents of the State who can be recognised as perpetrators of the crimes of torture and other ill-treatment. Prison sentences for those convicted of these crimes are usually between two and eight years.

“[Those] Who, having as their function the prevention, investigation with respect to any kind of offence, the enforcement of the respective sanctions **or the protection, guarding supervision or monitoring of a detained or imprisoned person** and tortures or treats them in a cruel, degrading or inhumane manner, in order to:

(a) To obtain from him or another person a confession, statement, testimony, declaration or information

(b) Punish him for an act committed or allegedly committed by him or another person

c) To intimidate or to intimidate another person, shall be punished by imprisonment for a term of 2 to 8 years.”

Further reading

Nelson Mandela Rules Guidance Document

https://www.osce.org/files/f/documents/7/b/389912_0.pdf

OHCHR Pocketbook for Prison Officials (Human Rights & Prisons) (2005)

<https://www.ohchr.org/documents/publications/training11add3en.pdf>

OHCHR Human Rights & Prisons Manual

<https://www.ohchr.org/documents/publications/training11en.pdf>

International Legal Standards for the Protection of Persons Deprived of their Liberty

<https://www.un.org/ruleoflaw/files/training9chapter8en.pdf>

A Human Rights Approach to Prison Management

https://www.prisonstudies.org/sites/default/files/resources/downloads/handbook_3rd_ed_english_v5_web.pdf

Council of Europe Handbook for Prison Staff

<https://rm.coe.int/combating-ill-treatment-in-prison-2-web-en/16806ab9a7>

[This has a focus on torture prevention.]

Module 2: Is Our Prison Safe and Responsive to Prisoners?



José's diary excerpt:

10:00 am - Prison guards' lounge

I received a complaint from one of the prisoners that he was beaten by one of the prison guards for making too much noise in his cell. I asked him which prison guard was responsible. He dared not tell me as he felt it would threaten his safety while in prison.

I was concerned with this revelation as I had previously believed the prison to be a safe and responsive place for prisoners. I also believed that my fellow guards adhered strictly to our code of conduct. Now, I wonder whether our prison really is safe and responsive to the needs and conditions of the prisoners. I wonder what I can do to make the prison safer.



Module 2	Building a safe and responsive prison in Timor-Leste
Description of the module	<p>This module provides participants with knowledge and practical understandings about.</p> <ul style="list-style-type: none"> ➤ what constitutes a safe and responsive prison, ➤ how these requirements link to participants' roles and responsibilities as prison guards, and ➤ how these feeds into torture prevention efforts
Learning outcomes	<p>Participants will learn and get acquainted with:</p> <ul style="list-style-type: none"> ➤ what a safe and responsive prison is according to international standards, and national policies and laws. ➤ what the roles and responsibilities of prison guards are in building safe and responsive prisons.
Time required to deliver the module as a training session	1 hour 45 minutes
Instructional materials and aids needed	<p>1. For the facilitator:</p> <ul style="list-style-type: none"> ➤ Powerpoint presentation ➤ Factsheets and scenarios <p>2. For participants:</p> <ul style="list-style-type: none"> ➤ A set of pictorial cards for Activity 1 for each group ➤ A scenario worksheets for Activity 2 for each group ➤ Blank charts for assessing key measures for safe and responsive prisons (Activity 2) for each group ➤ A copy of the Mandela Rules¹ in Tetum/Portuguese for each participant ➤ A copy of the UNCAT in Tetum/Portuguese for each participant ➤ A copy of Timor-Leste's Code of Conduct for Law Enforcement Officials for each participant ➤ A copy of the CAT Committee's Concluding Observation to Timor-Leste in Tetum/Portuguese
Agenda for the training session	<p>Content outline:</p> <p>What is a safe and responsive prison? Activities: Scenario ("Let's make our prison safe and responsive") and discussion, with presentation by the facilitator (1 hr)</p> <p>What are the roles and responsibilities of prison guards in building safe and responsive prisons? Activities: Scenarios, class discussion and facilitator's summary of key points from the module (45 minutes)</p>

1. The Mandela Rules are the revised Standard Minimum Rules for the Treatment of Prisoners 1957. The revised rules are adopted unanimously by the United Nations General Assembly in 2015.

Instructions for Activities

What is a safe and responsive prison?

Activity 1: Let's make our prison safe and responsive

Time: 1 hour

1. The facilitator will start the session by introducing the objectives of the module.
2. The facilitator will ask participants what they understand by the words 'safe' and 'responsive' using one of the following questions.
 - What are the first ideas, images or words that come to your mind when you hear the words 'safe' and 'responsive'?
 - Imagine a home that is safe and responsive: how would you describe it without using those words?
3. The facilitator will write down participants' responses on a flipchart, then explain that the session will explore these responses in the context of safe and responsive prisons.
4. The facilitator should reassure participants that the session will not test their knowledge of all the criteria and measures that constitute a safe and responsive prison. Instead, it will guide them through the main measures proposed in international human rights standards.
5. The facilitator will then divide participants into groups, with 5 or 6 people in each. Each group will then be given a copy of the following scenario.

José is a prison guard in one of the prisons in Timor-Leste. His Head of Prison has asked for his help to assess if the prison is safe and responsive for prisoners. The Head of Prison gave José a list of 16 items to consider. José must decide which 10 items are critical to making the prison safe and responsive.

1. A prisoner registry book
2. A complaints mechanism for prisoners.
3. A library
4. A field for daily exercise and recreational activities

5. Mobile phones for prisoners
6. Monthly prison visits from the Provedor of Human Rights and Justice
7. Training for prison guards on managing prisoners and work stress
8. Separate cells for women and/or juveniles
9. A small place of worship for prisoners
10. Desktop computers for prisoners to use
11. CCTV for public areas in the prison
12. Regular medical check-ups for all prisoners
13. A shop that sells food and essentials
14. A well-equipped gym
15. A counselling service for prisoners
16. The latest equipment for controlling and disciplining prisoners (e.g., tasers)

6. The facilitator will provide each group with a set of 16 pictorial cards to help them discuss the scenario (see *Notes for Facilitators and Training Materials* below).
7. The facilitator will give the groups 10 minutes to agree on the 10 items José should choose. Participants are also encouraged to expand on the details of their selected items; for example, participants might choose to specify how regular the medical check-ups should be and/or what kinds of books the library should contain.
8. Once each group has agreed on their 10 items, they should display the 10 associated pictorial cards.
9. The facilitator should then read aloud the second part of the scenario

The government of Timor-Leste has announced that all plans to reform the prison system have to be suspended as the funds are needed to address a recent flood disaster.

As a result, José has to drop 5 items from his list. He needs help to decide which items to keep and also ideas for how these items can be implemented without any additional budget from the government.

10. The facilitator will give the groups 15 minutes to agree which 5 items to keep and why.
11. The facilitator will then invite each group to stick the 5 associated pictorial cards on the flipchart or a wall using a masking tape.
12. The facilitator will highlight common choices as well as bringing participants' attention to the items selected least often.
13. The facilitator will then ask the following questions, writing down key responses on the flipchart:
 - Why were certain items selected in the first round and not others? How did you decide which items to choose (i.e., what were your selection criteria)? Were any items difficult to agree on? Why?
 - How did you decide which items to keep in the second round? Was it easier to decide which items to drop in the second round? If so, why? Would you have made different choices if the items were described differently (e.g., if instead of a mobile phone, one item was a public telephone)?
 - What do the five chosen items represent to your work as prison guards?
14. The facilitator will highlight the following points:
 - The items on the pictorial cards represent some of the main measures that a safe and responsive prison should have in place, as stipulated by international human rights standards.
 - Prison authorities may have to decide, based on the context and situation of the country, which measures to use and to what extent they can be implemented. Sometimes these decisions are not easy, as participants will have seen during the activity.
 - However, some of the measures must be put in place regardless of the context; facilitators should highlight common choices from the second round, as well as discussing other items that could be part of the selection.
 - Facilitator should also point out where different items chosen in the second round are found in international law (e.g., the UNCAT, OPCAT or Mandela Rules).
15. The facilitator will present the criteria for a safe and responsive prison as outlined under the *Notes for Facilitators and Training Materials* below.

What are the roles and responsibilities of prison guards in building safe and responsive prisons?



Activity 2: “What can I do to build a safe and responsive prison?”

Time: 45 minutes

1. The facilitator will choose one group’s list of 5 items from the second round of Activity 1 or create his/her own list.
2. The facilitator will then divide the class into groups, with 4 or 5 participants in each.
3. The facilitator will give the groups 20 minutes to discuss the following questions in relation to this list of items:
 - How many of these measures are in place in your prison?
 - How are the measures currently implemented, and what is your opinion of how well or badly they are working?

Based on your experience, what could be done either to implement measures not currently employed in your prison or to improve the implementation of those that are already in place?

4. The facilitator will then invite each group to present a summary of their discussion. The facilitator will document key points in the following format on a flipchart:

Measure	Description of any current implementation of the measure	Recommendations
For example, a complaint mechanism for prisoners.	The prison does not have a complaint mechanism.	Discuss with the Prison Director the possibility of introducing a safe space for prisoners to submit complaints.

5. The facilitator will encourage the whole class to discuss these points together, asking each other questions and adding their own observations and experiences. The facilitator should allow 20 minutes for this.

The facilitator will conclude the session by highlighting the key measures and practices needed for a safe and responsive prison, as well as the roles played by prison guards and management in ensuring these measures and practices are implemented effectively. The facilitator should refer to the *Notes for Facilitators and Training Materials* for guidance.

Notes for Facilitators and Training Materials

Training materials and aids for sessions

Activity 1: Card set – “Let’s make our prison safe and responsive”



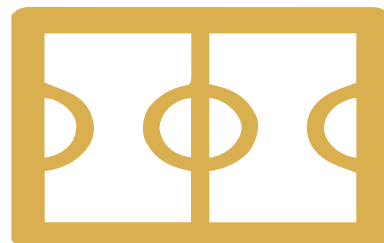
A prisoner registry



A complaints mechanism
for prisoners

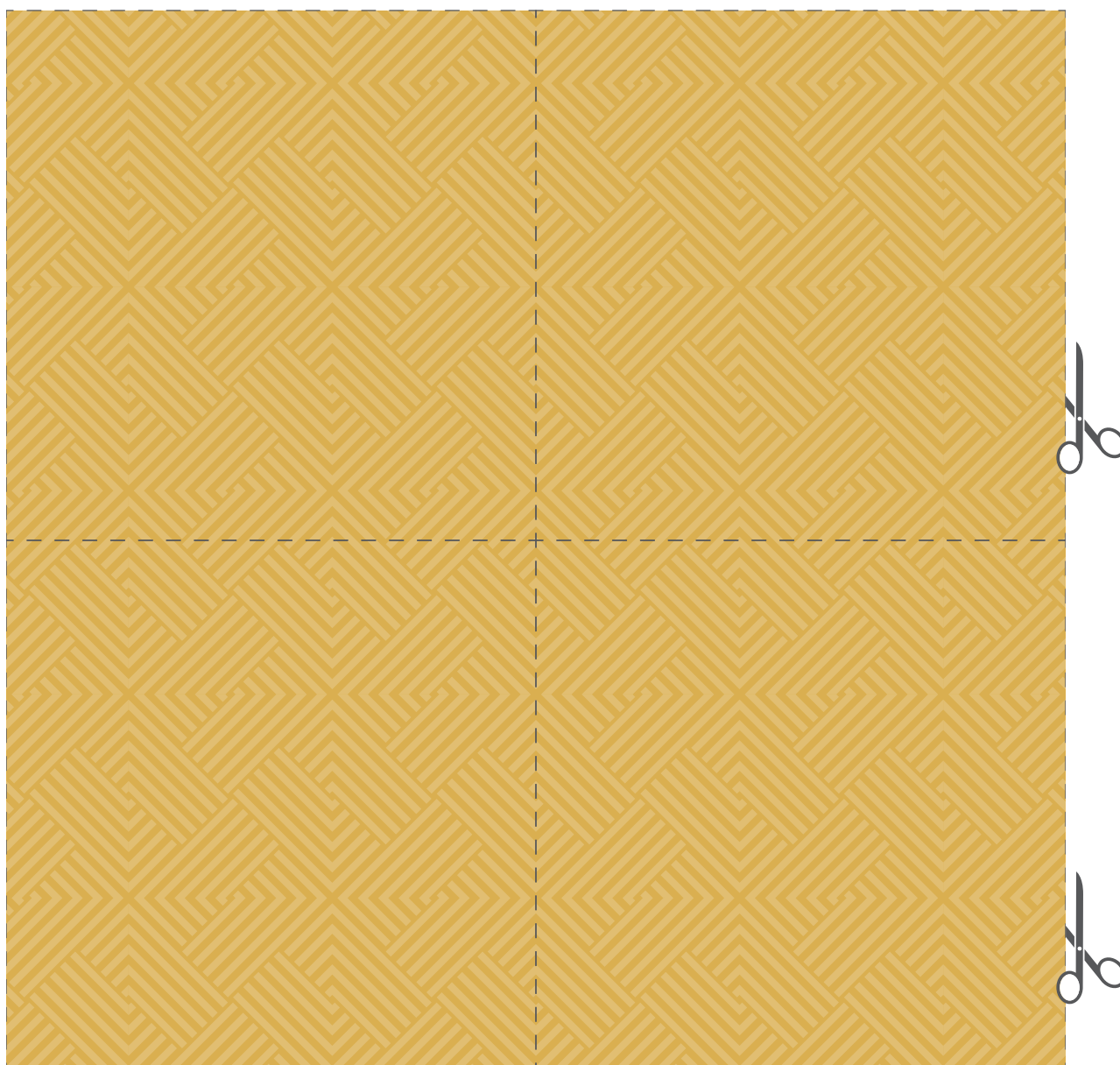


A library



A field for exercise and
recreational activities



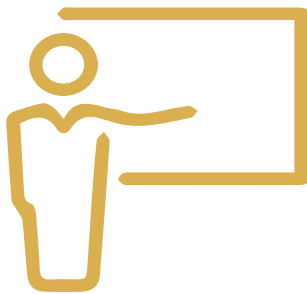




Mobile phones for prisoners



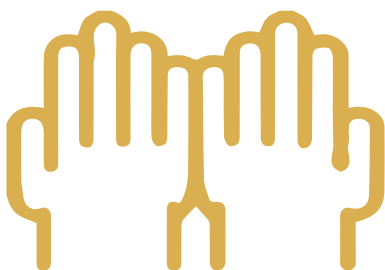
A monthly prison visit
by the PDHJ



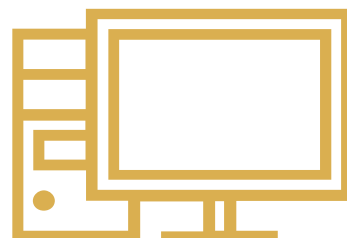
Training for prison guards on
managing prisoners and work stress



