



Monitoring places of detention

a practical guide

The Association for the Prevention of Torture

The Association for the Prevention of Torture (APT) is an independent non-governmental organization (NGO) based in Geneva, Switzerland, since 1977.

Its primary objective is to prevent torture and other forms of ill-treatment throughout the world. To achieve this the APT:

1. Promotes monitoring of places of detention and other control mechanisms that can prevent torture and ill-treatment.
2. Encourages the adoption and respect of legal norms and standards that prohibit torture and combat impunity.
3. Strengthens the capacities of persons seeking to prevent torture, especially national actors. This is done through training (e.g. of police, NGOs, national institutions, judges, prosecutors etc) as well as providing practical guides and relevant legal advice in a variety of languages.

The APT operates as a source of ideas and expertise for a broad variety of partners in torture prevention, ranging from Governments to NGOs, UN bodies, Regional bodies (e.g. African Commission on Human and Peoples' Rights, Inter-American Commission, OSCE and Council of Europe), national human rights institutions, prison authorities and police services.

The APT is the dynamo behind the drafting, adoption and implementation of: the Optional Protocol to the UN Convention against Torture; the European Convention for the Prevention of Torture; the African Commission's Robben Island Guidelines to prevent torture in Africa; as well as the Southern African Regional Police Chiefs Co-operation Organization (SARPPCO) Code of Conduct for police officers.

The APT is a member of the Coalition of International NGOs Against Torture (CINAT). It has consultative status with the UN, the Organisation of American States, the African Commission and the Council of Europe. It is recognised by the Swiss authorities as a non-profit association.

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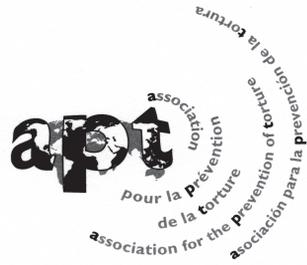


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First of all, the APT would like to thank the OSCE Office for Democratic Institutions and Human Rights (ODIHR) for agreeing to let us publish this guide as an update of our earlier joint publication “Monitoring places of detention: a practical guide for NGOs” (Geneva, December 2002). We thank Ms Annette Corbaz, who wrote the earlier guide.

The updated draft was discussed during an expert meeting held in Geneva on 20 October 2003 and we would like to thank the following experts who participated in the meeting: Mr Paul English (Penal Reform International), Ms Mary Murphy, member of a UK independent prison monitoring board and former Amnesty International researcher, Mr André Picot, International Committee of the Red Cross (ICRC), Mr Jean-Pierre Restellini, member of the European Committee for the Prevention of Torture (CPT), Ms Margaret Sekaggya, Chair of the Uganda Human Rights Commission and Mr Morris Tidball-Binz, Human Rights Defenders Office of the International Service for Human Rights (ISHR). Their fruitful and relevant comments on the draft were essential contributions for the final version of this guide.

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Our acknowledgements also go to Mr Theo van Boven, UN Special Rapporteur on Torture who agreed to write the foreword to this publication.

Finally, this guide could not have been published without the generous financial support of our donors.

EDITOR'S NOTE

For over a quarter of a century, the Association for the Prevention of Torture (APT) has defended the simple but novel idea proposed by its founder Jean-Jacques Gautier, that visits to places where people are deprived of their liberty is one of the most effective ways of preventing torture and ill-treatment. The APT continues to promote this idea both at the international and the national level.

The APT was actively involved in the drafting of international instruments based on preventive visits to places of detention. The organization was thus at the origin of the European Convention for the Prevention of Torture (1987) as well as the Optional Protocol to the UN Convention against Torture adopted on 18 December 2002 (OPCAT). The OPCAT is particularly innovative as it is based on the complementarity of preventive visits by an international organ and by “one or several national preventive mechanisms” that State Parties must set up after ratification.

This “twopillar” approach reflects that of APT, which has for several years encouraged monitoring of places of detention at the national level. It is in this context that the APT developed, in 2000, a joint project with ODIHR on “Encouraging national NGOs to monitor places of detention”. This project resulted in a joint publication entitled “Monitoring places of detention: a practical guide for NGOs”, published in December 2002 in English and in September 2003 in Russian. The joint guide was written by Annette Corbaz, a consultant for the APT who has more than ten years’ experience of visiting places of detention with the International Committee of the Red Cross (ICRC).

Our new guide is an adaptation of this previous version, in order to include elements of the newly adopted OPCAT and broaden the target audience to any person or body entitled to carry out visits to places of

detention at the national level. The guide will be published in English, French, Portuguese, Spanish and possibly Russian.

We hope that the guide will be of help to those involved in monitoring places of detention, in the preparation, conduct or follow-up to visits, and that it will ultimately contribute to improving conditions of detention and preventing torture and ill-treatment in the world.

