

Older persons in detention

A framework for preventive monitoring



A Detention Monitoring Tool resource

Older persons in detention: a framework for preventive monitoring

This publication has been produced by Penal Reform International in partnership with the Association for the Prevention of Torture and with the financial assistance of Matrix Chambers.

Penal Reform International would like to thank the following for their contribution: Abdiweli Ibrahim Abdullahi (Horn International Relief And Development Organization, Somalia), Andrea Barrios and Oscar Perdomo (Colectivo Artesana, Guatemala), Bill Mitchell (Townsville Community Law, Australia), Luciano Cadoni (Church World Service), Suzanne Jabbour (UN Subcommittee on Prevention of Torture and PRI Board member), Tomiko Shine (Aging People in Prison Human Rights Campaign, USA).

Its contents are the sole responsibility of Penal Reform International.

This publication may be freely reviewed, abstracted, reproduced and translated, in part or in whole, but not for sale or for use in conjunction with commercial purposes. Any changes to the text of this publication must be approved by Penal Reform International. Due credit must be given to Penal Reform International, the Association for the Prevention of Torture and to this publication. Enquiries should be addressed to publications@penalreform.org.

Penal Reform International

info@penalreform.org


 @PenalReformInt

 @Penalreforminternational

www.penalreform.org

Association for the Prevention of Torture

apt@apt.ch

 @apt_geneva

 @apt.geneva

www.apt.ch

First published in June 2021

ISBN: 978-1-909521-81-0

© Penal Reform International 2021

Contents

Introduction	02
Concepts and protection framework	03
Definitions	03
Protection framework	03
Risk factors and situations	05
Arrest and police custody	05
Assessment and classification of older persons in prison	05
Accommodation and infrastructure	06
Provision of adequate healthcare	07
Terminal illness and palliative care	09
Deaths in custody	09
High risks: violence and discrimination	10
Older persons with disabilities	10
Older women	11
Older persons serving sentences of life imprisonment	12
Rehabilitation and reintegration	12

Introduction

More older persons are in prison than ever before, and the number has been growing at a faster rate than the general prison population – at least in countries where data is available. Significant increases have been seen in the number and proportion of older persons in prison across Europe¹ and in Japan, Singapore, the US, and Canada in recent decades.² The cause of this increase varies across countries. In some places, it is reported that more older people are being convicted of offences committed when they were younger,³ and in others some older people have turned to crime due to poverty and isolation.⁴ For the most part, however, it is due to the hardening of sentencing practices and increased use of imprisonment, which has coincided with reduced mechanisms for early release in some countries. Life imprisonment is being used more often for less serious and non-violent offences, and mandatory sentencing laws have contributed to longer prison terms and the increased use of life imprisonment without the possibility of parole.

This ageing of the prison population has unique and important implications for health-related policy and practice across criminal justice systems. Prisons are designed for younger people who make up the majority of the prison population worldwide, and most prison systems struggle to provide even for the needs of younger people, let alone cater to the different physical capabilities and programming needs of older persons in their care. As the number of older persons in prison is expected to continue to grow in the coming years, it is vital that prison administrations develop policies and strategies to address the needs and specific vulnerabilities of this group, and that bodies monitoring places of detention are equipped to identify and highlight violations of their rights, in particular to prevent ill-treatment and torture.

This tool aims to support detention monitors in assessing conditions for older persons in prisons in line with international human rights standards to ensure that the rights of older persons in detention are protected. Many monitoring bodies have included older persons in their consideration of groups in situations of vulnerability when they visit places of detention, and some have identified older people as a distinct group in a situation of vulnerability within the prison population, examining their situation in more detail and issuing targeted and practical recommendations to authorities which have subsequently been accepted and adopted by governments.⁵ Based on input from National Preventive Mechanisms (NPMs) and experts, this tool provides analysis and practical guidance to enable monitoring bodies to address systemic risk factors for older persons in detention within the criminal justice system (although many of the issues raised may also be relevant in other contexts), with a focus on prevention of torture and other ill-treatment. It also serves as guidance to policymakers and staff working in detention facilities and highlights the negative effect of longer sentences on the prison population.

1. Across Europe, the average proportion of the prison population who are over the age of 50 increased from 11.7 per cent in 2013 to 15.3 per cent in 2019, and ranges from 7 per cent in Russia and Moldova, to over 30 per cent in Liechtenstein and Bulgaria. See Council of Europe, *Annual Penal Statistics SPACE I reports*, available at wp.unil.ch/space/space-i/annual-reports.

2. For figures, see Penal Reform International's *Global Prison Trends* series, www.penalreform.org/resource/global-prison-trends.

3. For example, in England, see 'OAPs serving jail time hits new high as law catches up with decade-old offenders', *Express.co.uk*, 10 January 2021, www.express.co.uk/news/uk/1382094/oapsjailed-murder-charges-manslaughter-figuresrecord-high.

4. For example, in Japan, see 'Japan's jails a sanctuary for seniors', *NHK World-Japan*, 25 December 2019, www3.nhk.or.jp/nhkworld/en/news/backstories/761.

5. For example, see Ombudsman of Luxembourg, *La privation de liberté de détenus particulièrement vulnérables*, 2014; Public Defender of Rights, Czech Republic, *Report on Systematic Visits carried out by the Public Defender of Rights*, 2016, pp. 37-41; General Controller of Places of Deprivation of Liberty, France, *Avis du 17 septembre 2018 relatif à la prise en compte des situations de perte d'autonomie dues à l'âge et aux handicaps physiques dans les établissements pénitentiaires*, 2018.