Separate cells for juveniles
and/or women

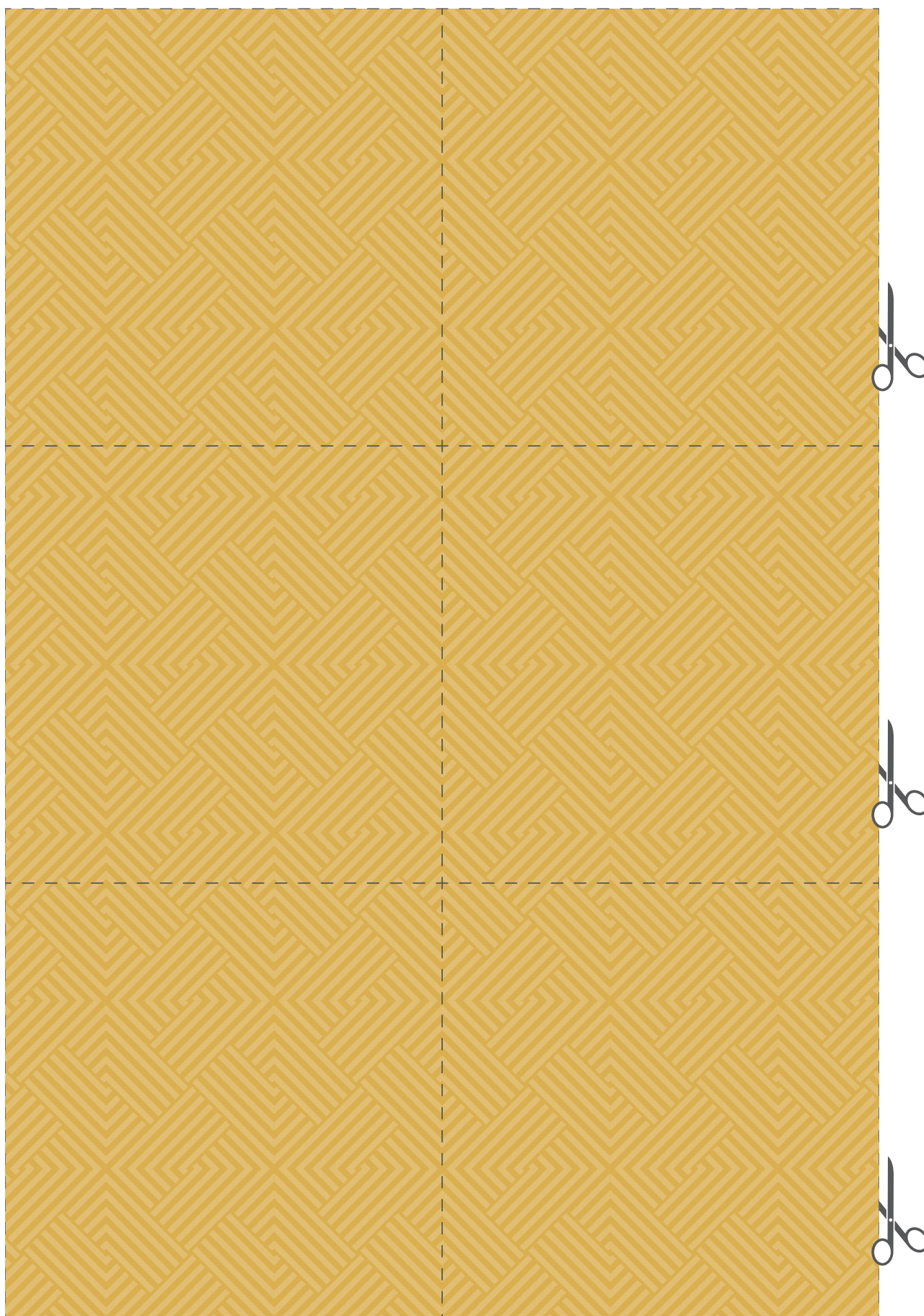


A small place of worship
for prisoners



Desktop computers
for prisoners to use







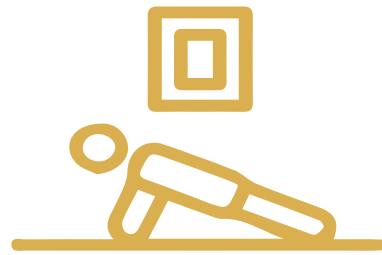
CCTV for public areas in the prison



Regular medical check-ups
for prisoners



A shop that sells food and essentials



A well-equipped gym

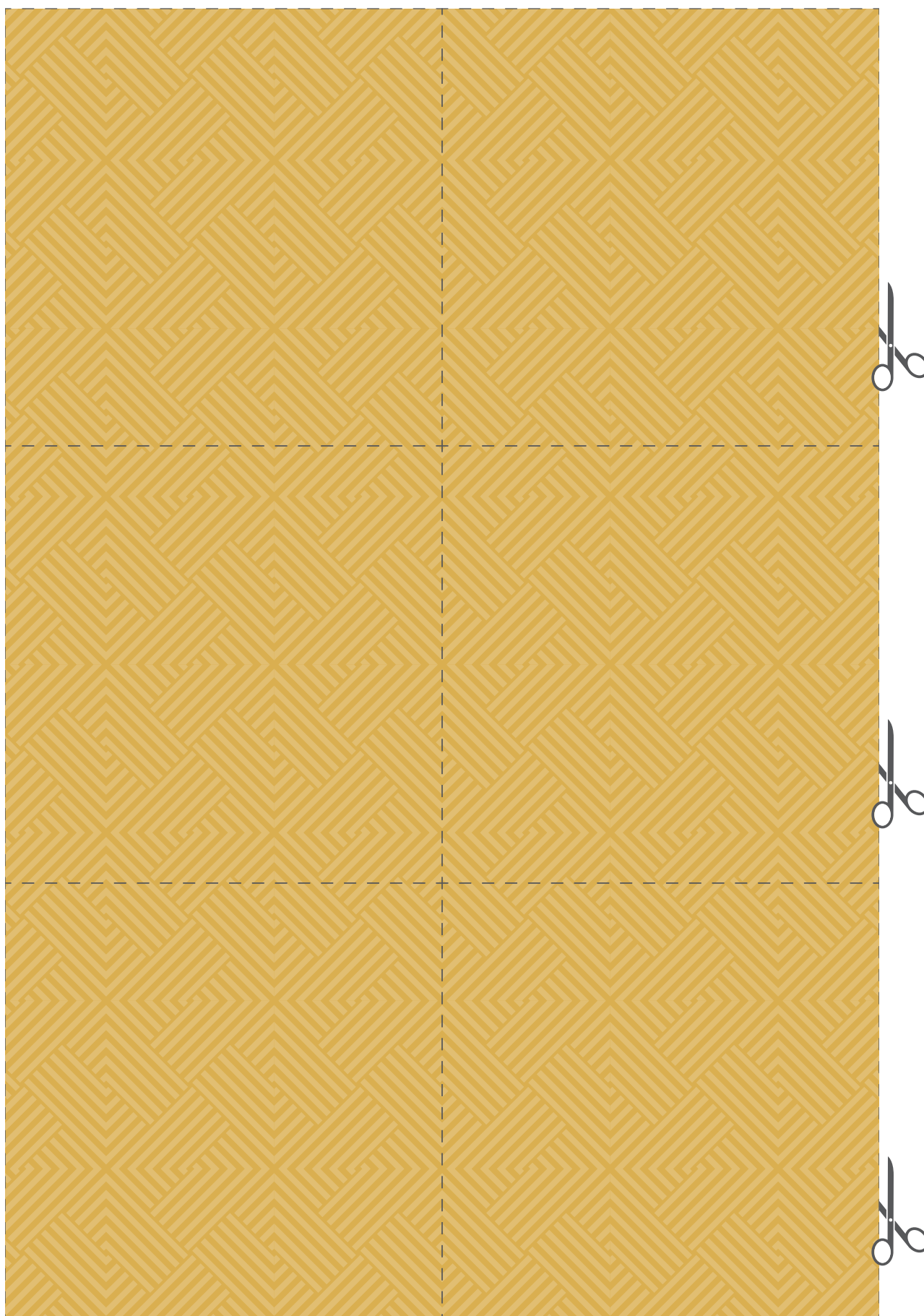


A counselling service for prisoners



The latest equipment for controlling
and disciplining prisoners (e.g., tasers)





Notes for facilitators

Activity 1: “Let’s make our prison safe and responsive”

1. What constitutes a safe and responsive prison?

A safe and responsive prison is a prison that

- strives to rehabilitate and prepare prisoners to return to society. (Pictorial cards relevant to this aspect include a counselling service, library, and place of worship for prisoners.)
- has a clear and effective policy prohibiting torture and other ill-treatment. This includes prohibiting the use of whipping, solitary confinement, and excessive force for disciplining prisoners, among other acts. (Pictorial cards relevant to this aspect include a prisoner registry, CCTV for the public areas in the prison, and a monthly prison visit by the PDHJ.)
- has a competent, dedicated, well-trained staff led by effective and transparent management. (Pictorial cards relevant to this aspect include training for prison guards on managing prisoners and work stress, and a monthly prison visit by the PDHJ.)
- respects and responds to prisoners’ physical, mental, emotional, psychological, spiritual, and intellectual needs. (Pictorial cards relevant to this aspect include a well-equipped gym, a field for daily exercise and recreational activities, separate cells for juveniles and/or women, desktop computers for prisoners to use, a library, and regular medical check-ups for all prisoners.)

2. Why must prison be a safe and responsive place for prisoners?

All people, including prisoners, are entitled to fundamental human rights. Imprisonment is a form of rehabilitation that restricts a prisoner’s freedom of movement. This means their other basic rights, as guaranteed by the Universal Declaration of Human Rights and UNCAT (e.g., the rights to adequate living standards, freedom from torture and other ill-treatment, and freedom to exercise personal beliefs) must still be upheld during their prison sentence.

Imprisonment is a measure (often considered a ‘last resort’) that aims to assist society and the state in rehabilitating and reintegrating wrongdoers into the community. Taking this approach to imprisonment helps, in the long-term, to prevent crime and increase community peace and stability.

Their period of imprisonment should prepare prisoners for reintegration into society after they complete their sentence. To ensure this, the prison system should recognise the physical, mental, emotional, psychological, spiritual, and intellectual needs of prisoners about rehabilitation.

3. What are the roles of prison guards in ensuring a safe and responsive prison?

Prison guards must make sure that the prisoners under their care can access prison services and exercise their rights effectively. In the Timorese context, the law has detailed examples of these roles. Prison guards may face disciplinary actions if they fail to perform these stipulated duties, as summarised as below:

- » Ensure the safety and order of prisons, including compliance with the law and prison regulations.
- » Exercise custody over prisoners when they are outside prisons but still in the care of the prison administration (e.g., when participating in social reintegration programmes).
- » Monitor prison inmates in order to detect situations that threaten the order and safety of services, or the physical and moral integrity of those in prison.
- » Maintain a fair, firm and humane relationship with prisoners while seeking, through the example you set, to exert a beneficial influence, particularly in the case of women, children and young adults.
- » Collaborate, coordinate and provide the necessary information to other relevant authorities for the purpose of sentencing, preventive custody and security measures for prisoners.
- » Inform new inmates about the legal regulations and procedures implemented in the prison.

4. What is the prison situation in Timor-Leste?

In 2020, the PDHJ conducted three focus-group discussions with prison guards in Timor-Leste. There are three main prisons in Timor-Leste; these are in Becora, Gleno and Suai. The focus-group discussions provided insight into the issues and challenges faced by Timorese prison guards and prison management in their daily work. Some of these issues and challenges have a direct impact on efforts to prohibit and prevent torture in the prison system.

The gaps this work identified in the current prison situation in Timor-Leste include

1. The lack of sufficient human and financial resources for prison guards to carry out their work effectively.
2. Inadequate personal protective tools to deal with prisoners who are aggressive and/or who have mental health conditions.
3. Overcrowding in prisons.
4. The lack of an effective oversight mechanism within the Ministry of Justice, and lack of attention to prison facilities from the Ministry of Justice.
5. Insufficient implementation of laws and regulations relating to prisons in Timor-Leste (e.g., the Decree Law no 14/2014, 14 May, which approved the Penal Execution Regime).

Prison guards who participated in the focus-group discussions offered several salient recommendations to address these issues and challenges:

1. Allocate sufficient budget for capacity development of prison guards across all three prisons.
2. Consider career promotion for prison guards.
3. Consider increasing the number of prison guards.
4. Allocate sufficient funds for prison guards to safely escort prisoners between prison facilities and courtrooms.
5. Consider new prison facilities to accommodate the increased number of inmates.
6. Provide office equipment (e.g., computers, printers and photocopy machines).
7. Provide personal safety tools for prison guards (e.g., sticks and tear gas).
8. Provide sufficient operational vehicles, and sufficient fuel, to support prison guards to carry out their work effectively.
9. Provide a separate cell for prisoners suffering from infectious/transmissible diseases; this is particularly important in light of the COVID-19 pandemic.
10. Establish cooperative mechanisms between the Ministry of Justice and Ministry of Health to provide adequate healthcare for prisoners who suffer from transmissible diseases.
11. Resolve issues relating to access to water at Gleno Prison.
12. Provide nutritious food both to prison guards and inmates.
13. Provide uniforms and shoes for prison guards that are fitted and of decent quality.
14. Fully implement the Decree Law no 14/2014, 14 May, which approved the Penal Execution Regime.

These recommendations touch on significant aspects of the prison system, including the conditions that are essential for ensuring safe and responsive prisons in Timor-Leste. The recommendations deal with the key elements, including effective implementation of laws and regulations, the need for adequate staffing and incentives for prison staff, as well as appropriate measures to ensure humane treatment of prisoners. There are also numerous international standards, principles and practical guidelines that support of the recommendations made by the prison guards.

A recent UNCAT Concluding Observation issued by the Committee against Torture for Timor-Leste pointed out several measures necessary for improving the prison conditions in the country. These include regular inspection of detention conditions, setting up an internal and external complaints mechanism, and ensuring appropriate training and information for prison staff (see Concluding Observations to Timor Leste, 2017 CAT/C/TLS/CO/1, Para. 24-28 and 47-end under Further Reading section).

Activity 2: “What are the roles and responsibilities of prison guards in building safe and responsive prisons?”

1. What constitutes a safe and responsive prison?

A safe and responsive prison can be summed up by the following criteria:

- » A prison that strives to rehabilitate and prepare prisoners to return to society.
- » A prison that has a clear and effective policy prohibiting torture and other ill-treatment. This includes prohibiting the use of whipping, solitary confinement, excessive force for disciplining, and other cruel, inhuman or degrading treatment or punishment.
- » A prison that has a competent, dedicated, well-trained staff led by effective and transparent management.
- » A prison that respects and responds to prisoners’ physical, mental, emotional, psychological, spiritual and intellectual needs.

These criteria are in line with international and national standards and policies, as discussed below.

2. A prison that strives to rehabilitate and prepare prisoners to return to society

In democratic societies, respect for the inherent dignity of all human beings, whatever their personal or social status, is one of the most important principles for maintaining social order and establishing cohesive, caring societies.

It is widely acknowledged that “One of the greatest tests of this respect for humanity lies in the way in which a society treats those who have broken, or are accused of having broken, the criminal law” (Human Rights Approach to Prison Management, pp.13: see *Further Reading* below). This principle of respect for all human beings, and how it reflects the values of society, was also articulated by famous former-prisoner and ex-President of South Africa Nelson Mandela: “It is said that no one truly knows a nation until one has been inside the jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones.”

Imprisonment is not the goal of crime prevention efforts, nor is it purely a punitive measure put in place to punish wrongdoers and deter others from committing offences. Instead, imprisonment is a measure that aims to assist society and the state to rehabilitate and reintegrate wrongdoers into the community. Taking this approach helps, in the long-term, to prevent crime and increase community peace and stability.

This approach has been stipulated by international standards and principles. For instance, Principle 4 of the UN Basic Principles for the Treatment of Prisoners (see *Further Reading* below) states that

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

3. A prison that has a clear and effective policy prohibiting torture and other ill-treatment

Timor-Leste has clear and concrete laws that prohibit torture and other ill-treatment in all circumstances. However, it is reported that the use of corporal punishment and/or excessive physical force for disciplining prisoners continues to happen. More must be done to introduce, develop and implement effective policies and measures to prevent torture and other ill-treatment in Timorese prisons.

The strong prohibition of the use of force by prison guards against persons in their custody are detailed in various international human rights standards and principles. For instance, Rule 54 of the 1955 UN Standard Minimum Rules for the Treatment of Prisoners (see *Further Reading* below) states that

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

Additionally, Article 5 of the UN Code of Conduct for Law Enforcement Officials (see *Further Reading* below) explicitly prohibits prison guards from inflicting, instigating, or committing the act of torture or other ill-treatment under any circumstances:

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

Even when prison guards are dealing with problems such as overcrowding, security risks posed by violent prisoners, and/or understaffing of prison guards, this does not justify the use of violence or measures that could amount to torture or other ill-treatment. For instance, Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (see *Further Reading* below) states that

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

The use of legal, proportionate, and reasonable force is allowed, but is restricted to certain situations; these include self-defence and/or the defence of others against the immediate threat of death or serious injury, and when strictly necessary to prevent the escape of a person in custody.

International standards also set clear rules prohibiting certain punishments, as well as the use of specific risky and illegal measures that amount to ill-treatment and may rise to the level of torture:

- Corporal punishment, solitary confinement, and any forms of punishment that causes sensory deprivation.
- Use of physical restraints (e.g., irons, straitjackets, and chains).
- Administrative punishments that sever a prisoner's contact with family; this applies to contact via letter and/or visits.
- Punishing a prisoner twice for the same offence.
- Unofficial punishments that are not formally prescribed by law and so bypass official procedures. For instance, medical approval from doctors that prisoners are fit to be punished in a way that is prejudicial to their health and well-being does not over-ride the prohibition of torture and other ill-treatment.

Safe and responsive prison administration depends on prisons adopting and implementing policies that guide prison guards on how to control and discipline prisoners without resorting to acts that might amount to torture or other ill-treatment. Some of the policy measures that safeguard prisoners from torture and other ill-treatment include

- A standardised prisoner file-management system in every place where people are imprisoned. This system might be an electronic database of records or a registry book with numbered and signed pages. Procedures must be put in place both to ensure a secure audit-trail, and to prevent unauthorized access to, and/or modification of, any information contained in the system (as per the Mandela Rules: Rule 6).
- A prompt, effective and impartial complaints investigation mechanism. Complaints mechanisms shall be made known and accessible to the public and to prisoners (e.g., via telephone hotlines and/or confidential complaints boxes in detention facilities) and to persons belonging to vulnerable or marginalized groups, including those who may have limited communication abilities (as per the UNCAT: General Comment 3 [2012]).

In some contexts, trusted prisoners are employed by prison guards to help them discipline and maintain control of the other prisoners. However, this puts the whole system and institutional culture in the prison at risk of spreading a sense of impunity and, thus, eroding prisoners' and the public's confidence in the system. According to Rule 28.1 of the 1955 Standard Minimum Rules (see *Further Reading* below), "no prisoner shall be employed in the services of the institution in any disciplinary capacity."

4. A prison with a competent, dedicated, well-trained staff led by effective and transparent management

Working in the prison system, be it at the managerial or operational level, is a service to the public. The money for maintaining prisons, recruiting staff, and providing services to prisoners comes from taxes. Thus, as with schools and hospitals, prisons should be run with the objective of contributing to the public good.

The prison service, including its administration and staff at all levels and of all ranks, must be transparent and accountable in delivering the service. This is reinforced by Rule 48 of the 1955 UN Standard Minimum Rules (see *Further Reading* below):

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

Prison guards are expected to adhere to a certain set of standards to maintain their personal integrity, professionalism, and good relations with prisoners. For instance, Rule 77 of the Mandela Rules states that

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

Meanwhile, Article 2 of the UN Code of Conduct for Law Enforcement Officials (see *Further Reading* below) states that

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

Prison work can be demanding. In the context of Timor-Leste, issues such as prison overcrowding and violence between prisoners mean that many guards have a heavy and challenging workload, long working hours, and a stressful working environment.