Geneva, February 2004

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FOREWORD

Torture and ill treatment of persons deprived of their liberty usually takes place in centres of detention that are inaccessible to any form of public scrutiny. This is the ideal context for torturers to operate with complete impunity.

As the UN Special Rapporteur on torture I have advocated, like my two predecessors, that monitoring of places of detention, by suitably qualified independent bodies, is one of the most effective ways of combating the practice of torture and ill treatment. However, the monitoring bodies need to be adequately prepared, skilled and equipped to deal with a very difficult task in often tough conditions. Furthermore, they should be in a position to make recommendations that will be taken seriously and lead to positive improvements in the treatment of detained persons.

I welcome this guide of the Association for the Prevention of Torture as it provides a practical tool for anyone intending to visit a place of detention with the intention of preventing torture and ill treatment. The guide provides advice on how to monitor in a manner that enhances effectiveness and gives guidance on issues requiring special attention, such as medical services or protection measures. Moreover, it also explains clearly the different types of monitoring mechanisms and their complementary nature.

The manual is also timely as it is appearing just prior to the coming into force of the recently adopted Optional Protocol to the UN Convention against Torture. The preventive bodies envisaged in the Protocol, especially at a national level, will find this guide a very helpful reference book. I therefore sincerely hope that the guide will encourage many States to sign and ratify the Protocol. This important new international initiative promises to have a real impact in saving detained persons from the horrors of torture and ill treatment.

8 March 2004

PROFESSOR THEO VAN BOVEN
UN Special Rapporteur on Torture

SELECTED ABBREVIATIONS

ACHPR	African Charter on Human and Peoples Rights
APT	Association for the Prevention of Torture
BPP	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
BPTD	Basic Principles for the Treatment of Detainees
CAT	Committee against Torture
CPT	European Committee for the Prevention of Torture
ECPT	European Convention for the Prevention of Torture
EPR	European Prison Rules
ICCPR	United Nations International Covenant on Civil and Political Rights
ICPR	Inter-American Convention to Prevent and Punish Torture
ICRC	International Committee of the Red Cross
NGO	Non-governmental organisation
ODHIR	Office for Democratic Institutions and Human Rights of the OSCE
OHCHR	Office of the UN High Commissioner for Human Rights
OPCAT	Optional Protocol to the UN Convention against Torture
OSCE	Organisation for Security and Co-operation in Europe
UN	United Nations
UNCAT	UN Convention against Torture

Abbreviations for standards used only in the standard section of chapter IV are given at the beginning of that chapter.

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INTRODUCTION

“The Special Rapporteur is convinced that there needs to be a radical transformation of assumptions in international society about the nature of deprivation of liberty. The basic paradigm, taken for granted over at least a century, is that prisons, police stations and the like are closed and secret places, with activities inside hidden from public view. (...) What is needed is to replace the paradigm of opacity by one of transparency. The assumption should be one of open access to all places of deprivation of liberty.”

Sir Nigel Rodley

United Nations former Special Rapporteur on Torture
3 July 2001, A/56/156, §35

WHY A GUIDE ON MONITORING PLACES OF DETENTION?

Transparency and independent control of the public administration form part of any system based on the principles of democracy and the rule of law. This is especially true in the case of monitoring the power of the State to deprive people of their liberty. Monitoring the treatment and conditions of detention of persons deprived of their liberty through unannounced and regular visits is one of the most effective means of preventing torture and ill-treatment.

The idea of external and independent monitoring places of detention has made considerable progress over the past few years. It is now widely accepted that one of the best safeguards against torture and ill-treatment is for places of detention consistently to be as

transparent as possible, allowing regular access by reputable members of the public. This positive evolution is reflected in the adoption on 18 December 2002 of the Optional Protocol to the United Nations Convention against Torture (OPCAT), whose objective is “to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment”.

Under the OPCAT, the main obligation to prevent torture lies at the domestic level, as State Parties will have to “set up, designate or maintain one or several national preventive mechanisms”. New mechanisms will need to be set up or existing mechanisms will have to be adjusted in line with the OPCAT criteria. This development should not exclude or be detrimental to other forms of monitoring at the domestic level. In this context, the present practical guide aims to serve as a useful tool for promoting effective preventive visits by any monitoring group or body at the national level.

TARGET AUDIENCE

This guide addresses any person or body entitled to monitor and carry out visits to places of detention at the national level. As mentioned above, primary users will be members of mechanisms set up or designated as “national preventive mechanisms” under the OPCAT.

The guide, however, is not limited to these bodies, but has a broader use as a tool for other persons or institutions entitled to monitor places of detention in their country. It is addressed to bodies that already have obtained access to places of detention through their mandate or through specific agreement. Therefore, the issue of obtaining access to places of detention is not covered.¹

¹ The issue is covered in Part II of the APT/ODIHR guide “*Monitoring places of detention: a practical guide for NGOs*”, Geneva, December 2002, pp. 36-39.