Concepts and protection framework

Definitions

Old age is considered differently in different societies and contexts, based not only on date of birth (chronological age) but also linked to physical, mental and personality changes during the life cycle, and changes in an individual's roles and relationships as they age. In demographic analysis, age 60 and above is often considered the "older" cohort of the population but in places of detention, those over 50 can be considered older due to the concept of "accelerated ageing" in prison. Prison populations typically have poorer health status compared to general populations due to behavioural health risk factors, poorer prior access to healthcare, and the harmful effect of imprisonment on health and wellbeing. This means that older people in prison are more likely – compared to both younger people in prison and people of the same age living in the community – to have disabilities, multiple, chronic health conditions, or age-related cognitive impairment such as dementia, and so, the average physiological age of a person in detention is higher than their chronological age.⁶

The older prison population includes different categories: first, those who are serving long or life sentences and who have therefore experienced the ageing process in prison, and those who have been sentenced to a custodial sentence later in life. Among this second category, we can further distinguish between those sentenced for the first time to a custodial sentence, and those who have already served one or more sentences, who could be considered repeat offenders and are more accustomed to the prison environment.

Ageism refers to the stereotypes, prejudice, and discrimination directed towards people based on their age. It can be self-directed, interpersonal, or institutional – the latter referring to the laws, rules, social norms, policies and practices of institutions

that systematically disadvantage individuals because of their age.⁷ The older prison population is a highly heterogeneous group. While some older persons will become increasingly dependent and require support for various reasons, others may be able to be more independent, particularly if adequate attention is paid to their specific requirements. Therefore, an individualised approach is needed to adequately assess and respond to the needs of older persons in prison, which duly considers the multiple and intersecting forms of discrimination they may experience while deprived of liberty.⁸

PROMISING PRACTICE: Luxembourg

In Luxembourg, the Ombudsman decided to expand the definition of an older person in prison to include those age 55 and above, rather than 60. This decision was based on a number of factors. First, as there are fewer people in prison over 60, it risked not providing a representative sample compared to the fairly significant number of those over 55. In addition, interviews found that people aged 55-60 raised exactly the same considerations as those put forward by the over 60 group. The Ombudsman explains this observation by the fact that those in detention, by the effects of detention, age faster than people outside.⁹

Protection framework

There is a robust legal framework in place to protect the rights of people in prison – most importantly the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) which set out a minimum universal standard for the treatment of people in prison, with rules that pertain to all aspects of prison life.¹⁰

6. See, for example, Greene, M. et al (2018) "Older adults in jail: high rates and early onset of geriatric conditions", available at www.ncbi.nlm.nih.gov/pmc/articles/PMC5816733.

7. Global Campaign to Combat Ageism, *Global report on ageism*, World Health Organization, 2021.

8. UN Independent Expert on the enjoyment of all human rights by older persons, *Submission to the Inter-American Commission*, 4 November 2020, para. 14, www.corteidh.or.cr/sitios/observaciones/OC-29/14_Exp_Indepen.pdf.

9. Ombudsman of Luxembourg, *La privation de liberté de détenus particulièrement vulnérables*, 2014, pp. 51-62.

10. United Nations Standard Minimum Rules for the Treatment of Prisoners (hereafter, UN Nelson Mandela Rules), adopted by the General Assembly on 17 December 2015, A/RES/70/175.

International standards related to older persons

United Nations Principles for Older Persons (1991)
Madrid International Plan of Action on Ageing (2002)
International Convention on the Economic, Social and Cultural Rights (1966)
International Committee on Economic, Social and Cultural Rights – General Comment No. 6 on the Economic, Social and Cultural rights of Older Persons (1995)
International Covenant on Civil and Political Rights (1966)
Universal Declaration of Human Rights (1948)
Report of the Secretary General, Follow-up to the International Year of Older Persons: Second World Assembly on Ageing, A/73/213 – 20 July 2018
African Union Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Older Persons in Africa (2016)

Inter-American Convention on the Protection of Human Rights of Older Persons (2015)
Council of Europe, Committee of Ministers Resolution (76) 2 on the treatment of long-term prisoners (Adopted by the Committee of Ministers on 17 February 1976)
Council of Europe, Committee of Ministers recommendation No. R (98) 7, concerning the ethical and organizational aspects of health care in prisons (Adopted by the Committee of Ministers on 8 April 1998)
UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)(2015)
UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)(2010)
Full set of standards, key reports etc. can be found here: www.ohchr.org/EN/Issues/OlderPersons/IE/Pages/InternationalStandards.aspx.

The Rules are underpinned by the principle of non-discrimination. They require people in prison to be ‘treated with the respect due to their inherent dignity and value as human beings’¹¹ and for prison administrations to take account of people’s individual needs, in particular the ‘most vulnerable categories in prison settings’.¹² While the Rules do not explicitly mention older persons among such categories, it is implied given their advanced age, complex health needs and challenges they face in places of detention. Older persons in prison should be afforded all the rights set out in the Nelson Mandela Rules, and indeed in all international human rights and related standards.

At the regional level, the European Court of Human Rights has in its jurisprudence considered the potential human rights impacts of the prolonged detention of older persons in prison. The Court has noted that advanced age is not, of itself, a bar to pre-trial detention or a prison sentence; its assessment is determined by the particular circumstances of each specific case,¹³ based on several key factors: i) the situation of the person detained, ii) the quality of medical care, and iii) the continued appropriateness of detention given the person’s health status.¹⁴

11. UN Nelson Mandela Rules, Rule 1.

12. UN Nelson Mandela Rules, Rule 2.1.

13. *Papon v France*, (no 1) Application no 64666/01, 7 June 2001.

14. See for example *Sawoniuk v UK*, Application no 63716/00, 29 May 2001; *Patsos v Greece*, Application no 10067/11, 25 September 2012; *Mouisel v France*, Application no 67263/01, 2002.