Working with prisoners from different backgrounds, some of whom have special needs, means that prison guards need appropriate knowledge and skills to do their work satisfactorily and professionally. Therefore, it is essential that prison staff are carefully selected, and then properly trained, supervised and supported. The qualities and criteria of persons working as prison guards are described in Article 18 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (see *Further Reading* below):

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

Therefore, training is an important part of prison guards' capacity enhancement and professional growth. According to Rule 75 of the Mandela Rules (see *Further Reading* below),

The prison administration shall ensure the continuous provision of training courses in service with a view to maintaining and improving the knowledge and professional capacity of its staff, after entering on duty and during their career.

In general, there should be different stages of training for prison guards:

- initial training that is part of a prison guard's induction upon entry into service,
- on-going professional development to enhance prison guards' experience and promotion opportunities, and
- training on safe and responsive work involving prisoners with vulnerabilities (e.g., women, children, persons with disabilities, and ethnic/religious minorities).

To be effective, prison staff training programmes should be grounded by an institutional vision that prioritizes standards of professionalism; these programmes should also form part of a coherent approach to on-going professional development for all staff.

In addition to personal capacities and competencies, the selection of prison guards should aim for diversity, especially with regard to ethnicity and sex, in order to cater to the diverse needs of the prison population. For example, there are situations (e.g., supervision of sanitary areas and carrying out body searches) in which the staff involved should be of the same sex as the prisoner. Recruiting more female prison guards should therefore be a priority.

5. A prison that respects and responds to prisoners' physical, mental, emotional, psychological, spiritual, and intellectual needs

During imprisonment, prisoners should be prepared for reintegration into society after they complete their sentence. To ensure this, the prison system must recognise the physical, mental, emotional, psychological, spiritual, and intellectual needs of prisoners to enable them to rehabilitate and prepare themselves for the next phase of life.

The treatment of prisoners should encourage them to enhance their self-respect, develop their sense of responsibility, and broaden their moral values and mental resilience to ensure they will go on to lead law-abiding and self-supporting lives. Several provisions under the Mandela Rules (see *Further Reading* below) reiterate the importance of this aspect of the prison system. For instance, Rule 4 states that

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

2. To this end, prison administrations and other competent authorities should offer education, vocational training, and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.

Rule 66 further states that

So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination.

Rule 92.1 provides further detail and instruction:

To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length of his or her sentence and prospects after release.

Finally, Rule 104.1 adds that

Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterate prisoners and of young prisoners shall be compulsory and special attention shall be paid to it by the prison administration.

The main physical, mental, emotional, psychological, spiritual, and intellectual needs of prisoners stipulated by international standards are summarised below:

- The right to profess and practice personal belief (as per the Basic Principles for the Treatment of Prisoners: Principle 3).
- Recreational and cultural activities must be provided in all prisons for the benefit of the mental and physical health of prisoners (as per the Mandela Rules: Rule 105).
- Every prison shall have a library for the use of all categories of prisoners: it must be adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it (as per the Mandela Rules: Rule 64).

6. What does Timor-Leste's laws say about the roles and responsibilities of prison guards?

Provisions in the domestic law in Timor-Leste about the roles and responsibilities of prison guards reiterate the international standards stipulated by the Mandela Rules, the UN Code of Conduct for Law Enforcement Officials, and other relevant standards. The Decree Law No 10/2012 on Special Career and Status of the Prison Guard, which was adopted in 2012, details the key aspects of a prison guard's roles and duties:

- Ensuring the safety and order of prisons.
- Ensuring compliance with the law and prison regulations.
- Exercising custody over prisoners outside prisons when still in the care of the prison administration (e.g., when prisoners are participating in social reintegration programmes).
- Monitoring prison inmates to detect situations that threaten the order and safety of services, or the physical and moral integrity of staff or prisoners.
- Maintaining a fair, firm, and humane relationship with prisoners while seeking, through the example you set, to exert a beneficial influence, particularly in the case of women, children, and young adults.
- Collaborating, coordinating, and providing the necessary information to other relevant authorities for the purposes of sentencing, preventive custody, and security measures of prisoners.
- Informing new inmates about the legal regulations and procedures implemented in the prison.

Articles 3 and 4 of the Decree expand further on these aspects. Meanwhile, under Article 30, “prison guards are expected to contribute, through their exemplary behaviour, to the good reputation of prison services and public administration”, and to carry out their duties with “assiduity, dedication and competence”.

The Decree also prescribes how prison guards should interact with prison inmates, including in relation to actions that are prohibited (e.g., receiving bribes, conducting unauthorised searches, seizing personal belongings, and inappropriate/ disproportionate use of firearms).

While prison guards must implement the provisions of such decrees and other domestic laws governing their duties, the international human rights standards discussed above are an important and useful framework for understanding how prison administrators and guards can employ a more humane, proportionate, and fair approach to maintaining order and security in prison, thereby avoiding actions that can amount to torture or other ill-treatment.

Further reading



A Human Rights Approach to Prison Management

https://www.prisonstudies.org/sites/default/files/resources/downloads/handbook_2nded_eng_8.pdf

Balancing Security and Dignity in Prison: A Briefing Paper

<https://cdn.penalreform.org/wp-content/uploads/2016/01/security-dignity-2nd-ed-v6.pdf>

Handbook on Monitoring Prison Violence:

<https://atlas-of-torture.org/en/entity/w9zkp2sbc9a?page=6>

A video on addressing prison violence and ways of preventing it

<https://atlas-of-torture.org/en/entity/qsjb5h7dii>

OHCHR Basic Principles for the Treatment of Prisoners

<https://www.ohchr.org/Documents/ProfessionalInterest/basicprinciples.pdf>

OHCHR Standard Minimum Rules for the Treatment of Prisoners (1955)

<https://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>

UN Code of Conduct for Law Enforcement Officials

<https://www.un.org/ruleoflaw/files/CODEOF~1.PDF>

UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

<https://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf>

Nelson Mandela Rules : Guidance Document

https://www.osce.org/files/f/documents/7/b/389912_0.pdf

UNCAT, General Comment 3 (2012)

https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf

The Decree Law No 10/2012 on Special Career and Status of the Prison Guard

**Module 3: “No matter who they are,
and crimes they committed, prisoners
have human rights too.”**



José's diary excerpt:

14:30 pm - Prison reception hall

I was informed that our prison received a new woman prisoner today. Her name is Maria, and we were cautioned in advance that she is "troubled and difficult".

Selena, my woman colleague, has been requested to brief all prison guards on duty about the new prisoner. As one of the senior prison guards, it is my responsibility to be part of the briefing and support Selena in any way I can.



Module 3	Ensuring human rights for all prisoners
Description of the module	<p>This module provides participants with knowledge about standards for the protection of categories of prisoner who are in a heightened situation of vulnerability, in particular women and LGBTI+ persons.</p> <p>The module also helps participants understand how such standards should be applied in the daily routine of places of deprivation of liberty.</p> <p>Finally, it addresses the concept of vulnerability, including how different vulnerabilities intersect with each other and how to ensure the observance of the principle of non-discrimination.</p>
Learning outcomes	<p>Participants will learn and get acquainted with:</p> <ul style="list-style-type: none"> ➤ the concept of vulnerability. ➤ what it means to be a person in a situation of vulnerability. ➤ the intersection between different vulnerabilities. ➤ how and why the principle of non-discrimination must be applied in places of deprivation of liberty. ➤ an approach to detention standards that takes account of the needs of women.
Time required to deliver the module as a training session	2 hours 45 minutes
Instructional materials and aids needed	<p>1. For the facilitator:</p> <ul style="list-style-type: none"> ➤ Powerpoint presentation ➤ Factsheets and scenarios <p>2. For participants:</p> <ul style="list-style-type: none"> ➤ A True or False statements sheet for Activity 1 for each group ➤ A Case study – “The Day Maria Arrives” sheet for Activity 3 for each group ➤ A case analysis guide sheet for Activity 3 for each participant ➤ Blank chart for analysing the Activity 3 case study for each group ➤ A copy of the Bangkok Rules in Tetum/Portuguese for each participant ➤ A copy of the Yogyakarta Principles in Tetum/Portuguese for each participant
Agenda for the training session	<p>Content outline:</p> <p>What does vulnerability mean and how is it relevant to detention settings?</p> <p>How to secure the rights of LGBTI+ prisoners</p> <p>Activities: Icebreaker – True or False (45 minutes); short video and discussion (30 minutes)</p> <p>How to create a safe and responsive prison for women prisoners</p> <p>Activities: Case study – “The Day Maria Arrives” (1 hour 30 minutes)</p>

Instructions for Activities

What does vulnerability mean and how is it relevant to detention settings?

.....

Activity 1: Icebreaker – Agree, Disagree or Not Sure

Time: 45 minutes

1. The facilitator will divide participants into pairs.
2. The facilitator will read aloud the list of statements below. After each statement, the facilitator will allow time for the pairs to discuss the statement and arrive at a decision about whether they **AGREE**, **DISAGREE** or **ARE NOT SURE**. After a quick discussion together, the pairs will share their response with the rest of the class. The statements to be read are as follows.

- » Prisoners should be placed in different cells based on the severity of their crimes and record of violence.
- » Women prisoners need fewer hours of fresh air and recreation compared to men prisoners.
- » LGBTI+¹ prisoners should be searched by women prison guards only.
- » Transgender prisoners should be placed in cells with men prisoners based on their appearance.
- » When a woman prisoner gives birth in prison, she should be allowed to stay with and take care of her infant in the prison.
- » Women prisoners should only be treated by women medical practitioners.
- » Timor-Leste needs more women prison staff.

3. The facilitator will discuss the answers given by the participants for the statement above by referring to the guidance note under “Additional Information”.

1. LGBTI+ stands for lesbian, gay, bisexual, transgender and intersex. The acronym used to represent the community has, over the years gone evolved, signifying the multiple facets and discourse taking place in the community. The APT has been using the LGBTI+ acronym in our work and materials as it is more inclusive and give more visibility to the intersex community. Nevertheless, the APT take note of the various approaches and arguments that go into the use of the different acronyms and may also adapt our approach to reflect the on-going conversation and debates in the future. Facilitators are encouraged to further discussed the use of the appropriate acronym in the context of the Timor-Leste's experience, considering that the use of any acronyms should prevent further risks of seclusion and stigmatisation of the LGBTI+ community in Timor-Leste.

4. The facilitator will continue the discussion by building on the answers provided with the following additional questions
 - how and why did you choose your answer in relation to each statement?
 - have you ever come across such a situation/scenario in your work? If so, could you share the experience and what you learnt from it with the class?
 - do you have any experience in working with LGBTI+ prisoners?
 - do you have any experience in working with intersex prisoners and/or prior knowledge about these complex medical conditions?
5. The facilitator will invite participants to think of one word each to describe the situation of women, LGBTI+ and child prisoners. The facilitator will write up the words on a flipchart. In the process, the facilitator will introduce the concept of vulnerability.
6. The facilitator will present PowerPoint slides 1-4 (see *Notes for Facilitators and Training Materials* below) to explain the concept of vulnerability and its relevance to prison settings.
7. The facilitator will then invite participants to identify other groups in a situation of vulnerability, particularly when deprived of their liberty. The facilitator will write down the answers on the flipchart and debrief the answers with participants, guided by the facilitator note under “Additional Information”.

Activity 2: Video – “Protecting LGBTI+ persons deprived of liberty: a discussion with Victor Madrigal”

Time: 30 minutes

1. The facilitator will introduce the video before screening it (see *Notes for Facilitators and Training Materials* below) and share with participants a list of questions.
2. The facilitator will ask participants to find the answers to the questions based on the video that they will watch.
3. After the video, the facilitator will invite participants to share their thoughts, writing up key points on the flipchart. The facilitator asks the class to identify the main lessons for prison guards regarding how to ensure that LGBTI+ prisoners in Timor-Leste are protected and treated fairly. The facilitator may refer to the facilitator’s note for this activity under “Additional Information”.

How to create a safe and responsive prison for women prisoners

Activity 3: Case study – “The Day Maria Arrives”

Time: 1 hour 30 minutes

1. The facilitator will divide the participants into groups, with five people in each. Each group should elect
 - a team leader to moderate the group discussion, and
 - a rapporteur to write down or type up the key points of the group’s discussion, then present this to the rest of the class.
2. The facilitator will hand out a case study and case study analysis guide to each group.
3. The facilitator will give the groups 30 minutes to discuss the case study and prepare their response using the case study analysis guide. The facilitator should encourage the participants to refer to national and international standards and treaties (e.g., the Mandela Rules).
4. After 30 minutes, the facilitator will ask the groups to volunteer to present their case study analysis. Each group will have 5 minutes to present, and another 5 minutes to discuss with the rest of the class.
5. After the presentations, the facilitator will present the following messages:
 - Often the needs of people in situations of heightened vulnerability (e.g. women, LGBTI+ people, children, elderly people and those with mental health issues) are overlooked in prison because of social stigma, discriminatory practices, and scarcity of resources.
 - Promotion and protection of the rights of people in a situation of vulnerability in prison must be guided by the principles of non-discrimination, social inclusion, and equitable solutions.
 - Prison policies and practices must promote and protect the rights of groups in situations of vulnerability in prison. Where such measures are already in place, prison guards and other staff should enhance the implementation of these measures.

Notes for Facilitators and Training Materials

Training materials and aids for sessions

Activity 1: Icebreaker – Agree, Disagree or Not Sure

Response notes for facilitators

- **Prisoners should be placed in different cells based on the severity of their crimes and record of violence.**

AGREE: Separation of prisoners is a measure applied to help protect the physical and mental integrity of prisoners, to better monitor them individually and to contribute to their rehabilitation. International standards clearly stipulate that women should be separated from men, minors from adults, untried persons from convicted detainees, and civil detainees from detainees imprisoned for criminal offenses. Separation should also be guided by clear classification of prisoners when they arrived in prison. Such classification can be carried out on a case-to-case basis through a comprehensive assessment of the prisoners to determine age, profile, type of crime or offense committed as well as level of danger presented by or to the person. It is important to remember that separation of prisoners is in no way a disciplinary measure.

- **Women prisoners need fewer hours of fresh air and recreation compared to men prisoners.**

DISAGREE: This practice is discriminatory in nature. Women and men need just as much fresh air and recreation in detention. Prison guards can develop an inclusive plan or roster that enable prisoners to exercise their rights to fresh air and recreation regularly.

- **LGBTI+ prisoners should be searched by women prison guards only.**

DISAGREE/NOT SURE: It is important to avoid “one-size-fits all” approach in dealing with this situation. It is recommended for prison guards to assess the situation closely in consultation with the prisoners to ensure that their view is taken into consideration when a search needs to take place. Prison guards need to exercise active listening, empathy and recognises the complexities of such situation and take steps to develop a standard operating procedure and approach that prioritise the interest, dignity, and well-being of the prisoners.

➤ **Transgender prisoners should be placed in cells with men prisoners based on their appearance.**

AGREE/DISAGREE/NOT SURE: This was never an easy discussion. LGBTI+ people have a heightened risk of stigmatisation, bullying, and physical and sexual violence from detaining authorities and/or fellow prisoners. Transgender persons face specific difficulties, especially in relation to their placement in prison and/or prison wings. In general, there are no conclusive approach to how best address or resolve these difficulties as there are on-going debates and discussions on how to tackle this challenge. In some contexts, separate prison cells or wing are allocated for LGBTI+ persons. This practice is mainly adopted with the aim of protecting LGBTI+ detainees from suffering physical, psychological or sexual violence, as they are routinely targeted when incarcerated with the general prison population. Such approach has been seen by LGBTI+ advocates as a concrete measure that protects LGBTI+ prisoners from violence and a safe space for LGBTI+ prisoners to express their gender identity and body expression or characteristics. However, this measure could also have a negative impact. The use of separate cells or wings could lead to risks of stigmatisation and discrimination, arbitrariness in the placement decision-making process and often prevent LGBTI+ prisoners from having access to vocational training, recreational and cultural activities.

There is no clear answer to this dilemma. At the core of the issue, states and prison management needs to secure the safety of all prisoners and pay particular attention to those in a heightened vulnerability and transgenders are one of those groups. As a first step, prison management must have a clear policy and conduct risk assessment of LGBTI+ persons before and during placements. A process that is safe and respectful of the LGBTI+ experiences and realities must be put in place to consult LGBTI+ on their views related to their safety, physical and psychological integrity, and gender identity. As such, any placement decision should be based and made in the best interest and personal well-being of the LGBTI+ prisoners.

This issue is clearly complex and require a more open and constructive conversations and dialogues between all relevant stakeholders at the national, regional, and international level.

➤ **When a woman prisoner gives birth in prison, she should be allowed to stay with and take care of her infant in the prison.**

AGREE/NOT SURE: The decision about whether children will stay with their mothers in prison must be made in the best interests of the child as the primary consideration. Factors to be considered in the decision include the conditions in prison and the quality-of-care children can expect to receive outside prison. Prison guards, staff and management should demonstrate flexibility and take decisions on an individual basis, considering the circumstances of the child and wider family, including the availability of alternative care options in the community. The environment in which they are brought up in prison should be as close as possible to a normal environment outside prison. The normal standard of healthcare for children, including all regular vaccinations, should be provided. For mothers who are separated from children, continued communication should be enabled to mitigate the psychological damage caused by the separation. Extended visits with mothers in prison, and/or home leave for mothers, should be part of a planned separation process to help settle the child with the carer outside prison.