Apart from domestic visiting mechanisms, the guide could also be a useful tool for bodies more generally interested in issues surrounding deprivation of liberty, such as international and national non-governmental organisations, international and regional organisations and their field offices.

Finally, our intention is for the information provided in the guide also to be useful to the authorities responsible for, and personnel working in places of detention, as it is they who will have to cooperate with the monitoring bodies.

Objectives of the guide

The overall objective of the guide is to promote effective domestic visiting bodies, newly established or existing ones, by increasing their professionalism and thus their impact in preventing torture and improving conditions of detention.

Specific objectives are:

- To provide concrete advice and recommendations on the methodology of visits through the different steps (preparation, implementation and follow-up);
- To promote cooperation between different domestic visiting bodies, as well as between national and international bodies;
- To present in a practical, thematic way the different international standards relevant to monitoring places of detention;
- To provide information on the content of the OPCAT, which for the first time in an international human rights treaty sets out clear criteria and guarantees for the independence and effective functioning of “national preventive mechanisms”;
- In so doing, to assist in preventing mechanisms being set up in a way that contradicts the OPCAT principles.

The guide is not tailored to any specific mechanism, nor to any particular country or region. It aims to be valid for a broad and universal public.

Scope of the guide

The guide is intended to deal with monitoring in any place where persons are deprived of their liberty. In practice, however, it focuses mainly on prisons and, in a more limited way, on police stations. Monitoring specific places such as psychiatric institutions, centres for juveniles or detained foreign nationals requires a specific approach, although some of the general concepts are applicable.

Specific categories of vulnerable detainees, such as women, children, minorities and foreign migrants, are not considered in a separate chapter but, where possible, are included throughout the guide under different topics.

The guide is structured as follows: The first chapter contains a general introduction on the importance of monitoring conditions of detention. The second chapter briefly sets out the existing international and domestic mechanisms, and makes special reference to the features of national preventive mechanisms as set out by the OPCAT. The third chapter is of a more operational nature, describing how to conduct a visit from preparation to follow-up. The last chapter sets out, theme by theme, the aspects of detention that should be considered during a visit and comments upon the corresponding provisions in international standards.

Definition of key terms:

Monitoring places of detention

Monitoring places of detention describes the process, over time, of regular examination, through onsite visits, of all aspects of detention. The examination can involve all or certain categories of detainees (see below) held in one or more places of detention (see below).

Monitoring includes the oral or written transmission of the results of the examination, as well as recommendations to the authorities concerned and to other actors involved in the protection of persons deprived of their liberty at the national and international level. It also includes follow-up regarding the implementation of recommendations conveyed to the authorities.

Detainee

The term “detainee” is used in different ways in different countries and even in different international documents. The term sometimes relates only to persons at the pretrial stage or under administrative detention, and not to convicted prisoners. In the present guide, the term “detainee” is used in its broadest possible sense to cover any person deprived of personal liberty as a result of arrest, administrative detention, pretrial detention or conviction and held in a place of detention (see below).

Place of detention

The term “place of detention” is also used here in a broad sense. It covers any place where a person is deprived of liberty: prisons, police stations, centres for foreigners or asylum seekers, centres for juveniles, social care homes, psychiatric institutions, prisons or cells for military personnel and any other place where people can be deprived of their liberty.

Domestic visiting bodies

This term refers to all arrangements at a domestic level (national, local or community) by which different types of independent bodies (national human rights institutions, ombudsman offices, special visiting bodies, national NGOs, citizens’ committees and other civil society groups) monitor places of detention.

National preventive mechanism

This term specifically refers to mechanisms designated by a State Party as a “national preventive mechanism” under the OPCAT.

Visit

The term “visit” is understood in a broad sense to cover not only the actual visit to the place of detention, but also its preparation and follow-up. It covers the visit to an entire place of detention as well as more focused visits to specific detainees or concerning a particular problem, theme or incident.

CHAPTER I

Monitoring places of detention in context

1. THE PROTECTION OF PERSONS DEPRIVED OF THEIR LIBERTY

1.1 Deprivation of liberty

The right to liberty and freedom of movement is one of the fundamental human rights. However, it is not absolute. States have the possibility to deprive people of their liberty through arrest or detention where the reasons for deprivation of liberty, and the procedures to be followed are clearly established by law. Arbitrary arrest or detention are prohibited under international law.

Deprivation of liberty means the placement of a person in a public or private setting which that person is not permitted to leave at will, by order of any judicial, administrative or other authority.