Risk factors and situations

Older persons face a multitude of types and situations of risk in criminal justice systems. In places of detention, the risk of torture and ill-treatment increases for older persons due to their deteriorating health and mobility, high prevalence of psycho-social disabilities and cognitive impairment including dementia-related conditions, as well as any individual risk factors. The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has acknowledged that within detention facilities, there is usually a strict hierarchy and those at the bottom of this hierarchy, including older persons and persons with disabilities, among others, suffer multiple forms of discrimination.¹⁵

In relation to the impact of the COVID-19 pandemic on older persons, the UN Independent Expert on the enjoyment of all human rights by older persons specifically noted the challenges faced by older people 'living in confined spaces such as prisons and residential care homes'.¹⁶ The UN Secretary-General also highlighted the particular risk to older persons in prison given their higher risk from COVID-19, overcrowded conditions where physical distancing is difficult, and limited access to health services, water and sanitation facilities, and called for options for release and alternatives to detention to mitigate these risks to be explored, particularly for people with underlying health conditions.¹⁷

This chapter does not provide an exhaustive list of risk factors related to older persons in detention but seeks to outline particular risks for monitoring bodies to consider relating to police custody and the penitentiary system.

Arrest and police custody

With a growing number of older persons being arrested in some countries (see Introduction), it is becoming increasingly important that law enforcement and other officials interacting with older persons entering the criminal justice system are trained to identify and

respond to their age-related needs. Police officers, lawyers and staff in pre-trial detention centres who are not trained in ageing-related health may struggle to identify common health problems in older persons, such as substance misuse, depression, anxiety, and cognitive impairment. It may be difficult for older people with sensory impairments, such as vision or hearing loss, to avoid victimisation while detained and some may even hide impairments fearing that disclosure will increase their vulnerability.¹⁸

Failure to identify and account for these needs can have a detrimental effect on how the criminal justice system responds to an older person. It could lead to arrest for behaviour that is caused by dementia, or harsher treatment for failure to comply with police officers during an arrest, caused by hearing loss. Some older persons with impairments that are not easily identifiable may not be assessed by a geriatric specialist, even where this is available, and as a result may experience repeat cycles of arrest.

→ Monitoring bodies should promote the identification of age-related needs to ensure older persons can be more appropriately supported through criminal justice processes or identified for diversion to treatment or care-based alternatives to imprisonment, where they may experience improved outcomes and avoid the particular risks faced by older persons in prison.

Assessment and classification of older persons in prison

Individual assessments are crucial in ensuring the personal safety of people in prison and that their social, legal, cultural, healthcare and rehabilitation needs are met. Failing to identify or neglecting a person's specific needs may contribute to ill-treatment in detention. The assessment process for older persons in prison should be as robust as that for younger cohorts of the prison population. Authorities must undertake a comprehensive assessment in line with the UN Nelson Mandela Rules which requires a person's individual

15. UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention*, 5 February 2010, A/HRC/13/39/Add.5, para. 231.

16. "Unacceptable" – UN expert urges better protection of older persons facing the highest risk of the COVID-19 pandemic', *OHCHR*, 27 March 2020, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25748.

17. United Nations, *Policy Brief: The Impact of COVID-19 on older persons*, 1 May 2020, pp. 3, 7.

18. 'How can criminal justice systems from police to probation address the medical and social care needs of elderly prisoners?', Cyrus Ahalt and Brie Williams for *Penal Reform International*, 25 February 2015, www.penalreform.org/blog/declining-health-advancing-years-prison-call-policy-oriented.

needs to be taken into account.¹⁹ The Rules also require programmes, activities and services to be delivered in line with individual treatment needs.

Any assessment should include consideration of physical and mental health, criminal history, family contacts/ties and wider relationships, and may also consider whether they have experienced any form of elder abuse in the past. Ideally, an assessment of an older person newly admitted to prison should be undertaken by a specialist in geriatric medicine who will be best placed to assess their multiple needs, including functional ability, chronic illnesses and any ageing-related illness.²⁰ Thereafter, further assessment should be undertaken on a regular basis to address any new health or other issues as they may arise.

PROMISING PRACTICE: New Zealand

The Chief Ombudsman's inspections are focused on whether the conditions and treatment of all detainees are appropriate in terms of the prevention of torture and other ill-treatment, including whether the individual needs of all detainees are being met. The particular needs of older people are specifically considered. The inspection methodology includes a focus on the needs of older people, which can include access to health services and appropriate equipment such as hospital beds, walking frames, accessible prison cells and hearing aids.

The Chief Ombudsman is also the designated National Preventive Mechanism (NPM) in relation to people detained in privately-run aged care facilities. The Chief Ombudsman is developing an OPCAT inspection methodology in relation to these facilities and anticipates commencing inspections from July 2021.

In terms of security, risk assessments should effectively detail the risk a person poses, including the danger they pose to others in prison and the overall safety and security of the prison, and their risk of escape. On the whole, older persons in prison pose less of a security threat than their younger counterparts. Research suggests that older persons in prison are less likely to escape, violate prison rules and are easier to supervise.²¹

Thus, any assessment should take into account the fact that older persons in prison are, generally, a lower risk status than others and, as such, should be placed in the lowest appropriate category. Prison systems in almost all countries operate some form of classification. Classification should avoid unnecessary overuse of a

high security regime and prison administrations should avoid over-classifying older persons in prison given their general status as low risk detainees.²²

→ **Monitoring bodies should pay special attention to admission and periodic assessment procedures in place in relation to older persons in prison and fully review policies and practices to ensure they align with human rights principles, taking the UN Nelson Mandela Rules as a reference point.**

Accommodation and infrastructure

The physical prison environment and layout – particularly buildings which are very old – may be full of dangers and trip hazards for an older person, including poor lighting or ventilation and uneven flooring. Older persons often suffer from physical disabilities, mobility problems, sensory and/or cognitive impairments which make day-to-day life more challenging in a prison setting. Older persons may have difficulty climbing stairs and accessing top bunks or sanitary facilities such as showers, toilets and sinks.

In some instances, environmental adaptations will need to be made to meet an individual's sensory, functional and cognitive abilities. This could include, for example, installing shower chairs, ramps or shower handles, or moving an older person to a lower bunk. In Luxembourg, the NPM recommended that prison cells be built with adjacent health infrastructures adapted to the needs of older persons in prison and in line with international human rights standards. This followed a prolonged stay of an 85-year-old in the prison hospital which was wholly unsatisfactory and did not provide the requisite geriatric care.