➤ **Women prisoners should only be treated by women medical practitioners.**

AGREE: Woman prisoners must be examined and treated by a woman physician or nurse to the extent possible, except for situations requiring urgent medical intervention; when a male medical practitioner is involved, a woman chaperone must also be present throughout. The Bangkok Rules prohibit the presence of non-medical staff during medical examinations, except in certain circumstances; when it is necessary for non-medical staff to be present (e.g. for justified security reasons or because the prisoner has requested a female chaperone), the Bangkok Rules state that such staff should be female and that the medical examination and/or treatment should be carried out in a manner that safeguards the privacy, dignity and confidentiality of the prisoner.

➤ **Timor-Leste needs more women prison staff.**

AGREE/NOT SURE: There is a two-pronged approach to this statement. First, women should have equal opportunities in all professional areas and fields including prison service. Second, as the number of women prisoners increase in Timor-Leste, there is a need for the prison service in Timor-Leste to employ more women guards, staff, and managers. This is to ensure that physical and mental needs and contexts specific to women prisoners can be attended to, in line with international human rights standards.

Activity 2: Video – “Protecting LGBTI+ persons deprived of liberty: a discussion with Victor Madrigal”

To access the video, please go to <https://vimeo.com/307474636>



Question sheet for participants

(The questions below are to help participants follow Victor Madrigal’s interview as well as identify some key messages that are relevant to this session. Facilitator can write them down on a flipchart, PowerPoint slide or as sheets distributed to participants).

1. Prisoners should be placed in different cells based on the severity of their crimes and record of violence.
2. Women prisoners need fewer hours of fresh air and recreation compared to men prisoners.
3. LGBTI+ prisoners should be searched by women prison guards only.
4. Transgender prisoners should be placed in cells with men prisoners based on their appearance.
5. When a woman prisoner gives birth in prison, she should be allowed to stay with and take care of her infant in the prison.
6. Women prisoners should only be treated by women medical practitioners.
7. Timor-Leste needs more women prison staff.

Activity 3: Case study - “The Day Maria Arrives”

Case Study –The Day Maria Arrives

25 March 2021

Today, a new prisoner named Maria arrived at the prison. She was convicted for a drug-related offence and was sentenced to 1 year of imprisonment. Maria seemed pale and tired. She kept insisting that she needed to see a doctor for regular treatment. As she was convicted for a drug-related offence, she had to undergo a thorough body search before she could be transferred to her cell. She started to resist and shout when approached by a male guard and a female guard for the search. As this amounted to insubordination, the guards decided that she should be kept for at least one night in a separate small cell (with one small window and a small ensuite toilet) away from other prisoners.

26 March 2021

Maria refused to eat her breakfast. She then started to vomit in the small cell. She was taken to the infirmary for a check-up. The nurse gave her two paracetamol tablets and asked her to return to her assigned cell rather than the small separate cell. Her assigned cell is shared with 15 other women. On arrival at the cell, Maria started to cry and refused to talk to anyone. The other prisoners reported her condition to a guard.

27 March 2021

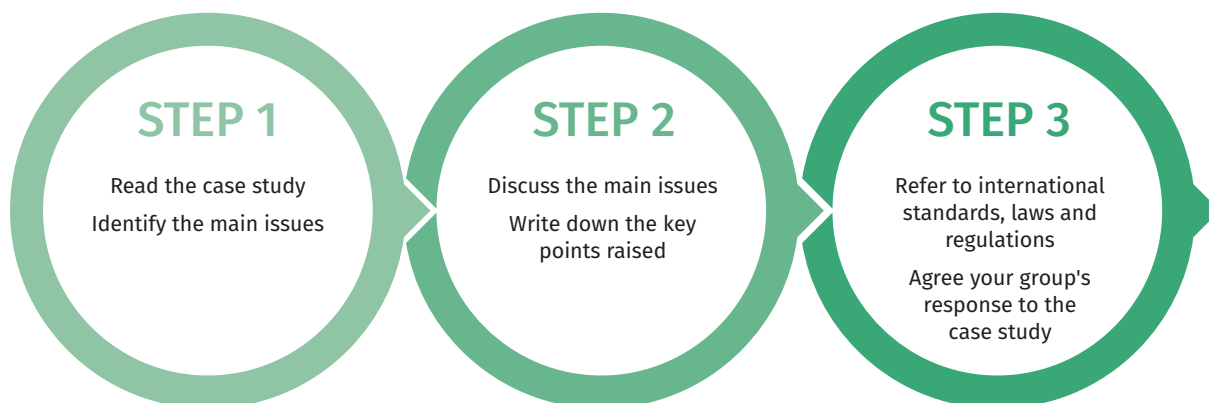
Today, Maria’s condition worsened: she lay on her mattress, writhing in pain. She appealed to the prison guard to let her speak to her mother on the phone, but her request was denied. After an hour, the other prisoners started to see blood spreading across Maria’s mattress. Maria cried even louder, screaming, “My baby, oh my baby...” The doctor and the nurse on duty took her to the infirmary for immediate treatment.

28 March 2021

Word spread in the prison that Maria had suffered a miscarriage. The other women prisoners tried to support her and talk to her, but she only sobbed and cried to herself. Today, her mother visited her, but Maria did not say much except how much she missed her 3-year-old son. Her family grew worried about her condition. “I wonder if she can survive the year there,” her mother said tearfully.

Based on the excerpts from the prison guard’s diary, what are the main issues Maria is facing, and what are the measures that could be taken to address them? Identify measures to be taken by prison officials, prison guards, and doctors/nurses in the prison infirmary.

Activity 3: Case analysis guide



Activity 3: Blank chart for the case study analysis

Main issues	Related international standards, laws and regulations

Notes for facilitators

Activity 1: What does 'being in a situation of vulnerability' entails and how is it relevant to detention settings? – PowerPoint slides 1-4

What is vulnerability?

- » All prisoners are in a situation of vulnerability because detention is a form of vulnerability.
- » Among prisoners, there are certain people and groups that are especially vulnerable and so require additional assistance and protection.
- » Additional services, support and/or protection for these people and groups do not represent preferential treatment or discrimination against the majority.

1

“No prisoners shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as justification.”

Mandela Rules: Rule 2.

2

Risks factors in prison that can heighten vulnerabilities



3

Groups in a situation of vulnerability

People in a situation of vulnerability can be grouped into different categories, including

- » Women
- » Children
- » LGBTI+ people
- » Intersex people
- » People with physical and/or cognitive disabilities
- » Foreigners
- » Ethnic and religious minorities

Some prisoners have multiple vulnerabilities:



4

Activity 3: Sample answer for the case study – “The Day Maria Arrives”

Main issues	Related international standards, laws, and regulations
Access to healthcare: this must be appropriate to Maria as a pregnant woman	Bangkok Rules: Rule 10
Body/cavity search	Mandela Rules: Rules 50-53 and 60 Bangkok Rules: Rules 19-21
Solitary confinement for insubordination	Mandela Rules: Rules 43-46 Bangkok Rules: Rule 22
Lack of psychological assessment	Mandela Rules: Rules 31 and 109-110
Lack of contact with family (including children)	Mandela Rules: Rules 58.1, 88.2, and 106-107 Bangkok Rules: Rules 26 and 28
Post-miscarriage care in prison	Mandela Rules: Rule 28

Additional information

1. Key concepts concerning vulnerability

Situations of vulnerability

Any detained person, whatever the reasons that led to their deprivation of liberty, is in a situation of vulnerability due to the power imbalance between prisoners and those in charge of them, the fact that prisoners are almost completely dependent for the necessities of life on the detention facility, and the fact that prisoners tend to have weakened social ties, often resulting from stigma relating to their detention.

However, certain detained people and prisoner groups are especially vulnerable and so require additional attention and protection. In some cases, vulnerabilities may even justify access to additional services, not as a demonstration of preferential treatment or discrimination against the majority but because these services are necessary to uphold the rights of vulnerable prisoners considering additional needs associated with their vulnerability.

Rule 2.2 of the Mandela Rules (a revised version of the 1955 UN Standard Minimum Rules for the Treatment of Prisoners) states that

For the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.

For instance, a person with disabilities who is deprived of liberty should be eligible for ‘reasonable accommodations’; these might involve installing access ramps if the person is in a wheelchair, or having key documents (e.g., about prisoners’ rights and duties within the prison) available in Braille if the person is blind or has a significant visual impairment.

The responsible authorities should be permanently vigilant and diligent about the potential additional needs of vulnerable people. A wide range of vulnerabilities must be considered in relation to prison practices and procedures to ensure that they are not discriminatory towards any prisoner.

Situations of vulnerability often present enhanced or extra risks for the persons involved: for instance, pregnancy creates extra health risks for a woman prisoner. To be safe and responsive, prisons must mitigate these risks by being attentive to the situations of vulnerability that lie behind them.

Options other than imprisonment should always be sought for certain groups, especially children.

Contextual vulnerability

There can be no exhaustive list of groups in situations of vulnerability in detention since categories can fluctuate depending on context, culture, and time. This is the reason the term «groups/people in situations of vulnerability» is used: it recognises that vulnerability is a dynamic and evolving concept, rather than static and definitive. It also focuses attention on the fact that the person is not vulnerable per se, but rather the context renders the person vulnerable.

Risk factors

Personal, environmental, and socio-cultural factors can create and reinforce the vulnerability of prisoners.

Personal factors (i.e., socio-demographic characteristics) include age, sex, sexual orientation, level of education, religion, nationality, ethnicity, physical and mental health, legal situation, economic situation, lack of information, low self-esteem, past or present trauma (including torture, and/or domestic and sexual violence), and so forth.

Environmental factors include the attitudes of prison staff, the staff-to-prisoner ratio (e.g., the number of guards relative to the number of prisoners), other prisoners' attitudes, informal systems of privileges, prison lay-out, whether prisoners are allowed to 'customise' their personal space, absence of family ties, overcrowding, and access to (and competence of) healthcare, legal and social services.

Socio-cultural factors include societal and media attitudes towards persons deprived of their liberty, stigmatisation and social exclusion, social invisibility, attitudes towards minorities, and corruption.

Groups in situations of vulnerability

People in situations of vulnerability can be grouped into different categories according to the context creating or reinforcing the vulnerability, though certain groups should always be considered as being in a situation of vulnerability regardless of context (e.g., children and adolescents). Key groups in situations of vulnerability in prison include

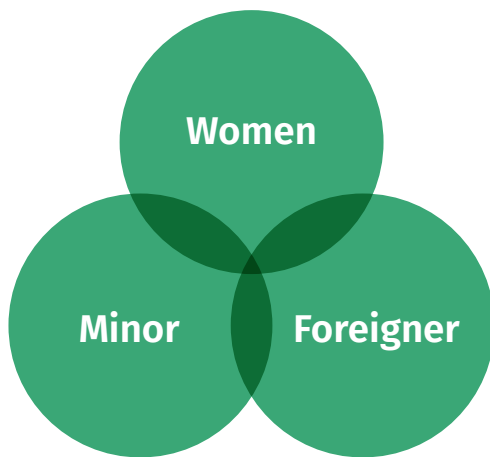
- Women
- Children
- LGBTI+ people
- People living with a physical and/or cognitive disabilities
- People with mental health issues
- Foreigners
- Ethnic minorities and indigenous people
- Religious minorities

Other people and groups may also find themselves in situations of vulnerability due to their age, health, or status within the criminal justice system. For instance, people with terminal illnesses, the elderly, people living with HIV, and drug users are all in a situation of vulnerability, particularly when deprived of their liberty. Similarly, people in pre-trial detention, people suspected of terrorism or security threats against the state, death-row prisoners, inmates sentenced to life in prison, and sexual offenders are in a situation of vulnerability.

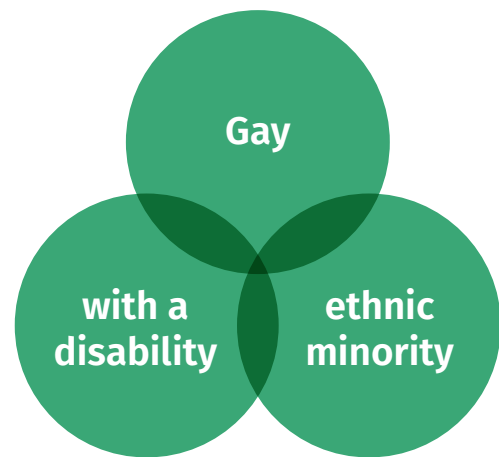
Multiple and/or intersecting vulnerabilities

The intersection of personal, environmental and/or socio-cultural factors results in some people experiencing multiple vulnerabilities.

Example 1:



Example 2:



The examples above illustrate the concept of multiple, intersecting vulnerabilities: the darker the zone an individual person falls into, the more complicated their situation of vulnerability. Far from being exceptions in places where people are deprived of their liberty, multiple vulnerabilities are common and require the authorities to protect and pay special attention to those concerned, given the multiple attendant risks these prisoners.

All persons deprived of their liberty have rights and no situation of vulnerability, whether temporary or permanent, should hinder the enjoyment of these rights.

Further reading:

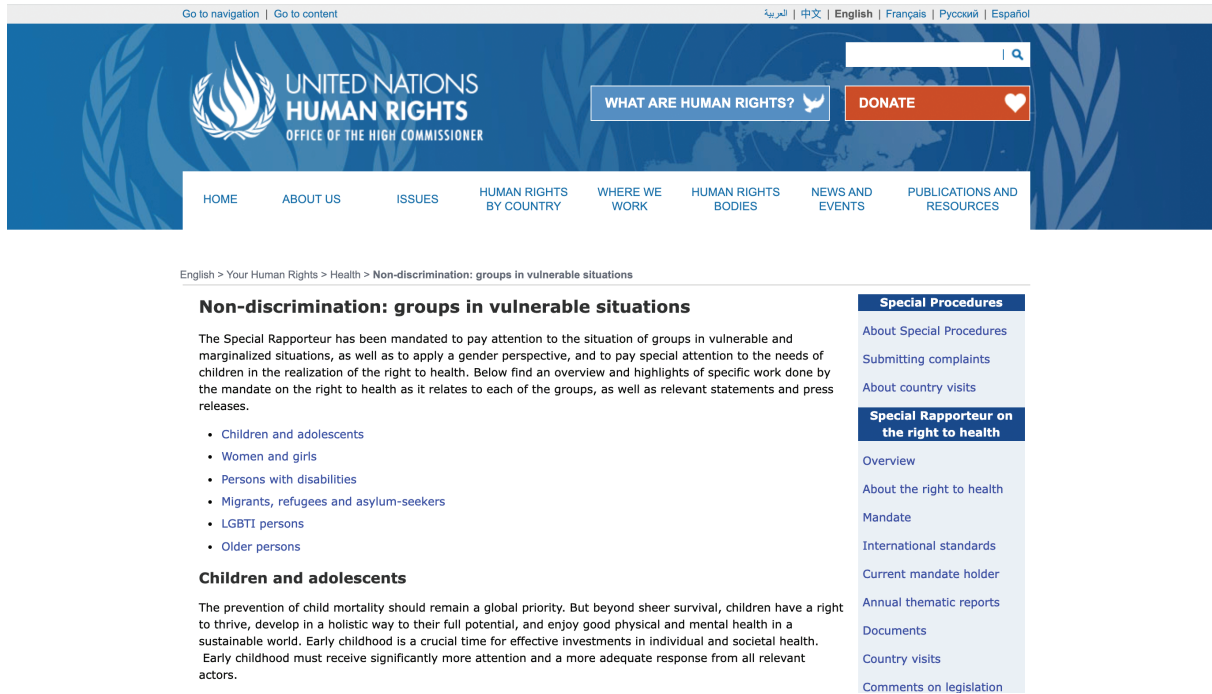
Detention Focus Database: Groups in Situations of Vulnerability

<http://tortureprevention.ch/detention-focus/en/groups-in-situation-of-vulnerability/>

(This subsection is adapted from the above.)

2. International standards on vulnerabilities and non-discrimination

The website of the United Nation’s Office of the High Commissioner on Human Rights provides a broad range of resources on this topic.



[Source: <https://www.ohchr.org/EN/Issues/Health/Pages/GroupsInVulnerableSituations.aspx>]

3. What are the key international human rights standards for women in detention?

In considering how to create a safe and responsive prison for women prisoners, there are several useful documents, standards, and resources to consider, including Women in Detention: A guide to gender* sensitive monitoring:

The concept of gender mainstreaming is of key importance when applied to policies and programmes in places of deprivation of liberty. In these closed environments, where societal attitudes and power structures are reflected in an intensified way, women’s powerlessness and sense of powerlessness is increased. At the same time, perhaps paradoxically, women’s gender specific needs are recognised to an even lesser extent than in society, because places of detention are male dominated worlds with little recognition and understanding of gender related needs, with the exception, perhaps, of those needs which relate to childbirth and pregnancy. Promoting gender mainstreaming in places of deprivation of liberty is a long-term process, which involves not only changing the attitudes, policies and practices in these places, but also in wider society, in order to achieve durable change.