Examples of deprivation of liberty:

- Arrest
 - Custody before charges (police custody)
 - Custody after charges and before trial (pretrial or remand detention)
 - Imprisonment (serving a prison sentence after definitive verdict has been passed)
 - Administrative detention
 - Detention of juveniles
 - Psychiatric internment
 - Detention as a disciplinary punishment in the military
-

International standards encourage States to limit the use of deprivation of liberty. Pretrial detention should not be used in a systematic way but as “a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the

protection of society and the victim”². The standards promote use of non-custodial or alternative measures to detention, such as community service.

International standards particularly encourage States to avoid detention of juveniles, including before trial.

Through detention individuals lose their right to freedom of movement. They must continue to enjoy their other human rights. In particular they must be treated in a way that is respectful of their dignity as a human being.

1.2 Protection of persons deprived of liberty

People deprived of their liberty are vulnerable and particularly at risk of human rights violations. Their security and well-being are under the responsibility of the detaining authority, which should guarantee conditions of detention that respect human rights and human dignity. Monitoring detention conditions therefore forms an integral part of the **system for protecting persons who are deprived of their liberty**. An essential element within the monitoring system are regular, unannounced visits by independent bodies to places of detention, followed by reports and recommendations to the authorities and a systematic follow-up of implementation of these recommendations. Any State that is concerned with ensuring that human rights are respected in this field should possess, or establish, a system of this kind.

Experience has shown that an effective national protection system for those deprived of their liberty will include the following:

2 Article 6, United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by the General Assembly resolution 45/110 of 14 December 1990.

1. a national legal framework which has integrated the protection standards established by international law: that is, the adoption of corresponding laws and regulations which provide the framework for government policies and directives.

2. effective implementation of this legal framework in the maintenance of law and order, in legal practice, and in the organisation and handling of persons deprived of their liberty. This involves:

- a clearly stated and widely disseminated political will to implement the legal framework;
- human resources trained according to sound codes of professional ethics;
- financial and material resources.

3. monitoring effective application of the legal framework by:

- internal inspection services;
- judicial control by judges, prosecutors;
- lawyers and Bar associations;
- national human rights and ombudsman institutions;
- independent domestic visiting bodies;
- non-governmental organisations;
- international mechanisms (ICRC, CPT, future UN Sub-Committee to CAT)

Taken as a whole, this monitoring helps to provide an overview of the work carried out by State bodies. Measures can be proposed at either the practical or the legal level. Good practices can be identified and shared.

2. MONITORING PLACES OF DETENTION THROUGH VISITS

2.1 What is meant by monitoring places of detention?

Monitoring describes the process, over time, **of regular examination of all aspects of detention**. The examination can involve all or certain categories of persons deprived of their freedom in one or more places of detention.

All aspects of detention are interdependent and must be examined in relation to each other (see CHAPTER IV):

- The legal and administrative measures set and applied within the place of detention with a view to protecting the person, guaranteeing his or her right to life and physical and psychological integrity;
- the living conditions during detention;
- the regime of detention (activities, contacts with the outside world);
- the access to medical care;
- the organisation and management of detainees and of personnel as well as the relations between the detainees and the detaining authorities.

Monitoring includes the oral or written transmission of the results of the examination to the authorities concerned and, in some cases, to other players involved in the protection of persons deprived of their liberty at the national and international levels, and to the media. It also includes the follow-up regarding the implementation of the recommendations transmitted to the authorities.

2.2 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 the authorities and public officials to guarantee his or her protection, rights, and means of existence;
- The possibilities 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 those detained out of the sight 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. This means that they must be afforded enhanced protection by monitoring their conditions of detention.

It should be noted that the fact that monitoring mechanisms have been integrated into the permanent protection system for persons deprived of their liberty does not necessarily imply that there are serious problems in the places of detention or a widespread lack of confidence in the officials in charge.

It is more a matter of subjecting the huge power gap in detainer-detainee relations to outside scrutiny by a body 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.

They also contribute to the transparency and accountability of places of deprivation of liberty, thus increasing the legitimacy of the management of the place and the **public confidence in the institutions**.

2.3 Visiting places of detention – the main tool for monitoring

Places of detention are monitored essentially through visits to the places where persons are detained.³ These visits have a variety of functions:

- **preventive function:** The simple fact that someone from the outside regularly enters a place of detention in itself contributes to the protection of those held there.
- **direct protection:** *In situ* visits make it possible to react immediately to problems affecting the detainees which have not been dealt with by the officials in charge;
- **documentation:** During the visits, the different aspects of detention can be examined and their adequacy assessed; the information collected provides a basis for forming a judgement and documenting it and for justifying any corrective measures proposed.