There is an ongoing debate about the optimum housing model for older persons in prisons and opinion is divided on this issue.²³ In some countries, for example in the US, Canada, Germany, Belgium and Mauritius, older persons in prison are sometimes housed in separate specialised geriatric housing units. These dedicated units are designed in a more 'age-friendly' way to meet the specific health care and programmatic needs of older persons. It has also been suggested that these units are 'safe havens' for older people in prison who may be at risk of victimisation or in fear in the general population.

On the other hand, while separate units may be more aligned to the specific needs of older persons in prison, they may exacerbate feelings of social isolation or depression. A report of the Independent Monitoring Board in Norwich, England commented on a prison wing for older persons serving life sentences that

19. UN Nelson Mandela Rules, Rules 2.2 and 4.2.

20. Bedard, R. et al. 'Ageing prisoners: An introduction to geriatric health-care challenges in correctional facilities', *International Review of the Red Cross* (2016), 98 (3), 917–939.

21. Kerbs, J. and Jolley, J., 'A Commentary on Age Segregation for Older Prisoners', *Crim Justice Rev.* (2009) 34(1), 119–139.

22. For more, see Penal Reform International and Association for the Prevention of Torture, *Balancing security and dignity in prisons: a framework for preventive monitoring*, 2013.

23. For more, see UNODC, *Handbook on Prisoners with special needs*, 2009.

'it has the feel of a rather sad old people's home with fewer visitors and little to do.'²⁴ There is also anecdotal evidence that older persons themselves do not want to be isolated and prefer to remain in the general prison population.²⁵ As special housing units are usually not available in all prisons, older persons may find it more difficult to maintain family ties if they are detained far away from home. Older persons are also thought to have a therapeutic and calming effect on other detainees. The Council of Europe recommends that older persons are housed together with the wider prison population to ensure that they lead as normal a life as possible.²⁶

Ultimately, it is the prison administration and relevant policy officials who will decide whether or not to establish geriatric units; such decisions will be influenced by national considerations and contexts and will require a cost-benefits analysis, an examination of available resources (budgetary and otherwise) and individual needs assessment. Most importantly, any decision to create geriatric units should be underpinned by human rights standards and principles.

→ **Monitoring bodies should pay special attention to the prison estate as they tour the facilities, to ensure that the physical environment is safe and secure for older persons. In addition, monitoring bodies may wish to discuss potential environmental adaptations with prison staff.**

PROMISING PRACTICE: Costa Rica

In Costa Rica, there is a penitentiary centre for older persons which has a specific infrastructure and operates in a way designed to meet the needs of older persons in a less repressive manner. Bedrooms do not have bars, there are handles in the corridors, restrooms and showers, single-level beds, hot water, dedicated kitchen and doctor's office, a library, computer area, and green spaces to spend time during the day. During prison visits, the NPM observes the condition of the infrastructure, including kitchen and food supply, diets, medical care, and the punctual delivery of medicines. During the COVID-19 pandemic, the NPM was in regular communication with the authorities of the older persons centre regarding health protocols, medical care, preventive measures, and responses in the case of an outbreak. This was the last penitentiary centre to confirm a case of COVID-19 infection.

Provision of adequate healthcare

Prison populations typically have a low health status, with higher rates of disease, substance dependency and mental illness than in the community. Older persons in prison face chronic medical conditions and ongoing health issues which require enhanced medical attention, such as hypertension, diabetes, Parkinson's disease, pulmonary disease, Alzheimer's, strokes, arthritis, asthma, depression, and cognitive impairment. Poor prison conditions are likely to exacerbate these existing conditions. In some cases, prison authorities may need to liaise with external specialist care services and possibly transport older persons to hospital for emergency or specialised treatment. A lack of healthcare and failure to provide access to medicines to people in prison can constitute cruel, inhuman or degrading treatment.²⁷

→ **Monitoring bodies should check that the ongoing medical needs of older persons in prison are being met in line with the UN Nelson Mandela Rules and are at least equivalent to those available in the community.**

PROMISING PRACTICE: Armenia

In Armenia, the NPM affords special attention to older persons, those who are ill and persons with disabilities as groups in situations of vulnerability during both general and special visits to places of detention. Particular attention is given to the organisation and means of medical treatment and care, including the provision of all prescribed medication and appropriate treatment and, where necessary, mental health support.

Conditions of detention of older persons and persons with disabilities are monitored with a special methodology. The humidity of cells is checked with special equipment and considered according to the state of health of the individual. The ability of independent movement is monitored, including the provision of wheelchairs and other types of mobility aid, as well as accessibility of toilets, personal hygiene, outdoor exercise, contact with the outside world, and the accessibility of vehicles used to transport older persons and persons with disabilities. Several important NPM recommendations addressed to the Ministry of Justice have been implemented and the legislation regulating the provision of medical aid and care in penitentiary institutions has been amended.

24. UK Parliament, House of Commons Justice Committee, *Older Prisoners, Fifth Report of Session 2013-2014*, July 2013, para. 49.

25. *Ibid.* para. 50.

26. Council of Europe Committee of Ministers, Recommendation No. R(98) Concerning the Ethical and Organizational Aspects of Health Care in Prisons, adopted 8 April 1998.

27. Inter-American Court of Human Rights, *Chinchilla Sandoval et al. v. Guatemala*, 29 February 2016; European Court of Human Rights, *Kotsaftis v Greece*, Application no 39780/06, 12 June 2008.

For example, in those cases of compassionate release on health grounds, the NPM has recommended that the authorities evaluate the individual's state of health in conjunction with detention conditions as criteria for release. Previously, Armenian legislation prescribed specific medical conditions as grounds of release which excluded many older persons in prison. These changes have been implemented by the Government.