[Source: <https://cdn.penalreform.org/wp-content/uploads/2016/01/women-in-detention-2nd-ed-v7.pdf> (p.5)]

*In this document, ‘gender’ is used interchangeably to refer to ‘sex’ and to ‘gender’ (i.e. forms of discrimination that derive from imposing different socio-cultural norms, traditions, values and stereotypes on men and women.)

The Bangkok Rules

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules'), adopted by the United Nations General Assembly on 21 December 2010, is the first international instrument to provide specific and detailed guidance on responding to the sex-specific needs of women in the criminal justice system and children and infants living with their mothers in prison. The Bangkok Rules are based on an extensive review of research from around the world on the treatment of women prisoners.

The Bangkok Rules are founded on the principle that women prisoners and offenders have a different profile of risks and needs from their male counterparts. As women prisoners are not the majority population in the criminal justice system in any part of the world, correctional facilities and prison-based treatment, rehabilitation and education programmes are likely to be designed for male inmates. As a result, most correctional facilities do not effectively respond to the needs of and risks facing women prisoners (e.g., sex-specific hygiene and healthcare needs, and the needs of infants and children living with their mothers in prison).

The increase in the female prisoner population worldwide has highlighted the shortcomings in almost all prison systems about the specific needs of women prisoners. The Bangkok Rules are not intended to give undue attention to the needs of women prisoners, or to afford women prisoners more privileges or better treatment than men, but rather to create equality of treatment by creating an internationally accepted point of reference on the treatment of women prisoners.

The Bangkok Rules are intended to complement, not replace, the UN Standard Minimum Rules for the Treatment of Prisoners (the 'Mandela Rules', which are a revised version of the 1955 original) and the UN Minimum Rules for Non-custodial Measures (the 'Tokyo Rules'). Together these three sets of rules ensure that the treatment of women prisoners, and non-custodial measures for women offenders, respects their dignity and preserves their human rights.

Further reading:

Introduction to the Bangkok Rules, Thai Institute of Justice

<https://tijbangkokrules.org/en/about-bangkok-rules>

(This sub-section is adapted from the above.)

The nature and scope of medical examination on arrival at prison

Medical screening on arrival at prison is an essential component of policies that aim to detect torture and other ill-treatment by law enforcement officials and/or others to bring perpetrators to justice and provide the requisite support and care for victims. When complaints of sexual abuse or other forms of violence are ignored, the likelihood of custodial violence passing undetected by state authorities is increased, contributing to the lack of protection for women victims of such violence in prison.

The Bangkok Rules stipulates that medical examination of women on arrival at prison should consider any sexual abuse and other forms of violence that may have occurred prior to admission. A woman doctor should be available to conduct such examinations, especially if this is specifically requested by the woman prisoner; where this is not possible, a female chaperone should be offered.

Rule 7 of the Bangkok Rules sets out prison authorities’ responsibilities in cases where medical examination reveals that a woman prisoner has been subjected to torture or other ill-treatment, including sexual abuse or rape during previous custody. This standard should be incorporated into the legislation governing prisons and, in turn, disseminated during staff training. Regular reviews should be conducted to check whether these standards are being implemented in practice.

Medical examinations on admission are also crucial to assess women’s sex-specific healthcare needs and to develop individualised healthcare programmes to ensure that women’s physical and mental health is protected and promoted during their detention.

Medical examinations should never be confused with ‘virginity tests’. So-called ‘virginity tests’ represent a gross form of discrimination against women and are considered a form of custodial violence. They should be explicitly prohibited.

Separation of male and female prisoners

The Mandela Rules state that, as a matter of principle, women deprived of their liberty should be held in accommodation that is physically separate from that of men prisoners to protect the women against sexual harassment and abuse. Just as male children and adolescents should be separated from adult prisoners, female children and adolescents should be separated from women.

In some countries there has been a move towards limited contact between men and women prisoners following careful selection of prisoners involved and subject to close supervision. Such arrangements can enhance a sense of normality and enable women prisoners to participate in a larger variety of prisoner programmes. However, such arrangements must only be made with the consent of the women prisoners concerned. These arrangements should only be permitted when the prison administration is able to undertake the requisite selection and supervision of prisoners to guarantee their safety.

Search policies and practices

Searches are governed by laws and regulations that consider international standards and norms, including with respect for the principles of necessity and proportionality.

Body searches must be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched. Rule 19 of the Bangkok Rules requires prison authorities to take effective measures to ensure the protection of women prisoners’ dignity during searches. This corresponds with Rule 51 of the Mandela Rules, which explicitly emphasises that searches should not “be used to harass, intimidate or unnecessarily intrude upon a prisoner’s privacy”.

Rule 20 of the Bangkok Rules urges the development of alternative screening methods (e.g., such as scans) to replace strip searches and invasive body searches to avoid the harmful psychological, and possible physical, impact. However, where such search methods continue to be used, Rule 19 of the Bangkok Rules provides that they are carried out only by women staff who have been properly trained in appropriate searching methods in accordance with established procedures.

Use of restraints

Being restrained is humiliating for all prisoners. If restraints are used unjustifiably and/or for prolonged periods, the requirement to treat prisoners with dignity is violated. The Mandela Rules place strict

limits on the use of body restraints on prisoners. They prohibit the use of instruments of restraint that are inherently degrading or painful, including when used as a form of sanction or punishment. The Bangkok Rules prohibit the use of instruments of restraint on women during gynaecological examinations and during labour, birth and immediately after birth. This includes the use of restraints during transfers to hospitals for women in labour.

Sex-specific hygiene, and sexual and reproductive healthcare

The Bangkok Rules stipulates that women's special hygiene needs must be provided for and that the prison accommodation of pregnant women, breastfeeding mothers and women with dependent children should consider their and their children's special hygiene needs. Women need regular access to water, especially in the case of women who are menstruating, going through menopause, pregnant or have children with them in prison. Women also need to have ready access to sanitary towels/pads free-of-charge. Barriers to accessing these necessities, including embarrassment about having to ask for them, must be removed.

Women's sex-specific health rights, including reproductive and sexual health rights, are often violated in prison. Common issues include a lack of access to preventive sex-specific healthcare services (e.g., cervical and breast cancer screening), voluntary testing for sexually transmitted infections, services to treat sexually transmitted infections (including voluntary testing), and treatment and care for HIV/AIDS. Women in prison comprise a high-risk group for sexually transmitted infections as most women prisoners around the world have experienced sexual violence, while many have also experienced sex-related exploitation and/or have drug addiction issues.

Sex-specific healthcare services equivalent to those available in the community should be provided to women prisoners in line with the Bangkok Rules. Woman prisoners must be examined and treated by a woman physician or nurse to the extent possible, except for situations requiring urgent medical intervention; when a male medical practitioner is involved, a woman chaperone must also be present throughout.

The Bangkok Rules prohibit the presence of non-medical staff during medical examinations, except in certain circumstances; when it is necessary for non-medical staff to be present (e.g. for justified security reasons or because the prisoner has requested a female chaperone), the Bangkok Rules state that such staff should be female and that the medical examination and/or treatment should be carried out in a manner that safeguards the privacy, dignity and confidentiality of the prisoner.

Contact with family

The Bangkok Rules place responsibility on the authorities to make special efforts to accommodate women close to their place of residence or the place where they would like to be eventually released. They also require prison authorities to make a special effort to facilitate links between women prisoners and their families, and to ensure that women have the same rights to conjugal visits as men. In cases where any of these standards cannot be implemented, prison authorities should introduce measures that compensate for the disadvantages faced by women; for example, prison authorities may allow the extension of the length of visits and, if prisoners have access to telephones, they may increase the number and/or duration of telephone calls women prisoners are allowed to make to their families.

Mothers and children in prison

Under Rules 49-52 of the Bangkok Rules, and in line with Article 3 of the Convention on the Rights of the Child, the decision about whether children will stay with their mothers in prison must be made in the best interests of the child as the primary consideration. Factors to be considered in the decision include the conditions in prison and the quality-of-care children can expect to receive outside prison. Prison authorities should demonstrate flexibility and take decisions on an individual basis, considering the circumstances of the child and wider family, including the availability of alternative care options in the community

To prevent physical and/or psychological harm to children who remain with their mothers in prison, the environment in which they are brought up in prison should be as close as possible to a normal environment outside prison. The normal standard of healthcare for children, including all regular vaccinations, should be provided.

For mothers who are separated from children, continued communication should be enabled to mitigate the psychological damage caused by the separation. Extended visits with mothers in prison, and/or home leave for mothers, should be part of a planned separation process to help settle the child with the carer outside prison.

Further reading:

APT-Penal Reform International Briefing Paper – Women in Detention: a guide to gender sensitive monitoring

<https://cdn.penalreform.org/wp-content/uploads/2016/01/women-in-detention-2nd-ed-v7.pdf>

(This sub-section is adapted from the above.)

4. How to secure the rights of LGBTI+ prisoners

Key concepts: sexual orientation and gender identity

LGBTI+ stands for Lesbian, Gay, Bisexual, Transgender, and Intersex, while the + sign represents a range of other gender identities, some of which are specific to certain cultures and ethnic groups. Given the importance of cultural and social dimensions in defining sexuality and identity, the acronym LGBTI+ must be treated with caution.

What matters is to know the people concerned represent a group in a situation of vulnerability in detention in that LGBTI+ people are often exposed to high levels of discrimination, abuse, and violations of their rights. Their minority status compared to the rest of the prison population may also contribute to a lack of adequate protection and/or to neglect or ignorance of their specific needs.

Culture and/or religion must never be used to justify the violation of the basic rights of LGBTI+ people, including when they are deprived of liberty. However, many countries have discriminatory laws that criminalise same-sex relationships, viewing these as “unnatural”; this compounds the situation of vulnerability of LGBTI+ people in numerous ways.

Sexual orientation refers to a person's physical, romantic and/or emotional attraction to other people. Gay men and lesbian women are attracted to individuals of the same sex as themselves, while bisexual people are attracted to individuals of both sexes. Sexual orientation is not related to gender identity.

Gender identity reflects a deeply felt and experienced sense of one's own gender. This is separate from a person's sex. Transgender people often experience an inconsistency between the two.

Intersex

Intersex refers to a cluster of complex medical conditions with significant psychological, sexual, and social implications. Despite popular claims that intersex is 'as common as redheads' at around 1.7% of the population, this is due to serious errors in the seminal study by Fausto-Sterling being disseminated as fact; the most recent research estimates incidence at 0.02-0.05% of live births. Intersex encompasses both inconsistencies between a person's chromosomes and their anatomy, and conditions in which it is hard to determine a person's sex from their anatomy.

Charities run by and for intersex people identify their key needs as revolving around tailored, informed healthcare (including psychological help) and support to inform their families and communities about the facts and implications of intersex. With children, an additional critical element is to ensure that no medical procedures to cosmetically 'normalise' aspects of the child's body are carried out until the person is old enough to decide for him/herself, on an informed basis, what (if any) cosmetic interventions are provided.

All intersex people need their condition identified in order that their holistic health needs can be met. Indeed, some intersex people carry significant risks if interventions are not undertaken for instance, a high risk of cancer if gonads or certain reproductive tissues are not removed, while others are associated with serious urinary issues that can be resolved through surgical means. Interventions necessary to preserve a person's life and health should, of course, be carried out in a timely manner by doctors with relevant expertise; this includes when the patient is a child.

While the term 'intersex' used to be the standard, accepted terminology, recently people with the relevant medical conditions have started to form their own specific charities, organisations, and lobbying groups; as a result, they have been better able to communicate their preferences about terminology. While many still prefer the term 'intersex', a small but growing majority prefer 'DSDs': in the medical community this refers to 'Disorders of Sexual Development', though many people with DSDs prefer the more neutral 'Differences of Sexual Development'. This is a developing field, so it is important to check regularly for changes in accepted terminology. In the meantime, the best option for those working with intersex people/people with DSDs is to ask individuals what their preferences are about respectful language.

Risks that LGBTI+ people are exposed to when deprived of their liberty

There are numerous, persistent risks to both LGBTI+ people who are deprived of their liberty. These apply from the moment of their arrest to their release and even afterwards, since stigmatisation and rejection may follow from a period in prison, especially if the person's sexual orientation, gender identity and/or status as an intersex person is revealed during arrest or detention. State and detaining

authorities have a responsibility of protection and care towards LGBTI+ prisoners: not only are they responsible for any abuse committed by fellow prisoners, but they must also make every effort to prevent it.

Even in countries where same-sex relationships are legal, the police sometimes arrest people solely based on their sexual orientation or gender identity, exposing them to arbitrary detention, as well as the risk of blackmail, humiliation, ill-treatment, and sexual violence. The considerable imbalance of power during questioning by law enforcement agencies carries risks for LGBTI+ people, including that law enforcement officers may take advantage of their situation of vulnerability to obtain confessions under duress.

LGBTI+ people, have a heightened risk of stigmatisation, bullying, and physical and sexual violence from detaining authorities and/or fellow prisoners. Preventive policies should be put in place to protect these groups; these should include

- the careful selection of prisoners sharing the same cell and/or area of a building with LGBTI+ people,
- raising awareness about bullying, discrimination and abuse based on sexual orientation, gender identity, and
- access to an effective and independent complaints system.

LGBTI+ persons, should never be put in isolation as a matter of routine: this should only be done with the informed consent of the individual concerned and without depriving them of services to which other prisoners have access. When conjugal visits are allowed, they should be offered on an equal basis to LGBTI+ persons.

Transgender persons face specific difficulties, especially in relation to their placement in prison and/or prison wings. In general, there are no conclusive approach to how best address or resolve these difficulties as there are on-going debates and discussions on how to tackle this challenge. In most cases, they are automatically placed in a men's or women's section according to their sex without considering their feelings and/or any 'gender-affirmation' measures (e.g., involving hormones and/or surgery). Given the heightened risk of abuse, these decisions are taken on a case-by-case basis, with the consent of the persons concerned and the approval of specialist multi-disciplinary committees. However, there are still concerns attached to this approach. Some argued that in situations where case-to-case approach considers “gender-affirmation” measures, this may risk discriminating transgender persons who can't or chose not to express their gender identity in such way.

There is also on-going discussion on how best to approach body searches of transgender persons. If transgender prisoners are afforded the right to specify the sex of staff performing searches, should other male prisoners (especially those who are vulnerable because of a history of sexual trauma or child abuse) have the right to make the same request? There are also debates about the rights of female staff members about being required to search transgender persons of the male sex (in the community as well as in prisons). How do we deal with these dilemmas?

Therefore, it is important for prison guards, staff, and management to be aware of and recognises the complexities of these issues and establish prison guidance and procedures concerning body searches

that are inclusive, respectful, and empathetic to the prisoners' complex situations of vulnerabilities. Furthermore, support and therapeutic treatment for transgender people should be carried out on an equivalent basis with the situation outside prison.

Further reading:

Detention Focus Database: all standards related to LGBTI+

https://tortureprevention.ch/detention-focus/en/vulnerable_groups/6/

(This sub-section is adapted from the above.)

Recommendation CM/Rec (2010) 5 of the (Council of Europe's) Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, 2010

[Refworld | Recommendation CM/Rec \(2010\) 5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity](#)

African Commission on Human and Peoples' Rights, Resolution on Protection against Violence, and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, April-May 2014

[may 2014 resolution on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity. pdf \(up.ac.za\)](#)

Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity

<https://yogyakartaprinciples.org/principles-en/>

(A set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity that offers recommendations to States, UN human rights system, national human rights institutions, the media, non-governmental organisations and funders on their roles and human rights obligations. The principles were drafted and unanimously adopted by 29 distinguished experts from 29 countries in 2009).

Module 4: Joining Forces to Prevent Torture Together.



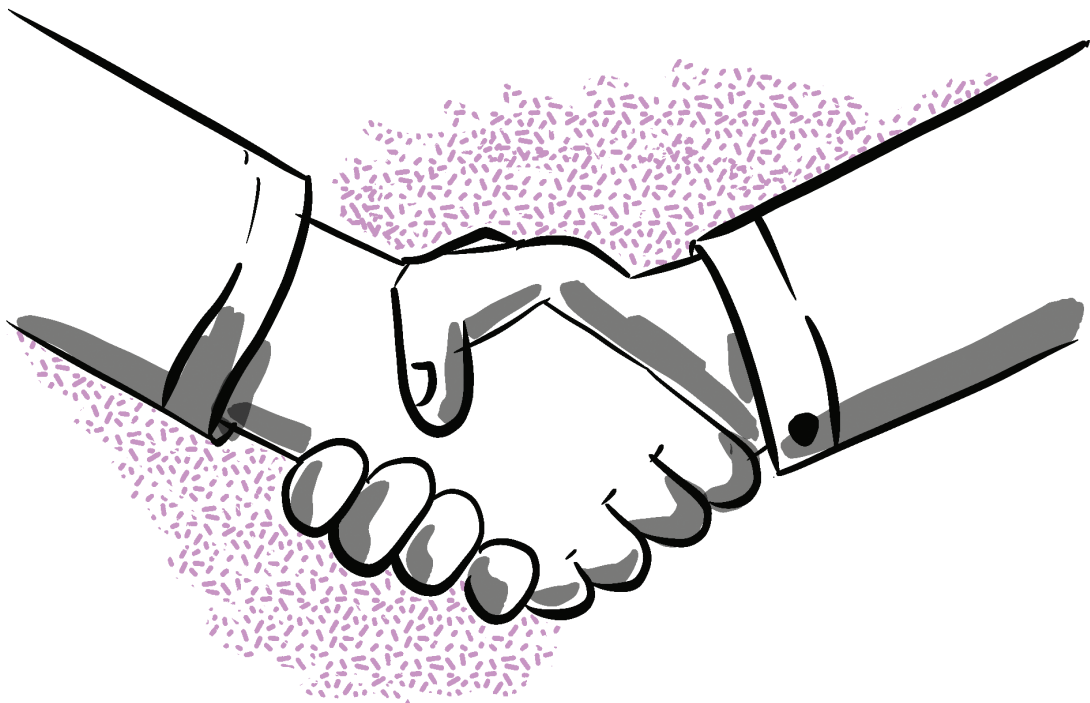
José's diary excerpt:

05:00 pm - Prison Director's Office

A delegation from the PDHJ arrived at the prison without notifying us. The Prison Director asked me to welcome the delegation and assist them with any requests they have during the monitoring visit.