The visits also provide an opportunity to document specific aspects of detention which could be dealt with in a thematic study;

- **basis for dialogue with the detaining authorities:** Visits make it possible to establish a direct dialogue with the authorities and officials in charge of the detention facility. This dialogue, in so far as it is founded on mutual respect, leads to the development of a constructive working relationship, in which the points of view of the officials about their working conditions and any problems they might have identified can also be obtained.

In addition, it should be noted that for persons deprived of liberty, having direct contacts with outside persons concerned with their conditions is of importance and constitutes a form of protection as well as of moral support.

³ Information about the conditions of detention collected outside the places of detention can also be used as a basis for intervention in cases where these places are not accessible. Nonetheless, the validity and legitimacy of these interventions can be more easily contested than can those following in situ visits.

3. BASIC PRINCIPLES OF MONITORING PLACES OF DETENTION

Monitoring places of detention through visits is a delicate and sensitive task. For reasons both of ethics and efficiency, it is important that those conducting visits keep in mind and respect a number of basic principles.

The following principles are mainly taken from the eighteen basic principles of monitoring identified in the United Nations Training Manual on Human Rights Monitoring⁴. They have been adapted, when necessary, in order to take into account the specificities of monitoring places of detention.

Mechanisms need to develop recruitment strategies, working practices and training that safeguard these core qualities. Peer evaluations have proven instrumental in assuring that these principles are incorporated into the monitoring practice.

1. Do no harm

Detainees are particularly vulnerable and their safety should always be kept in mind by visitors, who should not take any action or measure which could endanger an individual or a group. In particular, in cases of allegations of torture or ill-treatment, the principle of confidentiality, security and sensitivity should be kept in mind. Poorly planned or prepared visits, or visits not conducted in respect of the methodology or of the following basic principles, can actually do more harm than good.

⁴ Chapter V,(pp. 87-93) of the Training Manual on Human Rights Monitoring, Professional Training Series n°7, Office of the High Commissioner for Human Rights, United Nations, New York, Geneva, 2001.

2. Exercise good judgment

Monitors should have an awareness of the standards and rules against which they are conducting their monitoring. However, whatever their number, relevance and precision, rules cannot substitute for good personal judgement and common sense. Monitors should therefore possess and exercise good judgment in all circumstances.

3. Respect the authorities and the staff in charge

Unless a minimum basis of mutual respect is established between the staff and the visiting team, the work in the places of detention might be jeopardised. Visitors should always respect the functioning of the authorities and try to identify the hierarchic levels and their responsibilities so as to be able to address any problem at the right level. While it is clear that one can find individual staff with inappropriate behaviour, many problems stem not from individuals but from an inadequate system for deprivation of liberty which fosters inappropriate behaviour. Visitors should also take into account the fact that staff working in places of detention are carrying out a demanding job, often socially undervalued and, in many countries, poorly paid.

4. Respect the persons deprived of liberty

Whatever the reasons for deprivation of liberty, detainees must be treated with respect and courtesy. The visitor should introduce him or herself.

5. Be credible

Visitors should explain clearly, to detainees and staff, the objectives and the limitations of their monitoring work and behave accordingly. They should make no promise that they are unlikely or unable to keep, not take any action that they cannot follow through.

6. Respect confidentiality

Respect for the confidentiality of the information provided in private interviews is essential. Visitors should not make any representation using the name of a detainee without his or her express and informed consent. Visitors should make sure that the detainee fully understands the benefits as well as the possible risks or negative consequences of any action taken on their behalf. Visitors, medical doctors and interpreters are all bound to respect confidentiality.

7. Respect security

Security refers to the personal security of visitors, the security of the detainees who are in contact with them and the security of the place of detention.

It is important to respect the internal rules of the places visited and to seek advice or request any special dispensation from those in charge. Authorities often invoke security reasons for not allowing visits to specific places or put conditions on interviews with specific detainees. It is ultimately the responsibility of the visiting delegation to decide if and how they want to follow this advice.

Visitors should refrain from introducing or removing any

object without the prior agreement of the authorities. They should display their identity by wearing a badge or other means of identification.

Regarding the security of the detainees visited, the visitor should consider how to use information in such a way as not to put individuals at risk. Visitors should make repeat visits and meet again most of the detainees seen previously to make sure they have not suffered reprisals.

8. Be consistent, persistent and patient

The legitimacy of the visiting mechanism is established over time, mainly as a result of the relevance, persistence and consistency of its work. Monitoring places of detention requires efficiency, regularity and continuity. It implies visiting regularly the same places, and building up enough evidence to draw well founded conclusions and make recommendations. It is essential to be persistent also in the follow-up activities.

9. Be accurate and precise

During the on-site visit it is important to collect sound and precise information in order to be able to draft well-documented reports and relevant recommendations.

10. Be sensitive

Particularly when interviewing detainees, visitors should be sensitive to the situation, mood and needs of the individual, as well as to the need to take the necessary steps to protect his or her security. In cases of allegations of torture and ill-treatment, visitors should be aware of the problems of retraumatization (see Chapter IV: torture and ill-treatment).