It will often fall to correctional staff, in the first instance, to identify signs of health deterioration in older persons in prison and so staff should be provided with adequate training to identify such issues and convey them to healthcare professionals. There are pockets of good practice: in Scotland, prison officers have been given training on how to work with people suffering from Alzheimer's and dementia.²⁸ In some prison systems, specialist staff have been hired with expertise in gerontology and aged care. In Japan, for example, a new policy was implemented in prisons in 2019 to detect dementia, aimed at early detection of conditions and provision of treatment to ensure effective reintegration upon release.²⁹

→ **Monitoring bodies should assess the available resources (financial and otherwise) to support the healthcare needs of older persons in prison. Monitors should also explore the integration of geriatric healthcare policy into wider healthcare policy, and the relationship with community health services, to ensure that older persons in prison are provided with appropriate and timely care.**

PROMISING PRACTICE: Poland

In Poland, members of the NPM raise issues of concern in relation to healthcare management of older people in prison in post-visit reports. NPM officials have issued various recommendations and practical measures in these reports including transfers between prison cells, the provision of additional medical treatment or the need to enhance therapeutic work.

The treatment of older persons in prison places a heavy financial burden on prison administrations which are often underfunded and struggle to provide adequate healthcare. In cases where the requisite treatment and care cannot be provided within the prison healthcare system, it may be more appropriate and humane to consider compassionate release on health grounds.

→ **Monitoring bodies should ascertain whether compassionate release is available as an option and, if so, the eligibility criteria for such release.**

The impact of COVID-19 on older persons in prison is of particular concern. Their advanced age combined with poor health and geriatric conditions place them at greater risk of hospitalisation, intensive care, and death. People in prison are also more likely to develop mental health conditions due to their confinement and suffer psychosocial challenges that exacerbate physical disability.³⁰ Severe restrictions on movement and contact with the outside world are likely to impact upon older persons in prison in a profound way; they may be immobile in their cells for extended periods of time which can lead to a deterioration in both their physical and mental health.

→ **Monitoring bodies should pay special attention to measures and policies in place to shield and protect older persons in prison during the COVID-19 pandemic, as well as visitation and family contact, healthcare provision, and advance care planning in place for older people. In particular, monitoring bodies should review COVID-19 related release policies to ensure they are accessible to older people and include adequate preparation and post-release support.**

PROMISING PRACTICE: Argentina

In April 2020, the NPM of Argentina issued recommendations to reduce the prison population to prevent the spread of COVID-19 in places of detention. In line with guidance from the World Health Organization and the national Ministry of Health, the NPM made specific reference to the inclusion of persons over 60 years of age, as well as those with health conditions or disabilities, among those to be prioritised for release, and for the conditions to access release not to be overly burdensome.³¹

28. 'North-east prison officers given dementia training sessions', *The Press and Journal*, 25 July 2018, www.pressandjournal.co.uk/fp/news/north-east/1527557/prison-officers-given-dementia-training-sessions.

29. 'Justice Ministry to test new elderly inmates for dementia at 8 prisons', *The Mainichi*, 16 January 2018, mainichi.jp/english/articles/20180116/p2a/00m/0na/014000c.

30. Bedard, R. et al. 'Ageing prisoners: An introduction to geriatric health-care challenges in correctional facilities', *International Review of the Red Cross* (2016), 98(3), 917-939.

31. Comité Nacional Para la Prevención de la Tortura (CNPT), *Recomendaciones para reducir la población en cárceles y comisarías a raíz de la pandemia COVID-19*, 7 April 2020.

Terminal illness and palliative care

With the ageing prison population, care for those at the end of their life is becoming a growing responsibility for prison administrations globally. The ‘equivalence of care’ principle continues to apply to terminally ill people in prison, who have specific health care needs, including palliative care³² and constant monitoring.³³ Those who enter the later stages of chronic or terminal illness require specialised end-of-life care and will have a variety of needs.

In some countries, in-prison hospice units provide critical medical care and support to people that are dying in prison. In the US, such units employ trained volunteers to provide companionship and support for daily activities, and help completing paperwork and communicating with medical providers, family members and others.³⁴

However, in many cases the prison environment is not conducive to end-of-life care as prison staff lack the necessary training and resources to provide this highly specialised care. International standards are clear that people in prison who require specialist treatment should be transferred to specialised institutions or civil hospitals as required.³⁵ The Council of Europe notes that the “decision as to when patients subject to short term fatal prognosis should be transferred to outside hospital units should be taken on medical grounds”.³⁶

The concept of dignity in dying is particularly sensitive in the detention context. Prison authorities should take measures to ensure that terminally ill patients receive treatment and care in a way that fully respects their human rights, can retain contact with their loved ones and can access spiritual or religious support when requested. For example, in 2018, the *Dying Well in Custody Charter* was launched in the UK which sets out standards and guidelines for palliative and end-of-life care in prisons.³⁷

→ Monitoring bodies should establish whether an end-of-life care plan is in place for those with terminal illness or chronic disease, whether the prison administration has a hospice and/or palliative care programme and, if so, how it is being implemented.

The costs associated with the treatment of terminally ill patients is likely to be very high and simply not achievable within the prison administration budget in many countries. In such cases, it may be preferable for a terminally ill person in prison to be considered for early release on compassionate grounds; they would return to the community without any restrictions in place such as licence conditions. For example, a number of international human rights standards call for the compassionate or early release of people from prison who are living with HIV/AIDS.³⁸

→ Monitoring bodies should determine whether early release on compassionate grounds is provided for in prison rules and/or legislation, and the eligibility criteria.

Deaths in custody

There is an increasing number of people in prison and custody dying around the world, with mortality rates as much as 50 per cent higher for people in prison than for people in the wider community.³⁹ It is inevitable that, as the prison population ages, the number of natural deaths in custody will also increase.