These visits from the PDHJ are always quite burdensome and sometimes they last quite a long time. I wish they would announce them before arriving suddenly at the prison.

There have been some recurring incidents of violence among some groups of prisoners, but I do not know if the PDHJ can help us to find a solution. I wonder whether I should ask them.



Module 4	Joining forces to prevent torture together
Description of the module	This module provides participants with knowledge and insights on the preventive approach to torture and other-ill treatment based on cooperation and dialogue with external actors. It also addresses practical aspects relating to the role of prison guards during inspections by external oversight bodies.
Learning outcomes	<p>Participants will learn and get acquainted with:</p> <ul style="list-style-type: none"> ➤ Participants will learn and get acquainted with ➤ the key guiding principles of how to prevent torture and other ill-treatment. ➤ the powers of oversight bodies in monitoring prisons. ➤ the roles and responsibilities of prison guards in engaging with external oversight bodies (e.g. the PDHJ). ➤ the rights of prisoners to engage with monitoring bodies, and to submit complaints to both internal and external authorities. ➤ the roles of key actors and institutions in preventing torture and how to establish effective cooperation and collaboration between them.
Time required to deliver the module as a training session	2 hours 35 minutes
Instructional materials and aids needed	<p>1. For the facilitator:</p> <ul style="list-style-type: none"> ➤ Powerpoint presentation ➤ Factsheets and scenarios <p>2. For participants:</p> <ul style="list-style-type: none"> ➤ A set of 'story cards' for Activity 2 for each participant ➤ A set of stakeholder cards for Activity 4 for each group) ➤ A copy of the Mandela Rules in Tetum/ Portuguese for each group of Activities 3 and 4 ➤ A copy of the Bangkok Rules in Tetum/Portuguese for each group of Activities 3 and 4 ➤ A copy of the UNCAT in Tetum/Portuguese for each group of Activities 3 and 4 ➤ A copy of the OPCAT in Tetum/Portuguese for each group of Activities 3 and 4 ➤ A copy of the Timor-Leste Law of Penal Execution (<i>Regime de Execução Penal</i>) for each group of Activities 3 and 4 ➤ A copy of Timor Leste's Statutes of Office of the Provedor for Human Rights and Justice (PDHJ) for each for each group of Activities 3 and 4
Agenda for the training session	<p>Content outline:</p> <p>What is torture prevention? Activities: Group discussion moderated by facilitator (15 minutes), storytelling – "The garden and the dog" (40 minutes)</p> <p>What are the powers of oversight bodies when monitoring prisons? What are the responsibilities of prison guards when engaging with external oversight bodies? Activities: Case study – "Prison Director welcomes a monitoring team" (1 hour)</p> <p>How can we jointly prevent torture? Activities: Case study and small groups discussion – "Engaging in torture prevention efforts: a shared responsibility" (40 minutes)</p>

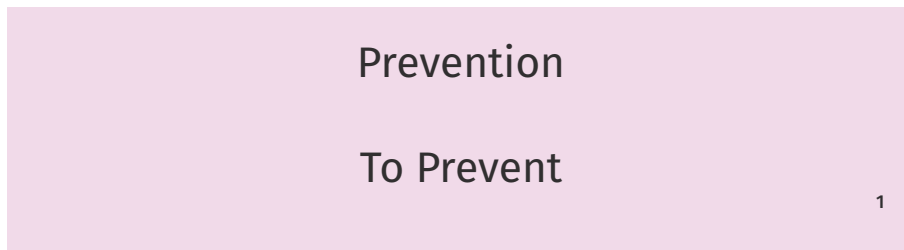
Instructions for Activities

What is torture prevention?

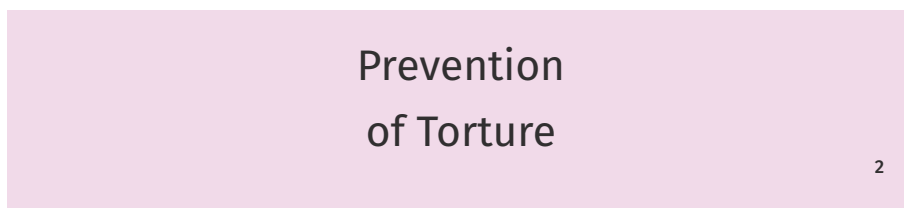
Activity 1: Group discussion moderated by facilitator

Time: 15 minutes

1. The facilitator will present Powerpoint slide 1 (below) and invite participants to share their thoughts about their understanding of both the noun 'prevention' and verb 'to prevent'.



2. The facilitator will write-up key comments from participants (usually between 3 and 5 participants) on a flipchart or whiteboard.
3. The facilitator will highlight the following key points, whether or not they were brought up by participants (see slide 2 below):
 - According to Chambers Dictionary, "to prevent" means "to stop (someone from doing something, or something from happening), to hinder, to stop the occurrence of, to make impossible, to avert."
 - Prevention requires people to predict factors that can lead to the problem, and identify situations that raise the risk of the problem, then to act on this knowledge to prevent further instances of the problem.
 - Prevention requires people to adopt a proactive attitude and to take positive steps and actions.
4. The facilitator will then show slide 2 below:



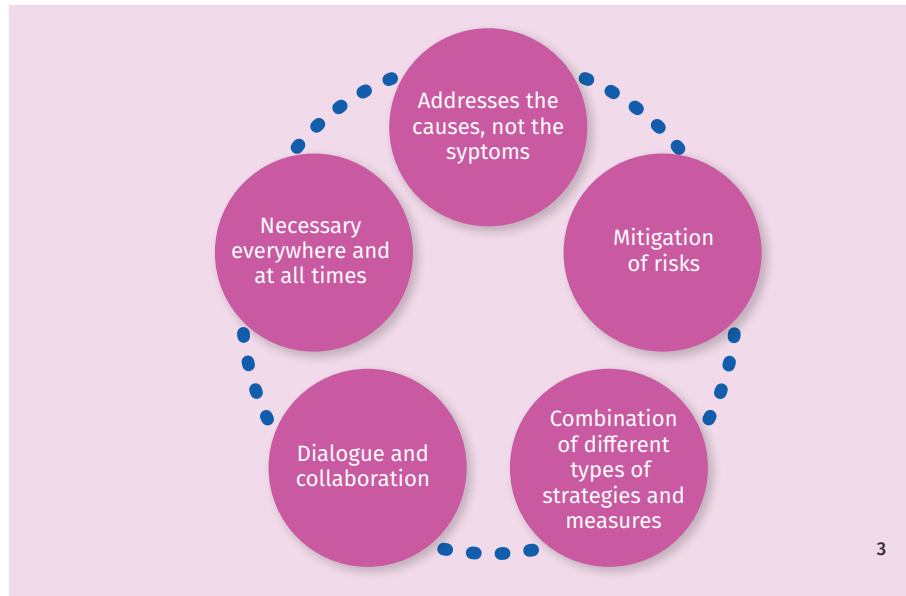
5. The facilitator will ask participants how the definition of prevention relates to what they learned about torture and other ill-treatment in Module 1. The facilitator will invite participants to spend 10 minutes brainstorming why preventing torture is especially important for prison guards. The facilitator will listen and note down key points from the discussion on the flipchart or whiteboard.
6. After 10 minutes, the facilitator will explore these responses further by asking the following questions:
 - Have you ever seen or experienced anything connected to the point you made?
 - Do you feel you could prevent the things we are discussing from happening, and why do you feel you can/cannot?
7. The facilitator will then conclude the discussion by presenting the key points on torture prevention for Activity 1 (see *Notes for Facilitators and Training Materials* below).

Activity 2: Storytelling – “The garden and the dog”

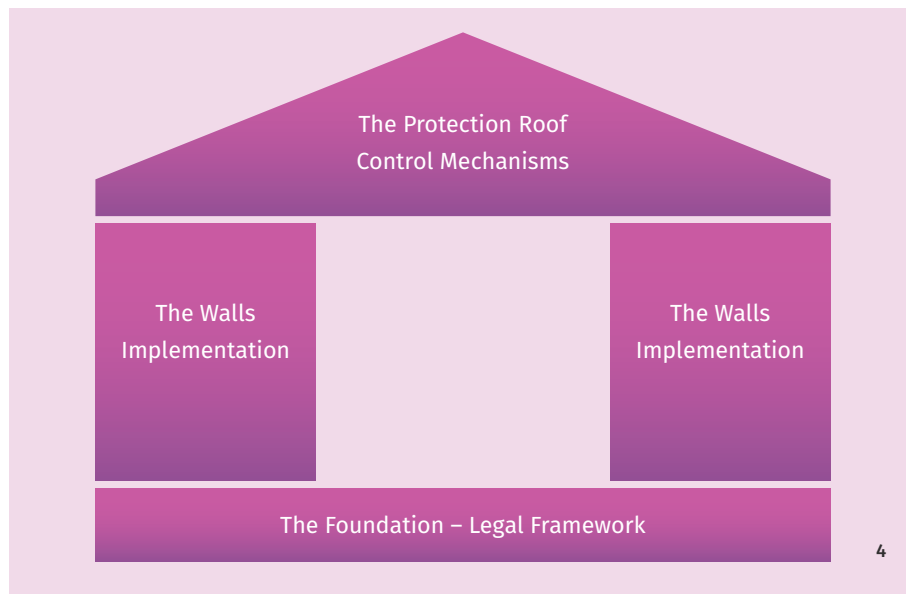
Time: 40 minutes

1. The facilitator will divide the class into groups, each with between 4 and 6 participants. First, each group should elect a rapporteur, who will write (on a flipchart) or type (on a laptop/ computer with a projector) the conclusions of the group’s discussion and present them to the rest of the class.
2. The facilitator will hand out ‘story cards’ (see *Notes for Facilitators and Training Materials* below) to each group. The facilitator will read aloud the story on the ‘story cards’, then explain that the groups will have 15 minutes to discuss the story and respond to the 4 questions on the cards.
3. After fifteen minutes, the groups will reconvene and the facilitator will ask each group to respond to one of the questions, while the rest of the class expands on the chosen group’s answer with their own responses. The facilitator will write up the main points on the flipchart in accordance with the key points for Activity 2 highlighted in the *Notes for Facilitators and Training Materials* (below): this should take approximately 10-15 minutes.

4. The facilitator will then discuss Powerpoint slide 3 (below), which presents an overview of the five main characteristics of torture prevention. The facilitator should use *Notes for Facilitators and Training Materials* (below) to ensure the key points are covered.



5. The facilitator will then show Powerpoint slide 4 (below) to explain the 'House of Prevention'. The facilitator should refer to the *Notes for Facilitators and Training Materials* (below) to ensure the key points are covered.



6. After ensuring that participants understand each component of the 'House of Prevention', the facilitator will ask the class to identify a risky practice common in prisons that amounts to torture and/or other ill-treatment. The class should then break down the elements of this practice using the following process, in a group discussion moderated by the facilitator:



7. The facilitator will then draw a big diagram of the 'House of Prevention' on the flipchart or whiteboard and invite participants to brainstorm various ways to prevent the risky practice from happening. This will last 10 minutes.
8. The facilitator will write up the answers on the diagram, clustering the responses according to which components of the 'House of Prevention' they represent. For example, if a participant proposes "enacting an anti-torture law", the law itself is part of the 'foundation' of the house, but the implementation of the law, through enacting it, is part of the 'walls'.
9. Next, the facilitator will explain that participants have just conducted an analysis of a risky practice they have identified as common in prisons and that they have also used their analysis to build a torture prevention plan using the 'House of Prevention'.
10. The facilitator should stress that preventing torture cannot be achieved through the effort of one person alone: it must be a joint effort. The facilitator will then explain that one of the most important partnerships for torture prevention in almost all states involves cooperation between prison management and personnel and external oversight bodies.

What are the powers of oversight bodies when monitoring prisons? What are the responsibilities of prison guards when engaging with external oversight bodies?

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Activity 3: Case study – “Prison Director welcomes a monitoring team”

Time: 1 hour

1. The facilitator will divide the class into groups, with between four and six people in each. First, each group should elect a rapporteur, who will write (on a flipchart) or type (on a laptop/ computer with a projector) the conclusions of the group’s discussion and present them to the rest of the class.
2. The facilitator will hand out the First Part of the case study (see *Notes for Facilitators and Training Materials* below) and give the groups 15 minutes to discuss it.
3. After 15 minutes, the facilitator should hand out the Second Part and give them a further 15 minutes to discuss.
4. After the second fifteen minutes, the facilitator will invite the rapporteurs to volunteer to present their group’s discussion. Each group will have 5 minutes to present, with another 5 minutes allowed for discussion with the rest of the class.
5. Afterwards, the facilitator will present the key points for Activity 3 outlined in the *Notes for Facilitators and Training Materials* (below), emphasizing and expanding on the participants’ responses.
6. Finally, the facilitator will ask if anyone has any further questions or doubts regarding visits by external monitoring bodies (e.g. how to handle security for prisoners and the monitoring team, the length of visits, and whether confidentiality can be guaranteed if requested by a guard or prisoner). The facilitator should allocate 10 minutes for this discussion.

Partners in prevention: how can we prevent torture together?

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Activity 4: Case study – “Engaging in torture prevention efforts: a shared responsibility”

Time: 40 minutes

1. The facilitator will divide the class into groups, with between four and six people in each. First, each group should elect a rapporteur, who will write (on a flipchart) or type (on a laptop/ computer with a projector) the conclusions of the group’s discussion and present them to the rest of the class.
2. The facilitator will hand out a case study worksheet and a set of ‘Partners in Prevention’ cards naming actors and institutions that work in partnership with prisons to help prevent torture and other ill-treatment (see *Notes for Facilitators and Training Materials* below).
3. The facilitator will give the groups 15 minutes to discuss the case study and prepare their response. The facilitator should encourage the class to consult their guiding materials, in particular the Mandela Rules and Bangkok Rules (as per the instructions in the case study worksheet).
4. After 15 minutes, the facilitator will invite the rapporteurs to volunteer to present their group’s discussion. Each group will have 5 minutes to present. The facilitator should highlight how these responses relate to the key points for Activity 4 outlined in the *Notes for Facilitators and Training Materials* (below).

Notes for Facilitators and Training Materials

Training materials and aids for sessions

Activity 2: Storytelling – “The garden and the dog”

Story Card – The Garden and the Dog

Once upon time, two neighbours fought over one neighbour’s dog destroying the other neighbour’s garden.

“Your dog ate my flowers. You should lock it in the house and not let it out!” said the first neighbour angrily.

“You should not plant your flowers so close to my house ! Why don’t you have your garden on the other side of the house?” the second neighbour responded loudly.

“If I plant my garden on the other side of the house, the plants will not get enough sunshine then they’ll die!” the first neighbor shouted.

After quarrelling incessantly for three days, pointing fingers and blaming each other,

the neighbours decided to bring their dispute to the head of the village. However, even the head of the village could not resolve their dispute as both neighbours refused to accept any proposal for settlement.

“Then it is up to you to seek the solution,” the head of the village told the pair.

A) What could both neighbors improve about how they communicate? Focus on the way they talk and behave in the argument.

B) Inviting an outside party (like the head of the village) to help mediate a conflict often results in a positive resolution. In this story, what else could the neighbors have done to resolve the conflict before going to the head of the village?

C) What are the risk factors that triggered the conflict? Are there additional risks involved in the escalation of the dispute to the point where even the head of the village could not resolve it? How could it be resolved?

Activity 3: Case study – “Prison Director welcomes a monitoring team”

Case Study

“Prison Director welcomes a monitoring team”

First Part (15 minutes)

A monitoring team from the PDHJ arrives at a prison to conduct an inspection. The monitoring team meets briefly with the Prison Director to introduce themselves and explain how they plan to carry out the monitoring visit. They leave the office of the Prison Director and walk towards the main wing, where all the cells are.

One of the prison guards, José, remains very reluctant about granting the team from the PDHJ access to the cells. He believes that “monitoring visits do not bring any benefits to detainees, nor to prison guards. Monitors only bring problems and disruption”.

A) As a prison guard, and José’s colleague, how would you respond to his concerns?

The prison is small and all the cells are located around an open patio area. As there are few prisoners, the monitoring team would like to interview all of them. They ask José to put a couple of tables and chairs in the middle of the patio; they wish to be out of hearing range of other people so they can meet with the prisoners one by one with sufficient privacy that they can reasonably offer the prisoners a guarantee of confidentiality.

B) José does not agree and insists that the monitoring team are allowed to interview prisoners only in administrative office spaces and that a prison guard must be present in the room for the entire conversation. The monitoring team does not agree with José’s proposal.