11. Be objective

Visitors must strive to record actual facts, and to deal with both staff and prisoners in a manner that is not coloured by feelings or preconceived opinions.

12. Behave with integrity

Visitors should treat all detainees, authorities and staff, and their fellow visitors with decency and respect. They should not be motivated by self-interest and should be scrupulously honest. In all their dealings they should operate in accordance with the international human rights standards that they are mandated to uphold.

13. Be visible

Within the place of detention, visitors should make sure that staff and detainees are aware of the methodology and mandate of the visiting body, that they know how to approach them. Visitors should wear a badge or other means of identification. Outside the place of detention, the work of visiting mechanisms should be publicised through written reports and careful use of the media (see Chapter III, section 5: follow-up to the visits).

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CHAPTER II

**Bodies
monitoring
places of
detention**

For a long time, monitoring at the national level was based only on inspections carried out by internal administrative bodies. But the necessity to have a broader public scrutiny of places of deprivation of liberty was more and more recognised and other forms of national monitoring emerged, totally independent from the detaining authorities. In parallel, the idea of international control was also developed and monitoring places of detention by international organs slowly became a reality.

With the recent adoption of the OPCAT, based on preventive visits to places of detention by both international and national visiting mechanisms, a further step was taken towards establishing a global system of mutually reinforcing international and national mechanisms.

It is also important to note that with the adoption of the OPCAT, for the first time in an international instrument criteria and safeguards for effective functioning of national visiting mechanisms are set out.

Sections 1 and 2 of this chapter provide an overview of the types of existing mechanism at the domestic and international level respectively. Section 3 sets out the visiting mechanisms foreseen in the OPCAT, with special reference to the national preventive mechanisms. Finally, section 4 deals with the question of the necessary coordination between domestic visiting bodies, and with international visiting bodies.

1. VISITING AT THE NATIONAL LEVEL

Monitoring detention conditions is, above all, the responsibility of the national authorities in charge of persons deprived of their liberty.

“In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.” *Principle*

29, paragraph 1, of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Most States have established their own internal inspection mechanisms, which are sometimes supplemented by judicial control. However, they have been slower to develop external independent monitoring mechanisms.

1.1 Internal inspections

Most States have set up internal administrative inspections by a government institution in charge of carrying out visits to places of deprivation of liberty, as part of the normal running of big bureaucracies. The role of such an administrative body is usually limited to controlling the compliance of staff and procedures with national standards, and administrative guidelines and regulations. It rarely includes a broader approach involving issues such as the dignity and human rights of the persons deprived of their liberty. It is thus possible for internal inspection procedures to carry out their mandate fully and for conditions of detention to remain incompatible with international human rights standards. This is one reason why internal monitoring is not sufficient in itself and must be complemented by external independent monitoring.

1.2 Judicial inspections

As part of their mandate, judges and public prosecutors are often responsible for carrying out regular visits to places of detention and inspecting the conditions of detention. In some countries, a “supervisory judge” may visit prisons for sentenced criminals and decide on matters related to the execution of the sentence. Judicial inspections vary in frequency and quality. They can be effective when the judge can issue binding decisions about prison conditions.

1.3 Independent external monitoring

In recent years, recognition that places of detention should be transparent and accountable of has led to the setting up of domestic independent monitoring mechanisms. These have become more professional and grown in influence. Such external mechanisms can be of very different types: official institutions established by Parliament, bodies attached to a specific Ministry or civil society groups or a mixture of these.

External mechanisms established by Parliament include **Ombudsman offices** and **national human rights institutions**. Their usually broad mandate to monitor and promote respect for human rights, combined with their power to examine individual complaints, often includes the possibility of visiting and monitoring places of detention. The depth and frequency of the visits may, however, vary . In addition, visits to places of detention are often undertaken to verify specific allegations and investigate an individual complaint rather than to preventively examine and assess the conditions of detention with the aim of pre-empting future problems. An advantageous feature of Ombudsman and national human rights institutions is that they usually report publicly to the Parliament and their recommendations are, thanks to the bodies' official status, viewed as authoritative.

In some countries, **special monitoring bodies** have been set up under a specific Ministry. These bodies often have a double mandate both to control conditions of detention in the places under that ministry's control and advise the Ministry on necessary improvements. Such bodies can be composed of officials, NGO representatives, independent members of civil society (lay people) or a combination of these. These bodies usually issue non-binding recommendations. Sometimes these are published in the form of reports.