All deaths in custody must be registered and reported to the competent authorities,⁴⁰ including deaths that appear to have occurred as a result of natural causes or suicide. It is important to identify deaths caused by neglect or omission in order to prevent any concealment of ill-treatment or another crime, to determine if the death could have been avoided, to identify systemic failings, and to prevent comparable situations from emerging in future.⁴¹

Older persons in prison are more likely to suffer fatal effects of COVID-19. One study of COVID-19 risk factors among people in prison found that the risk of death increases threefold per decade.⁴² Inadequate testing, data collection and transparency in places of detention has meant that deaths due to COVID-19 in prisons globally are underreported and where data is available, it is usually not disaggregated by age, sex, ethnicity, and other factors.⁴³

32. World Health Organization, *Integrating palliative care and symptom relief into primary health care – a WHO guide for planners, implementers and managers*, 2018.

33. UNODC defines terminal illness as ‘a situation in which there is no reasonable medical possibility that a patient’s condition will not continue to degenerate and result in death’. See UNODC, *Handbook on Prisoners with special needs*, 2009, p. 143.

34. ‘How can criminal justice systems from police to probation address the medical and social care needs of elderly prisoners?’, Cyrus Ahalt and Brie Williams for *Penal Reform International*, 25 February 2015, www.penalreform.org/blog/declining-health-advancing-years-prison-call-policy-oriented.

35. UN Nelson Mandela Rules, Rule 27 (1).

36. Council of Europe Committee of Ministers, Recommendation No. R(98) Concerning the Ethical and Organizational Aspects of Health Care in Prisons, adopted 8 April 1998, para. 51.

37. Ambitions for Palliative and End of Life Care Partnership, *Dying Well in Custody Charter: A national framework for local action*, April 2018.

38. UN Economic and Social Council Resolution 2004/35, Combating the spread of HIV/AIDS in criminal justice pre-trial and correctional facilities, 21 July 2014; Council of Europe Committee of Ministers, Recommendation No. R(93)6 concerning Prison and Criminological Aspects of the Control of Transmissible Diseases Including AIDS and Related Health Problems in Prisons, adopted 18 October 1993.

39. Penal Reform International, *Global Prison Trends 2020*, April 2020.

40. UN Nelson Mandela Rules, Rules 8 and 71.

41. Penal Reform International and Association for the Prevention of the Torture, *Incident management and independent investigations*, 2018.

42. Kennedy, B. S. et al, ‘Risk Factors for SARS-CoV-2 in a Statewide Correctional System’, *New England Journal of Medicine*, Volume 383, Issue 25, Massachusetts Medical Society, December 2020.

43. Penal Reform International, *Global Prison Trends 2021*, May 2021, pp. 28, 40.

A considerable number of people who die in custody – though not all – pose minimal to no threat to public safety once their illnesses and/or disabilities progress beyond a certain stage. However, early release mechanisms are not always in place and, where they are, they do not prove effective in enabling older (or terminally ill) persons to be with their families or support networks for their last days.⁴⁴

High risks: violence and discrimination

Older persons in prison may be targeted or victimised due to their age and/or vulnerabilities and may be unable or fearful to defend themselves. Older persons may be at risk of violence in prison from other detainees or from prison staff, and such ‘elder abuse’ may include physical and/or psychological abuse, and/or sexual violence. In some instances, violence committed towards older persons in prison may amount to torture or other forms of ill-treatment.

Where incidents occur, they must be properly investigated and proportionate sanctions imposed on those responsible, in line with the UN Nelson Mandela Rules.⁴⁵ All deaths, disappearances, serious injuries or allegations of torture or other ill-treatment should be reported “without delay” and notwithstanding the initiation of an internal investigation, and allegations of torture or other ill-treatment must be “dealt with immediately”.⁴⁶ An internal inquiry can be carried out in parallel to an external investigation, provided it does not interfere with the external investigation.

Prison staff and the nature of their relationship with those detained in their care play a key role in ensuring a secure and humane prison system. The ICRC suggests that prison officials fully brief older persons on the realities of prison life at the point of reception and offer them an opportunity to share their concerns and fears.⁴⁷ In Switzerland, the NPM ensures that a sample of older men and women are included in their private meetings and that questions are age-relevant – such as whether they have easy access to fresh air, contact or interaction with other detainees, appropriate food, and for those under sentence, whether they have an obligation to work and what type of work is available.

→ Monitoring bodies should conduct private interviews with older persons to better understand and critically assess their safety concerns in prisons, and should be mindful of any reasonable accommodations needed by an older person during interview. Monitors should also enquire into the prevention, detection, and intervention procedures regarding elder abuse in detention.

PROMISING PRACTICE: Luxembourg

The NPM in Luxembourg has noted a deterioration in the behaviour of younger people in prison who show little respect for the prison staff and fellow detainees. Increasingly, younger people are behaving more aggressively and using provocative verbal behaviour towards their fellow detainees and the NPM team themselves. Such behaviour has left older persons in prison concerned and in fear of violence, extortion, or threats. In response, the NPM has recommended the creation of geriatric units (one floor of a detention block) which would be available, on a voluntary basis, to those of a certain age and subject to security considerations.

Older persons with disabilities

Older persons with disabilities face a heightened vulnerability in prison due to overlapping risk factors. They may also be more reliant on staff or other detainees to move around, dress, bathe or fulfil other daily tasks, increasing their risk of experiencing violence or abuse.

A significant number of criminal justice systems lack strategies or policies to meet the needs of persons in prison living with disabilities. This means there is little data on their representation in global prison populations, but where national data is available, it suggests that a significant proportion of people in prison live with one or multiple disabilities.

→ Monitoring bodies should investigate the availability of data on older persons with disabilities in the prisons they monitor.

In addition to the lack of data, there is often insufficient understanding, recognition and under diagnosis of disabilities among prison populations, particularly of sensory or intellectual disabilities. Older persons in prison may try to hide or disguise an acquired or progressive physical or mental disability due to fears of vulnerability, which may further hinder diagnosis and the provision of appropriate accommodations or treatment. Infrastructure in detention settings is often inadequate for persons with disabilities (see Accommodation and infrastructure).