José consults you on how to handle the situation. How would you respond?

C) What are the risk factors that triggered the conflict? Are there additional risks involved in the escalation of the dispute to the point where even the head of the village could not resolve it? How could it be resolved?

Case Study

“Prison Director welcomes a monitoring team”

Second Part (15 minutes)

After the arrangements for the interviews with detainees are finalized, the monitoring team asks José to allow them to inspect all books and registers relating to the functioning of the prison and the treatment of prisoners, as well as any internal rules and regulations relating to the operational procedures of the prison. José is not sure whether he is allowed to provide these documents to the monitoring team, nor which books, registers and other paperwork he should show them. He decides to consult other prison guards.

He approaches you, as one of his colleagues, and asks the following questions:

- » Are members of the PDHJ entitled to access to registries and documents regarding prisoners and the functioning of the prison?
- » If they are allowed to have access to such documentation, which registers and files should be provided to them?
- » Can you give me a list of the registers and other key documents a prison should have in place?

D) How would you reply?

After inspecting the prison premises, the monitoring team approaches José and other prison guards and asks to interview them one at a time in private. José is hesitant. He believes visits and inspections of places of detention are targeted solely at checking material conditions of detention and receiving complaints from prisoners, so he does not understand why the team need to talk to him or the other guards.

E) Do you agree with José Horatio's point of view? Why?

Activity 4: Case study – “Engaging in torture prevention efforts: a shared responsibility”

Case Study – Engaging in torture prevention efforts: a shared responsibility

25 minutes

The Prison Director calls all the prison guards to his office after the PDHJ delegation leaves at the end of their monitoring visit. The Director informs everyone that the PDHJ has reported that the placement of prisoners does not follow international rules and standards: low risk offenders are sharing cells with prisoners convicted of violent crimes; there are no separate areas for pre-trial detainees; and juvenile prisoners are sharing cells with adults.

The PDHJ has also expressed concern about the prison registries, which lack basic information. This lack of information makes it more difficult to classify prisoners correctly in order to place them appropriately. The monitoring team also noted the absence of records of allegations of abuse and ill-treatment; as a result they are concerned about how the prison responds to incidents of violence.

The team from the PDHJ informed the Prison Director that these issues constitute risk factors that could contribute to the rise of violence among the prisoners. They also called the Director’s attention to the impact such violence has on prison staff; when interviewing prison staff, the PDHJ found that violence between prisoners is having a negative impact on staff well-being and contributing to the worsening of working conditions through raising anxiety and stress levels for staff.

The PDHJ encouraged the Prison Director to find solutions to these problems in order to prevent future instances of violence; the PDHJ team suggested that the Director should call on other stakeholders and authorities to be part of the solution to the current issues. The PDHJ also agreed to make themselves available to discuss their forthcoming written recommendations.

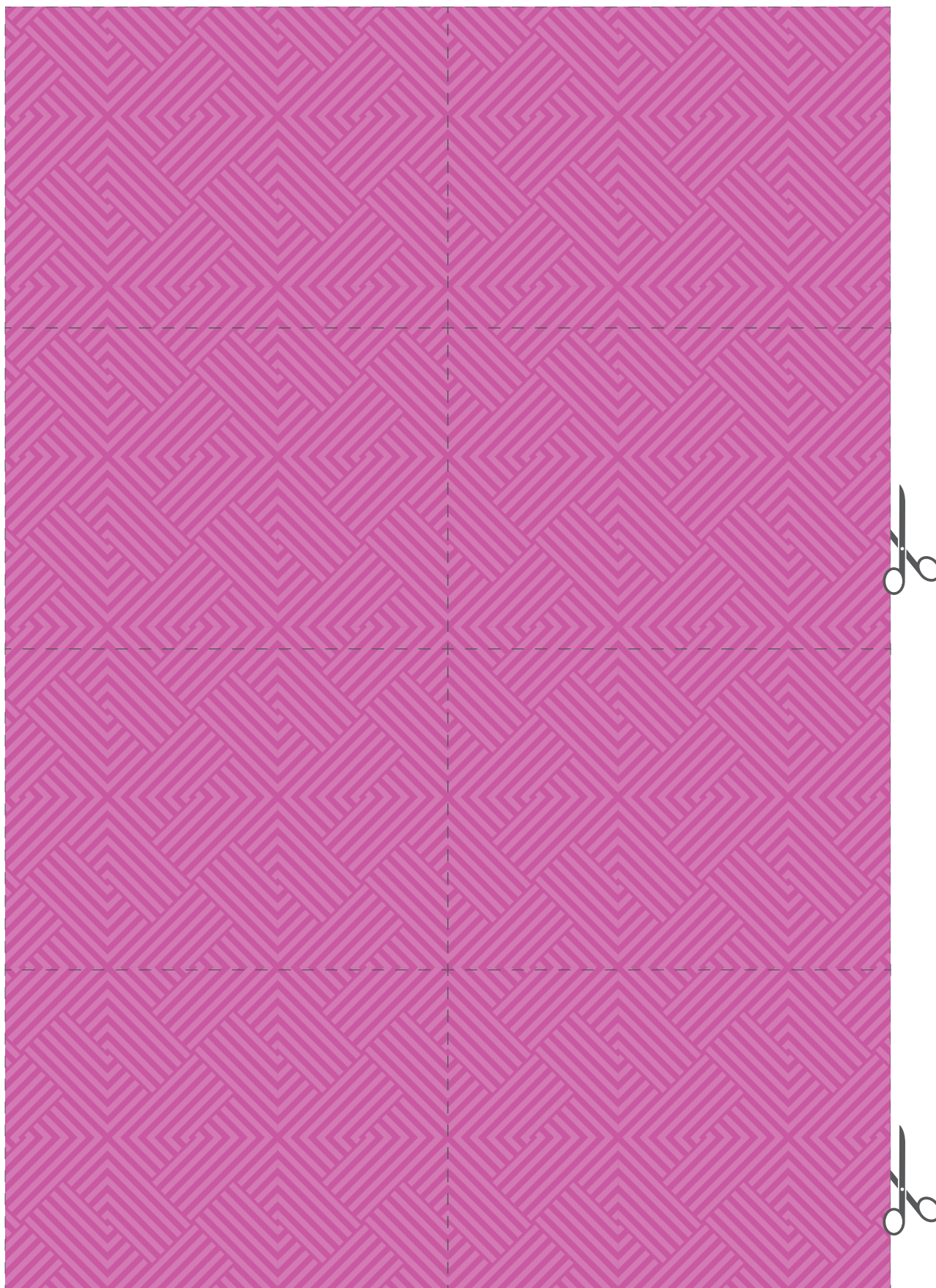
The Prison Director calls all the guards into a meeting to discuss what measures should be taken to address instances of violence among the prisoners and how to prevent such violence in future.

The Director also informs the guards that the PDHJ will carry out a follow-up visit to see what improvements have been made, and that the PDHJ may publish a report on the problems they identified during the visit.

Read the Mandel Rules: Rules 6, 7, 8 and 11, and the Bangkok Rules: Rules 2, 3, 40 and 41. Then, using the set of cards distributed by the facilitator, identify how the actor or institution named in each card could help address these issues or contribute to solutions. Consider the scope of the mandate of each institution or actor. Do this for as many cards as possible in the time.

Activity 4: Set of “Partners in Prevention” cards

Civil society organisations	United Nations Office of Drugs and Crime (UNODC)
Legislators	Ministry of Justice
The judiciary	Prison guards
Office of the Provedor for Human Rights and Justice (PDHJ)	National Directorate of Prison and Social Reintegration Services



Notes for Facilitators



Activity 1: What is torture prevention?

Key Points

1. Torture is among the greatest affronts to human dignity. Torture must be prevented because it is an act that dehumanises both victims and perpetrators; it corrupts states that use it, and degrades legal systems that accept it. Torture has no place in a modern society that respects human dignity, the rule of law and human rights. (The facilitator should refer back to the learning objectives from Module 1.)
2. States have a duty to prevent torture, including by undertaking active preventing measures. (The facilitator should remind the participants of their responsibilities and obligations as state agents, referring back to what they learnt in Module 1.)
3. Torture prevention aims to create an environment where acts that might amount to torture or other ill-treatment are less likely to happen. Preventive efforts aim to protect human dignity in the broadest possible sense.
4. Torture is a crime. The definition of crime prevention stated in the 2002 UN Resolution on 'Action to promote effective crime prevention' is a useful reference with regard to the responsibilities of prison guards in preventing torture:

Crime prevention comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential effects on individuals and society, including fear of crime, by intervening to influence their multiple causes[.]

Activity 2: Storytelling – “The garden and the dog”

Key points

- Naming and shaming is not helpful in trying to find a solution to a dispute.
- Dialogue and cooperation should be prioritized, including finding ways to join forces to overcome the problem.
- Prevention of conflict demands dialogue in which each party listens to the other’s point of view.
- Identifying risks and root causes are necessary steps to finding a solution to disputes.
- After understanding what is causing the dispute, both parties must identify what can be done to stop these risks and root causes from reoccurring.
- It is important to be creative: brainstorm and test different approaches and options.
- A preventive approach often involves a diverse set of actions and approaches to address root causes.

Key points – Powerpoint slide 2

Applying the lessons of the storytelling exercise will help participants identify the key elements that contribute to effective torture prevention.

- **Torture prevention addresses the causes, not the symptoms.**

Torture prevention complements work focused on investigating individual cases of torture.

Effective prevention relies on understanding the root causes of torture and other ill-treatment, then addressing these root causes through long-term changes to mitigate the associated risks. The root causes of torture and other ill-treatment include institutional, normative, political, cultural, socio-economic, and structural issues.

- **Torture prevention aims to mitigate risks.**

Torture prevention requires identifying and analysing key risks, reflecting on how to address them, then taking action to do so.

This, in turn, requires a holistic approach that looks at all the factors that have an impact on the conditions and treatment of prisoners.

Torture prevention is not just about asking what happened and how it happened, but why, and what can be done to stop it reoccurring.

➤ **Torture prevention combines strategies and measures of different types.**

Preventive approaches go beyond judicial responses (i.e. accountability and reparation) to violations that have already happened. Instead, prevention is broader and encompasses non-judicial measures (e.g. educating prison guards about human rights, capacity strengthening with regard to state actors and institutions, and reform of public policies to enable a holistic preventive approach).

Transparency and oversight contribute to prevention through enabling the documentation of conditions of detention, and the production of data and information about detention; this is essential to creating effective public policies to protect human rights, including through preventing torture.

➤ **Torture prevention emphasizes dialogue and cooperation.**

Silos work against effective prevention, which requires coordination and dialogue between relevant stakeholders to achieve change.

Prevention is not about ‘naming and shaming’ individuals and/or institutions for existing violations: it focuses dialogue and action to stop further violations taking place.

➤ **Torture prevention is necessary everywhere and at all times.**

No state, whatever its legal, political and social context, is immune from the risk of torture. All states are required to take measures to prevent torture and to remain vigilant about risks of torture. The role of the national human rights institutions is key.

The ultimate objective of torture prevention is increased protection of all persons against the risks of torture and other ill-treatment in order to fulfil the fundamental human right that “no one shall be subjected to torture” (as per Article 5 of the Universal Declaration of Human Rights).

Key points – Powerpoint slide 3

The ‘House of Prevention’ illustrates how to take a systemic approach to prevention of torture and other ill-treatment.

The foundation of the house contains **the legal framework** that provides the basis for a solid and comprehensive system with the potential to effectively protect persons deprived of liberty against torture and other ill-treatment. The national legal framework (i.e. the laws and regulations that provide the framework for government policies and directives) should integrate protection standards established by international law, including detention safeguards. National legal frameworks must also prohibit, and take measure to prevent, torture and other ill-treatment; achieving these goals relies, more broadly, on building societies that reject torture.

The walls of the house represent the **effective implementation** of the legal framework through laws, regulations, procedures, training, and effective investigations, prosecutions and sanctions in cases of torture and other ill-treatment. Regular, comprehensive review and reform of the culture of law

enforcement institutions, and their practices, is also vital. Collectively, effective implementation usually involves a clearly-stated and widely-disseminated political intention to implement the legal framework, staff trained according to sound codes of professional ethics, financial and material resources, measures to protect those who come forward with allegations of torture from reprisals, and remedy and redress for victims of torture and other ill-treatment.

The protective roof of the house sits over the entire system, verifying whether the legal framework is being effectively implemented through **control mechanisms**. Regular visits to places of detention by independent external (national and international) monitoring bodies are an integral part of this protective roof. Monitoring can be done by actors and institutions with a mandate to monitor places of detention, by national human rights and ombudsman institutions (i.e. the PDHJ in Timor-Leste), international mechanisms (e.g. the International Committee of the Red Cross, and the UN Subcommittee for the Prevention of Torture), and via judicial control (i.e. with the involvement of judges and prosecutors).

■ Activity 3: Case study – “Prison Director welcomes a monitoring team”

Key points – Part A

- The principles of transparency, openness, independent monitoring and oversight should be respected and observed by prison management. It is an explicit part of the mandate of the PDHJ (as per the Statutes of PDHJ: Article 28f, and the Law of Penal Execution: Article 17).
- There should be procedures in place to provide regular access to prisons for judges, non-governmental organisations, ombudsmen, and other external monitoring bodies. All prison staff should receive proper training and guidance on how to interact with monitoring bodies and what their powers are.
- Regular monitoring and inspections by external bodies
 - helps to prevent torture and ill-treatment through regular, unannounced visits.
 - provides an important source of moral support for persons deprived of their liberty; having someone ‘on the outside’ listen to them and their grievances helps to reduce anxiety.
 - results in expert recommendations; these, in turn, lead to dialogue with prison authorities in order to improve the situation of prisoners and the working conditions of prison guards and staff.
 - protects prison guards and staff themselves; the presence of such bodies makes it much more difficult for prisoners to sustain false accusations of abuse.
- It is important that prison staff do not feel threatened by the work of monitoring bodies. On the contrary, they should perceive monitoring bodies as indispensable, transparent and professional partners who can help to protect state officials who behave appropriately.

- Monitors work with the same objectives as prison guards and staff: to create a prison system founded on respect for human rights, with a focus on rehabilitation and reintegration of prisoners at the end of their sentence. Such work has a positive impact on prisoners, on society as a whole, and on the security of the public with regard to prisoners who have been released.

Key responses – Part B

- Prison officials should have a cooperative and collaborative attitude towards those who enter prisons to carry out monitoring .
- All prison staff have a legal duty to cooperate with PDHJ personnel: Article 44. 1 of the Statutes of PDHJ states that “Any person, including public officials, administrative agents, and holders of any civil or military body, must cooperate and provide all information requested by the Human Rights and Justice Ombudsman in the performance of his or her duties.”
- Prison officials should grant the follow access and assistance to monitoring teams in accordance with the Statutes of PDHJ (Law 7/2004, Articles 28e-f, 44.1, 48.1b, 49.1d and f, and 49.4):

unrestricted access to all facilities and services.

access to all information relating to the persons deprived of their liberty in the facility (i.e. all logbooks, internal regulations, personnel regulations, prisoners files, schedules, records of disciplinary measures, and so forth).

the option to interview prisoners without witnesses in order to ensure confidentiality of interviews: monitors have the right to conduct interviews with prisoners out of sight and out of hearing of any prison official, as well as other prisoners. In case of particular security concerns, the interview must take place at least out of hearing of any prison official. If needed, an interpreter may be involved.

the possibility of interviewing any other person that the PDHJ considers able to provide relevant information (e.g. external providers and religious leaders).

- Prison officials should refrain from intimidating and/or retaliating against prisoners who talk to the PDHJ. Reprisals against prisoners for speaking with a monitoring body are prohibited; as stated in Article 49.1e of the Statutes of PDHJ, “it is a serious offense: threatening, intimidating or unduly influencing anyone who has complained to or cooperated with the Provedor or intends to do so”.
- The objective of monitoring is to carry out a comprehensive examination of all aspects of life in detention; this includes checking the working conditions of prison guards and other staff, and hearing from them about what they perceive to be the main problems in the functioning of the prison and the prison system as a whole. Monitoring visits provide an opportunity for the PDHJ to answer any questions prison staff may have and to listen to their point of view.
- Interviewing prison guards and other staff represents a key opportunity to cross-check the information obtained by the monitoring team through their observations and their interviews with prisoners.

- Monitoring by external bodies of the treatment of prisoners and conditions of detention contributes to the prevention of torture and other ill-treatment, as well as improving the conditions of places of detention; this benefits both prisoners and prison guards and staff.
- Prison guards and prison staff and oversight bodies are working to achieve a common objective. The ultimate goal of all is to ensure a safe and responsive prison, and the full protection of everyone's dignity and rights. Therefore, prison guards and staff should adopt a respectful, collaborative and engaged attitude with regard to inspection and monitoring bodies, not least because improving conditions of detention will also positively impact on the lives and working conditions of all prison personnel.

Activity 4: Case study – “Engaging in torture prevention efforts: a shared responsibility”

It is important that facilitators highlight the following key points with regard to the different aspects of the case study; the points on the right concern what the associated actor(s)/institutions(s) on the left could do to aid efforts to prevent torture and other ill-treatment.