Finally, in some countries, **national human rights NGOs and civil society organisations** have managed to get authorisation and agreement to regularly monitor places of detention. Monitoring by civil society is usually characterised by a large degree of independence of the authorities, and the publicity given to the findings and

reports, frequently precisely because of that independence and the perception that this makes the findings more frank. However, the legal basis for monitoring can often be weak, based on a written agreement with the different ministries, or even individual minister, concerned, which leaves the monitors dependent on the political will of the authorities. In some countries, lack of funding even for travel costs can make the task of consistent monitoring almost impossible for such independent groups.

2. VISITING MECHANISMS AT THE INTERNATIONAL AND REGIONAL LEVEL

The practice of international bodies conducting visits to places of detention is a relatively recent development. The ICRC was the first to receive such a mandate, in the context of armed conflicts, to visit prisoners of war. Later, the mandate was extended through the right of initiative, allowing it to visit detainees, with the agreement of the concerned government, during internal troubles or tensions. ICRC's recommendations may also cover common-law detainees.

Most existing international mechanisms entitled to visit places of detention function essentially in a reactive manner, and carry out on the spot visits following receipt of information of torture or ill-treatment (e.g. UN Special Rapporteurs, CAT). Few have the mandate to regularly and proactively carry out visits (e.g. Special Rapporteur on prisons and conditions of detention in Africa). These mechanisms can only carry out on-site visits with the authorisation of the State concerned.

Two international bodies work on a radically different basis. The European Committee for the Prevention of Torture (CPT) was, in 1987, the first body set up specifically to carry out preventive visits to places of detention. Upon ratification of the Convention, State Parties accept visits of the CPT at any time to any place where persons are deprived of their liberty. The Sub-Committee to the Committee

against Torture, to be established under the OPCAT, will also be able to carry out regular visits to places where persons are deprived of their liberty, regardless of whether any complaint has been received and with no prior authorisation from the State Party concerned.

TABLE 1 : INTERNATIONAL AND REGIONAL VISITING MECHANISMS

TYPE	LEGAL BASIS	CHARACTERISTICS
<i>International mechanisms</i>		
UN Thematic Procedure <ul style="list-style-type: none"> • Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; • Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; • Working Group on Forced or Involuntary Disappearances; • Working Group on Arbitrary Detention 	Resolutions of the United Nations Commission on Human Rights	<ul style="list-style-type: none"> • Prior agreement by the State concerned; • Occasional visits to places of detention in order to assess country situations in relation to their mandate; • Recommendations issued on the basis of information communicated to the Rapporteur and verified, or following visits carried out in the country concerned; • Recommendations without binding character for States; • Public reports presented at the session of the UN Human Rights Commission.
Committee against Torture	Article 20 of the Convention of the United Nations (1984)	<ul style="list-style-type: none"> • Can only visit States Parties to the Convention⁵; • Visits only in the case of “systematic torture”; • Authorisation by the State concerned; • Confidential procedure.
Sub-Committee to the Committee against Torture⁶	Optional Protocol to the Convention against Torture (OPCAT) (2002)	<ul style="list-style-type: none"> • Visits to States Parties to the Protocol; • Will be established for the purpose of conducting preventive visits; • Acceptance of visits without prior consent upon ratification or accession to OPCAT; • Preventive periodic visits; possibility of one follow-up visit; • Unlimited access to any place where a person is deprived of his/her liberty; • Confidential reports; possibility for the State to authorise publication or for the committee to publish in case of a failure to co-operate; • Annual report to CAT; • Direct contacts with national preventive mechanisms.

TABLE 1 : INTERNATIONAL AND REGIONAL VISITING MECHANISMS (SUITE)

TYPE	LEGAL BASIS	CHARACTERISTICS
<i>International mechanisms</i>		
International Committee of the Red Cross	On the basis of the Geneva Conventions (1949) for situations of conflict; On the basis of an agreement with the State for other situations.	<ul style="list-style-type: none"> • Monitoring of conditions of detention targeted at persons arrested and detained in relation to a situation of conflict or internal strife. In certain situations, monitoring extends to other categories of persons deprived of their liberty; • In the situation of an international conflict, the States Parties to the conflict are obliged to authorise visits to military internees and civilian nationals of the foreign power involved in the conflict; • In other situations, visits are subject to prior agreement by the authorities; • Permanent and regular visits during a situation of conflict or strife or its direct consequences; relief or rehabilitation activities with the agreement of the authorities; • Help to restore family links • Confidential procedure and reports.
<i>Regional mechanisms</i>		
Inter-American Commission on Human Rights	American Convention on Human Rights (1978) American Declaration of the Rights and Duties of Man (1948) ⁷	<ul style="list-style-type: none"> • Country visits, including to places of detention, to States Parties to the Convention or the Declaration; • Each visit negotiated with the State concerned; • Public reports about the country situation.
Special Rapporteur on Prisons and Conditions of Detention in Africa	Following the Kampala Declaration, established by a Resolution of the African Commission on Human and Peoples' Rights (1996)	<ul style="list-style-type: none"> • Visits to States Parties to the African Charter on Human and Peoples' Rights; • Visit only after agreement of the state concerned; • General assessment of conditions of detention and treatment; • Reports are published after integration of comments and observations of state authorities concerned.