44. Bedard, R. et al. ‘Ageing prisoners: An introduction to geriatric health-care challenges in correctional facilities’, *International Review of the Red Cross* (2016), 98 (3), 917–939.

45. UN Nelson Mandela Rules, Rule 71.

46. UN Nelson Mandela Rules, Rule 57 (3).

47. International Committee of the Red Cross, *Ageing and Detention*, June 2020.

International law stipulates that persons diagnosed with severe mental disabilities and/or health conditions that would be worsened by prison should not be imprisoned but transferred to appropriate health facilities. Persons with mental disabilities can face discriminatory disciplinary measures in detention facilities, due to a lack of diagnosis and understanding among staff. They may also be placed in solitary confinement more frequently and for longer periods, in violation of the rules on solitary confinement in the UN Nelson Mandela Rules and the UN Bangkok Rules.

PROMISING PRACTICE: Finland

The Finnish NPM has conducted several thematic monitoring visits concerning accessibility in prison. These visits and associated observations and recommendations promote improved conditions for persons with disabilities, including older persons, who make up 4.4 per cent of the total prison population (99 people) as of 2019. The NPM found that some prisons visited were not accessible or capable of housing people with physical disabilities. Prisons did not have a built-in induction loop system for hearing-impaired persons anywhere in the prison and did not accommodate portable induction loop systems. Some people detained with physical disabilities were unable to work in the prison as the facilities in question were not accessible. In one case, the Deputy-Ombudsman found that the arrangements for people with physical disabilities violated the Imprisonment Act as the location of the allocated cell in a special ward meant that, in practice, those with physical disabilities always had to be housed in a closed ward even when they would have otherwise been eligible to serve their sentence in a ward with lower security.

Older women

Older women in prison form a very small part of the prison population and may be seen as a 'minority within a minority'.⁴⁸ Their needs are often overlooked and seldom considered in policy formulation and programme development. Women are particularly vulnerable to torture and ill-treatment, especially gender-based violence, in detention settings⁴⁹ and women who are admitted to prison are more likely than men to have existing mental healthcare needs, often as a result of domestic or gender-based violence. Older trans women in prison may have particular needs or experience intersecting discrimination while in detention.⁵⁰ Older women in prison are therefore likely to have a range of unique needs which require close and careful monitoring in order to prevent ill-treatment.

The unique healthcare and medical needs of older women in prison is 'under-researched and under-recognised'.⁵¹ According to studies in the US, the prevalence of hepatitis B and C, HIV/AIDS, and syphilis are higher in older women in prison than their male counterparts.⁵² Older women in prison may need help with everyday tasks⁵³ and may have specific care needs in relation to gynaecological issues and osteoporosis.⁵⁴ Older women in prison may have specific hygiene requirements given biological changes in later life. For example, women who are going through menopause will need to have regular access to water and may suffer from low mood, anxiety, and feelings of depression. The CPT considers that failure to provide basic necessities can amount to degrading treatment.⁵⁵

The UN Bangkok Rules provide a key reference point for monitoring bodies in fulfilling their responsibilities in relation to women in detention.

→ **Monitoring bodies should assess whether older women's special hygiene requirements are being met, and whether gender-specific healthcare services at least equivalent to those available in the community are being provided to older women in prison, including routine screening for breast cancer and cervical cancer.**⁵⁶

48. See for example, Eugenia Rodríguez Blanco, *Diagnóstico de la Situación de las Mujeres Privadas de Libertad en Panamá - Desde un enfoque de género y derechos*, March 2015, pp. 128-129.

49. For more, see Organization for Security and Co-operation in Europe, *Integrating the Issue of Sexual and Gender-Based Violence in Detention Monitoring: A Guidance Note for Oversight Mechanisms*, January 2021; Penal Reform International and Association for the Prevention of Torture, *Women in detention: A guide to gender sensitive monitoring*, 2013.

50. For more, see Penal Reform International and Association for the Prevention of Torture, *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, 2013.

51. Codd, H. 'Ageing in prison', in Westwood, S. (ed.), *Ageing, Diversity and Equality, Social Justice Perspectives*, London, 2018, pp. 345-346.

52. Bedard, R. et al, 'Ageing prisoners: An introduction to geriatric health-care challenges in correctional facilities', *International Review of the Red Cross* (2016), 98 (3), 917-939.

53. Ibid.

54. Carlie Newman, *Last chance: older women through the criminal justice system*, Research Paper 2005/2, www.thegriffinsociety.org/system/files/papers/fullreport/research_paper_2005_02_newman.pdf.

55. CPT Standards, 2006 Edition, Extract from the 10th General Report, CPT/Inf (2000) 13, para. 31.

56. See UN Bangkok Rules 10-18 which provides for gender specific healthcare including preventive healthcare measures such as breast and cervical screening.

Older persons serving sentences of life imprisonment

The increase in the number and proportion of older persons in prison globally is at least in part attributable to an increase in the number of people serving life sentences, which rose by almost 84 per cent from 2000 to 2014. In the US, 30 per cent of people serving life sentences are at least 55 years old, amounting to more than 61,000 people.⁵⁷ Keeping people imprisoned at the end of their lives as part of very long sentences heightens the importance of considering the needs of older persons in prisons and criminal justice systems as a whole. This sub-population of people in prison face extremely challenging circumstances and are something of a forgotten minority.⁵⁸

Older persons serving life sentences are often left behind in terms of rehabilitation and reintegration as prison authorities prioritise 'skilling up' the younger prison population. This may be particularly so for those serving life sentences without the possibility of parole, as they are usually de-prioritised and their needs considered less urgent.⁵⁹ Rehabilitation is especially important for older persons serving long sentences who may struggle to readjust to life outside of the prison system and require progressive preparation.