Prison guards	<ul style="list-style-type: none"> ✓ Maintain prisoners individual prison files by keeping these files up-to-date and properly completed (as per Law of Penal Execution: Article 27). ✓ Record incidents of violence between prisoners in the corresponding registry book. ✓ Guarantee immediate medical assistance for prisoners who suffer any kind of violence. ✓ Inform the Public Prosecution Office and PDHJ about incidents of violence in the prison so they may assist with the consequent investigation
Legislators	<ul style="list-style-type: none"> ✓ Increase the budget for the administration of prisons to ensure that they can provide separate spaces for juvenile prisoners and pre-trial detainees (as per the Law of Penal Execution: Article 18.1a-b). ✓ Provide an adequate budget for construction of specific facilities for female prisoners and juvenile prisoners
National Directorate of Prison and Social Reintegration Services	<ul style="list-style-type: none"> ✓ Establish protocols and guidelines regarding prison file-management systems to ensure that these accurately record all the criteria identified in the Mandela Rules (Rule 7) as vital for prisoners' individual records. ✓ Organise regular capacity-building programmes for prison guards and other staff, including on how to use and fill out entries in the file-management system. ✓ Organise training for prison guards on conflict management and resolution, including non-violence principles and strategies. ✓ Create programmes (including through partnerships with civil society organisations) for prisoners to assist in improving their lives. These programmes may include sessions on how to deal with stress and anxiety (e.g. through yoga, meditation, non-violent conflict resolution, or sport activities)

Office of the Provedor for Human Rights and Justice (PDHJ)	<ul style="list-style-type: none"> ✓ Follow up on all individual complaints of violence, forwarding cases (including any information or documents relating to allegations) to the Public Prosecution Office (as per Statutes of Office of the Provedor for Human Rights and Justice (PDHJ): Article 33.4). ✓ Draft a report about every monitoring visit; reports should detail irregularities observed and include associated recommendations and concrete proposals to address these. Such proposals and recommendations may be aimed at relevant stakeholders in addition to prison authorities (as per Statutes of PDHJ: Articles 24.b and 45).
Judiciary	<ul style="list-style-type: none"> ✓ Reduce the number of pre-trial detainees. Judges should order pre-trial detention only if there are reasonable grounds to believe that the accused has been involved in the commission of the alleged offence and there is a danger of flight, commission of further serious offences, or that the course of justice will be seriously interfered with if the detainee is freed. Pre-trial detention should be used as a means of last resort, as established by international standards, including Principles 6.1-2 of the United Nations Standard Minimum Rules for Non-custodial Measures (the 'Tokyo Rules'). ✓ Prioritize alternative measures to detention
Ministry of Justice	<ul style="list-style-type: none"> ✓ Prioritize the construction of separate detention facilities for women prisoners, juveniles and pre-trial detainees, as mandated by international standards (e.g. the Mandela Rules: Rule 11) and domestic legislation (Law of Penal Execution: Article 18).
UN Office on Drugs and Crime (UNODC)	<ul style="list-style-type: none"> ✓ Provide training for the staff of National Directorate of Prison and Social Reintegration Services on international standards regarding the separation of different categories of prisoners. ✓ Provide technical assistance to the Ministry of Justice and National Directorate of Prison and Social Reintegration Services on the development of protocols for prison file-management systems in accordance with standards set out in the Mandela Rules and Bangkok Rules
Civil society organisations	<ul style="list-style-type: none"> ✓ Organise and provide programmes to support prisoners who are victims of violence committed by other prisoners. ✓ Advocate before the executive and legislative for prison reform and for allocation of a sufficient budget to improve conditions in prison facilities

Additional reading

1. Defining “prevention of torture”

According to the Chambers Dictionary, “to prevent” means “to stop (someone from doing something, or something from happening), to hinder, to stop the occurrence of, to make impossible, to avert.” In public health, prevention is a common strategy in the fight against diseases; it is aimed at avoiding the emergence, development and spread of illness.

There are several ways to define torture prevention: one involves distinguishing between direct prevention and indirect prevention; another categorises preventive efforts as primary, secondary and tertiary.

Direct prevention (mitigation) aims to prevent torture from occurring by reducing risk factors and eliminating possible causes. Through training, education and regular monitoring of places of detention, direct prevention aims to address the root causes that can lead to torture and other ill-treatment. Direct prevention is forward-looking and, over the long term, helps to create an environment in which torture is less likely to occur.

Indirect prevention (deterrence) takes place once cases of torture or other ill-treatment have already occurred; it is focused on avoiding the repetition of such acts. Through investigation and documentation of past cases, denunciation, litigation, prosecution and sanction of perpetrators, as well as reparation for victims, indirect prevention aims to convince potential torturers that the cost of committing acts of torture are greater than any possible benefits.

The development of international standards is critical to how torture prevention is understood and how its aims are operationalised.

The UN Guidelines for the Prevention of Crime adopted under the Action to promote effective crime prevention (ECOSOC Resolution 2002/13) propose the following definition of crime prevention, which is also useful to preventive approaches to torture that focus on torture as a crime: “Crime prevention comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society by intervening to influence their multiple causes.”

Meanwhile, Article 2 of the UNCAT calls upon states to adopt and introduce a number of varied measures to prevent torture from happening: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

Effective torture prevention involves dialogue and cooperation with and between authorities. For instance, monitoring aims to provide better information (including through prison visits, analysis of observations, reports and recommendations) in order to increase the knowledge of responsible authorities about how to meet their obligations to respect the rights of persons deprived of their liberty.

The preventive approach encompasses 5 main characteristics as outlined under *Activity 2: Key points* – *Powerpoint slide 2* above.

2. Analysing risk factors – the four levels of analysis

Torture prevention involves analysing the risks of torture occurring and trying to reduce these risks. It complements work focused on investigating individual cases of torture. An effective preventive approach involves looking at all relevant factors impacting on the conditions and treatment of detainees.

To address the root causes of torture and other forms of ill-treatment, a direct preventive strategy should begin with identifying and thoroughly analysing the key risk factors (i.e. those conditions that increase the possibility of torture occurring), including

- situations and/or circumstances where risks of torture are higher (e.g. during police interrogation and stop-and-search incidents).
- categories of prisoners that are more likely to suffer discrimination and ill-treatment (e.g. women, children and ethnic minorities).
- practices that condone and/or heighten the risks of torture (e.g. forced confession, corporal punishment, or solitary confinement).
- regions, areas or places where torture is more likely to occur (e.g. unofficial secret cells, and overseas/offshore detention facilities).

Elements of the broader context that can heighten the risks of torture include

- A general political environment in which there is a lack of political will to prohibit torture, a lack of openness of governance, a lack of respect for the rule of law, and/or high levels of corruption. The same is true for the social and cultural environment: where there is a culture of violence, or high public support to 'get tough on crime', the risk of torture occurring increases.
- The organization and functioning of the criminal justice system, including the level of independence of the judiciary and the level of reliance on confessions in the criminal justice system.
- The organization and functioning of the prison system and other places where people are deprived of their liberty by the state (e.g. psychiatric hospitals and immigration detention facilities).
- An overall institutional environment where there is little accountability and/or transparency on the part of authorities. The lack of effective complaints mechanisms also has a direct influence on the risks of torture.

Further reading:

The Global Forum on the OPCAT. Preventing Torture, Upholding Dignity: From Pledges to Actions. Outcome Report

<https://www.apr.ch/en/resources/publications/apr-global-forum-opcat-outcome-report-0?cat=17>

(This sub-section is adapted from the above.)

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/OP/12/6

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/6&Lang=en

3. How to apply a holistic, preventive approach

Torture prevention works most effectively when a variety of measures are put in place to reduce risks. No single measure is sufficient to prevent torture. To achieve concrete long-term change an array of measures need to be implemented in combination with one another.

Torture prevention is not limited to a set of measures; instead, it requires a holistic approach in which different measures are interconnected, influencing each other and, together, creating an environment in which torture and other ill-treatment are less likely to occur.

Structural change is a vital part of this holistic framework, especially in terms of reform of laws and institutional culture; this is particularly effective when based on a shared commitment to building more transparent systems and more accountable institutions.

See the facilitators' notes on *Activity 2: Key points – Powerpoint slide 3* above for a discussion of the 'House of Prevention', which illustrates how to take a systemic approach to prevention of torture and other ill-treatment.

Creating an environment in which torture is less likely to happen necessarily involves elements from all parts of the house, each complementing and mutually reinforcing the others. If one element of the house is not strong, the house will collapse, just as weaknesses in any of the key elements of torture prevention increase the level of risk.

Further reading:

"Yes, torture prevention works". Insights from a global research study on 30 years of torture prevention. <https://www.apr.ch/en/resources/publications/yes-torture-prevention-works-global-research-study-2016>

(This sub-section is adapted from the above.)

4. What are the powers of oversight bodies in monitoring prisons? What are the responsibilities of prison guards when engaging with external oversight bodies?

According to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Effective domestic mechanisms of oversight, including complaints mechanisms, form an essential part of the apparatus of prevention. These mechanisms will take a variety of forms and operate at many levels. Some will be internal to the agencies involved, others will provide external scrutiny from within the apparatus of government, whilst others will provide wholly independent scrutiny [...]

Torture and ill-treatment are better prevented if the system of detention is open to scrutiny. [...] national human rights institutions and ombudsman's offices, play a key role in ensuring that such scrutiny takes place. This is supported and complemented by civil society, which

also plays an important role in ensuring transparency and accountability by monitoring places of detention, examining the treatment of detainees and by providing services to meet their needs. Further complementary scrutiny is provided by judicial oversight.

Source: SPT, CAT/OP/12/6

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/6&Lang=en

International standards relating to conditions of detention and prisoners' rights, such as the Mandela Rules, foresee regular inspections of prisons as a means to verify whether prison service practices comply with national and international legal frameworks. For instance, Rule 83 states that

There shall be a twofold system for regular inspections of prisons and penal services:

- (a) Internal or administrative inspections conducted by the central prison administration;
- (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.

2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.

5. What does monitoring encompass?

Monitoring describes the process, over time, of regularly examining all aspects of detention. This examination can involve all or only certain categories of persons deprived of their liberty in one or more places of detention.

All aspects of detention are interdependent and must be examined in relation to each other:

- the legal and administrative measures set and applied within the place of detention to protect detainees, including those measures aimed at guaranteeing their right to life and to physical and psychological integrity;
- the living conditions in the prison;
- the regime of the prison (e.g. with regard to activities and contact with the outside world);
- the access to medical care; and
- the organisation and management of prisoners and prison personnel, as well as the relationship between them.

Monitoring includes the oral or written transmission of the results of visits. These results should be communicated to the authorities concerned and, in some cases, to the media and/or other stakeholders involved in the protection of persons deprived of their liberty. It also includes follow-up regarding the implementation of any recommendations transmitted to the prison authorities.

6. The importance of monitoring

Monitoring of detention conditions is absolutely necessary for various reasons:

- Depriving a person of his or her liberty is a serious coercive act by the state, with inherent risks of human rights abuses.
- Through the loss of liberty, the detained person comes to depend almost entirely on prison authorities and public officials to guarantee his or her protection, rights, and means of existence.
- The opportunities for persons deprived of their liberty to influence their own fate are limited, if not non-existent.
- Places of detention are by definition closed and keep detainees away from the rest of the society.
- At all times, and in all places, persons deprived of their liberty are vulnerable and at risk of being mistreated and even tortured.

These issues mean that detainees must be afforded enhanced protection by monitoring their conditions of detention. The fact that monitoring mechanisms are integrated into how prisons function does not necessarily imply either that there are serious problems in these places of detention or that there is a widespread lack of confidence in prison officials. Instead, monitoring ensures that the huge power imbalance in prison-prisoner relations is open to outside scrutiny by institutions empowered to intervene in cases of abuse of this power. These control mechanisms promote human rights, help limit the risk of ill-treatment, and regulate any excessive measures taken against those deprived of their liberty.

Monitoring also contributes to the transparency and accountability of places of deprivation of liberty, increasing the legitimacy of the management of these places and public confidence in them.

7. Visits to places of detention – the main tool for monitoring

Places of detention are monitored through visits that have a variety of functions.

- **Preventive function:** The simple fact that someone from the outside regularly visits places of detention contributes to the protection of those held there.
- **Direct protection:** *In situ* visits make it possible to react immediately to problems that have not been (adequately) dealt with by the officials in charge.
- **Documentation:** During visits, the different aspects of detention are examined and their adequacy assessed. The information collected provides a basis for forming and documenting judgements in order to justify any corrective measures proposed. Visits also provide an opportunity to document specific aspects of detention for thematic analysis (e.g. pregnancy and maternity care in prisons).
- **Basis for dialogue with prison authorities:** Visits make it possible to establish direct dialogue with the authorities and prison guards and management in charge of detention facilities. This dialogue, in so far as it is founded on mutual respect, often leads to the development of a

constructive working relationship. Monitoring bodies are keen to learn about the perspective and experience of prison guards and other staff, including their working conditions and any problems they have identified.

- **Improving the detention system benefits all involved:** Monitoring visits contribute to structural changes and improvements in the prison system, including the working conditions of prison guards and other staff. The impact of recommendations from monitoring bodies is crucial to enhancing the well-being, benefits and interests of prisoners, prison guards and other prison staff.
- **Moral support for prisoners:** For persons deprived of their liberty, having direct contact with external bodies concerned with their conditions and well-being constitutes a form of moral support.

Further reading:

APT, Monitoring Places of Detention – a practical guide

<https://www.apr.ch/en/resources/publications/monitoring-places-detention-practical-guide-2004>

(This sub-section is adapted from the above.)

8. Understanding the powers of oversight bodies during monitoring visits

It is key that prison officials and other prison staff understand the powers of oversight bodies in relation to monitoring visits. As prison officials and staff will interact with such bodies when visiting teams enter their facilities, either as part of regular monitoring or as follow-up to individual complaints or a previous visit, it is crucial that all prison staff are acquainted with the powers of these bodies and what they are entitled to request during visits.

Prison staff should read the relevant international norms and principles, as well as domestic legislation.

The **Mandela Rules** describes the powers that should be granted to internal and external oversight bodies. For instance, Rule 84 states that

1. Inspectors shall have the authority:
 - (a) To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of detention;
 - (b) To freely choose which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview;
 - (c) To conduct private and fully confidential interviews with prisoners and prison staff in the course of their visits;
 - (d) To make recommendations to the prison administration and other competent authorities.

The powers of oversight bodies during monitoring visits are also set out in the Optional Protocol to the UN Convention against Torture (OPCAT): an international torture prevention treaty. It was approved by the General Assembly of the United Nations in 2002 and entered into force in 2006, establishing a system of regular monitoring at the domestic and international level. When a country ratifies OPCAT, it acquires an obligation to create or designate one or several independent bodies for the prevention of torture, known as national preventive mechanisms (NPMs).

Today, nearly half of the countries of the world have ratified the treaty and over a dozen more have signed it. Timor-Leste has not ratified the treaty (as of October 2021), though it signed in 2009.

As a signatory, the OPCAT constitutes an important reference regarding standards to be observed during monitoring visits to places of detention in Timor-Leste. As the country may ratify the treaty in the near future, state officials should get acquainted with the obligations the OPCAT imposes.

OPCAT: Article 19

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4 with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

OPCAT: Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

OPCAT: Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

At the domestic level, prison management, prison guards and staff need to be aware of national legislation and regulations concerning the mandate and powers of oversight bodies, including the PDHJ, to inspect prisons.

The Statutes of PDHJ and the Law of Penal Execution have clear rules addressing both the powers and mandate of the PDHJ to exercise external control over places of detention, and also the duties of prison guards and staff to cooperate with the PDHJ in the execution of its mandate. Some key documents and provisions therein are detailed below.

Law of Penal Execution: Article 17

1. A prisoner may, in order to discuss matters of interest to him or concerning prison life or sentence execution, or to complain about any unlawful order, address:
 - (a) the officials of the prison establishment;
 - (b) the director of the prison;
 - (c) the National Director of Prison Services and Social Reintegration;
 - (d) the inspection services of the Ministry of Justice.
2. Prisoners may freely address the Ministry of Justice inspectors during their inspection visits to prison, and the inspectors shall be responsible for determining the terms and conditions under which they shall be heard.
3. Prisoners may also submit petitions, complaints and exhibitions to sovereign bodies and other entities, namely the Ombudsman for Human Rights and Justice.

Statutes of PDHJ: Article 28

For the purposes of fulfilling his powers set out in Articles 23 to 27, the Ombudsman has the power to [...]:

- (e) Access any premises, places, equipment, documents, property or information and inspect them and question any person in any way connected with the complaint;
- (f) to visit and inspect the conditions of any place of detention, treatment or care and to conduct confidential interviews with prisoners[.]

Statutes of PDHJ: Article 44

1. Any person, including public officials, administrative agents and holders of any civil or military body, shall cooperate and provide all information requested by the Ombudsman for Human Rights and Justice in the exercise of its functions.

Statutes of PDHJ: Article 48

1. The following shall constitute simple infractions [...]:
 - (b) failing, without legitimate justification, to comply with a request from the Ombudsman for Human Rights and Justice to hand over any object or property in one's possession, custody or control.

Statutes of PDHJ: Article 49

1. It constitutes a serious infraction [...]:
 - d) [to] Prevent the Ombudsman from fulfilling its obligations and exercising the powers and duties set forth in this law [...]
2. Delay or refusal to accede to a request from the Ombudsman for Human Rights and Justice shall give rise to disciplinary action against the member or official of the Government or Public Administration to whom the request has been addressed.

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