People serving life sentences are often systematically segregated and treated more harshly than others, raising concerns about inhuman and degrading punishment,⁶⁰ including the systematic use of handcuffing and strip searches, as well as being escorted from their cells with guard dogs.⁶¹ For example, the European Court of Human Rights has held that routine handcuffing of people in Russian prisons based only on their life sentence amounted to degrading treatment.⁶²

Segregation of people serving life sentences in strict regimes is often not based on security concerns or individualised risk assessment,⁶³ but because they are perceived to be more dangerous than other people in prison. However, studies confirm that those serving life sentences are less likely to engage in institutional misconduct or acts of violence in prison than other people detained, and they often have a stabilising

International standards

Article 10(3) of the UN International Covenant on Civil and Political Rights (ICCPR) states that the purpose of the penitentiary system is 'reformation and social rehabilitation' and indicates that every person in prison should have the opportunity to be rehabilitated back into society and lead a law-abiding and self-supporting life, even those convicted of the most serious offences.

At a regional level, the Council of Europe has stated that the aims of life and long-term prison regimes should be: (i) 'to ensure that prisons are safe and secure places for these prisoners and for all those who work with or visit them'; (ii) 'to counteract the damaging effects of life and long-term imprisonment'; and (iii) 'to increase and improve the possibilities for these prisoners to be successfully resettled in society and to lead a law-abiding life following their release'.⁶⁴

effect on the prison environment.⁶⁵ In Luxembourg, for example, where the older prison population is mostly made up of people serving long or life sentences who have already served 10 years or more, the Ombudsman has found, by the almost unanimous opinion of on-call staff, that this category generates the least problems. They are well integrated into prison life, fully familiar with the rules defining prison life, and it is not uncommon for them to receive certain privileges that are at least implicitly tolerated by staff, due to a relationship of trust that has been established in a context of prolonged forced cohabitation.⁶⁶

Rehabilitation and reintegration

Traditionally, prison rehabilitation programmes, vocational training, and work are designed with the younger cohort of the prison population in mind; this means that the needs of older persons in prison are, all too often, not afforded the opportunities given to their younger counterparts. The lack of age-appropriate programming is compounded by a general resistance

57. The Sentencing Project, *No End in Sight: America's Enduring Reliance on Life Imprisonment*, 2021, p. 20.

58. 'Elderly life-sentenced prisoners: a forgotten and 'invisible' group', Vicki Prais for *Penal Reform International*, 23 August 2019, www.penalreform.org/blog/elderly-life-sentenced-prisoners-a-forgotten-and-invisible.

59. United Nations Office at Vienna, Crime Prevention and Criminal Justice Branch, *Life Imprisonment*, 1994, para. 3.

60. Penal Reform International, *Towards the abolition of the death penalty and its alternative sanctions in the Middle East and North Africa: Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen*, 2012, p. 9.

61. 25th General Report of the CPT [CPT/Inf (2016) 10], para. 71.

62. Applicants in the case had been subjected to routine handcuffing behind their backs every time they left their cells for various periods of time up to 19 years. European Court of Human Rights, *Shlykov and Others v. Russia*, Applications nos. 78638/11 and 3 others, 19 January 2021.

63. Penal Reform International, *Life after death: What replaces the death penalty?*, 2012, p. 2.

64. Council of Europe Committee of Ministers, Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners, 9 October 2003, para. 2.

65. For example, see Segall, J. D. et al, *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California*, Stanford Criminal Justice Center, 2011; Toch, H. and Adams, K., *Acting Out: Maladaptive Behavior in Confinement*, American Psychological Association, 2002.

66. Ombudsman of Luxembourg, *La privation de liberté de détenus particulièrement vulnérables*, 2014, pp. 51-62.

on the part of prison authorities to include older persons in programmes as they can be viewed as beyond rehabilitation or their participation somehow less worthy.⁶⁷

Older persons may also face practical or physical barriers in accessing learning or rehabilitation facilities in prison, such as libraries, and may need assistance from staff or others to meaningfully participate in activities. The UN Mandela Rules provides for one hour of 'suitable exercise in the open air daily if the weather permits'⁶⁸ but without adaptations to meet their needs, many older people might not be able to remain outside for lengthy periods of time, depending on the climate and their mobility and/or wider health conditions.

→ Monitoring bodies should undertake a comprehensive review of all available rehabilitation and recreational programmes to ensure that older persons are not discriminated against in their design or implementation, and that they are accessible to those with mobility and/or other health conditions.

PROMISING PRACTICE: Estonia

In Estonia, the Ombudsman has recommended that the prison authorities provide suitable and adequate clothing that corresponds to the season and to the detainees' mobility and health status; for example, older persons may need warmer clothing while being in the fresh air. The NPM has recommended that prison authorities carefully monitor older persons in prison who are in the fresh air and allow them to return indoors as soon as they wish. The NPM also recommended the installation of a weatherproof canopy and benches in the walking yards to enable people to take a rest.

67. See UNODC, *Handbook on Prisoners with special needs*, 2009, p. 22.

68. UN Nelson Mandela Rules, Rule 23.1.



FAIR AND EFFECTIVE CRIMINAL JUSTICE

Penal Reform International Headquarters

The Green House
244-254 Cambridge Heath Road
London E2 9DA
United Kingdom

The Hague Humanity Hub
Fluwelen Burgwal 58
2511 CJ Den Haag
Netherlands

+44 (0) 203 559 6752
info@penalreform.org

 @PenalReformInt
 @Penalreforminternational

www.penalreform.org

Penal Reform International in Central Asia

Syganak str. 29
Nur-Sultan
Kazakhstan
+7 (7172) 79-88-83

96 Toktogul street, office 7
Bishkek
Kyrgyzstan
+996 312 88 38 76
pricentralasia@penalreform.org

Penal Reform International in South Caucasus

+995 32 237 02 7
prisouthcaucasus@penalreform.org

Penal Reform International in Middle East and North Africa

22 Amro Bin Dinar
Amman
Jordan
+962 6 582 6017
priamman@penalreform.org

Penal Reform International in Sub-Saharan Africa

Plot 8, Kisozi Close
Kisozi Complex
Nakasero
Kampala
P.O. Box 11455
Uganda
+256 3920 01139
africa@penalreform.org