TYPE	LEGAL BASIS	CHARACTERISTICS
<i>Regional mechanisms</i>		
European Committee for the Prevention of Torture (CPT)	European Convention for the Prevention of Torture (1987)	<ul style="list-style-type: none"> • Visits to States Parties to the Convention; • Established for the purpose of conducting preventive visits; • Unlimited access: at any moment to any place where a person is deprived of his or her liberty; • Periodic and ad hoc visits (“required by the circumstances”); • Reports theoretically confidential, but their publication has become the rule.

5 Given that the State did not make a declaration under article 20.

6 The Sub-Committee will be established 6 months after the entry into force of the Optional Protocol, which is upon the 20th ratification.

7 The IACHR applies the Declaration to those member states who are not a party to the Convention.

3. THE OPTIONAL PROTOCOL TO THE UN CONVENTION AGAINST TORTURE

The Optional Protocol to the UN Convention against Torture (OPCAT) is based on the complementarity of visits to places of detention by international and national mechanisms:

“The objective of the Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment” (Art. 1 OPCAT).

3.1 The Sub-Committee to the CAT

The Protocol foresees the creation of a Sub-Committee to the Committee against Torture (The Sub-Committee). This body will be composed of ten independent members, proposed and elected by the States Parties to the Protocol⁸, with relevant professional experience and representing the different regions and legal systems of the world. In its work the Sub-Committee should be guided by the principles of “confidentiality, impartiality, non-selectivity and objectivity” (Article 2).

The mandate of the Sub-Committee is to visit places where persons are deprived of their liberty: it can have access not only to prisons or police stations but also, for example, to any centre for asylum seekers, to military camps, centres for juveniles, psychiatric hospitals and transit zones of international airports⁹.

The Sub-Committee can only carry out “regular visits” and should establish a programme and inform the State parties. In addition, it can carry out a short follow-up visits to a regular visit.

8 This number will be increased to 25 after the 50th ratification.

9 The type of place is the same as for national visiting mechanisms (see below).

Mandate and powers regarding visits:

- Access to all information regarding the number of persons deprived of liberty, their treatment and conditions of detention;
 - Access to all places of detention and all facilities. In exceptional circumstances, it is possible for a State to temporarily postpone access to a place for urgent reasons such as the protection of national defence, public safety, national disasters or serious disorder in the place to be visited;
 - Opportunity to have interviews in private;
 - Liberty to choose the places to be visited and the persons to interview;
 - In addition, there is a provision to protect people in contact with the Sub-Committee or the national preventive mechanism from any retaliation/sanction (art. 15).
-

After the visit, the Sub-Committee provides a confidential report containing recommendations, which is transmitted to the States Parties, and if relevant, also sent to the national preventive mechanism. The report is confidential but States can authorise its publication. Recommendations are not binding but the States have an obligation to examine them and enter into dialogue on implementation measures. The OPCAT also foresees the establishment of a special voluntary fund for supporting implementation of the recommendations.

If States refuse to co-operate, then the Sub-Committee can propose to the UN Committee against Torture to adopt a public statement or to publish the report.

3.2 National preventive mechanisms under the OPCAT

The standards and criteria set out in the OPCAT are of particular relevance for domestic visiting mechanisms which might be designated “national preventive mechanisms”. They are also of interest to other domestic visiting bodies, since they represent the ‘state of the art’ in international reflection on the guarantees needed to ensure that domestic visiting mechanisms are effective.

3.2.1 Setting up or designation of national preventive mechanisms

States Parties have an obligation to “maintain, designate or establish (...) one or several independent national preventive mechanisms for the prevention of torture at the domestic level” (Art. 17)¹⁰. Accordingly, some States will need to create a new body, whilst others that may already have such a mechanism will need to consider whether it fully complies with the obligations under the Optional Protocol.

In order to help States Parties to set up effective national mechanisms, the Sub-Committee can provide assistance and advice. Therefore, the Sub-Committee has the mandate to advise States Parties on the establishment of national mechanisms. The Sub-Committee can also offer direct assistance and training to national preventive mechanisms.

When a State designates an existing body as the “national preventive mechanism” under the OPCAT, it has to assess that it fulfils the criteria defined in the Optional Protocol, particularly regarding functional independence. The Sub-Committee will also be able to look at the effective functioning of the national preventive mechanism. It

10 States Parties are obliged to have national preventive mechanisms in place within one year of entry into force of the OPCAT or, once it is in force, upon ratifying the OPCAT. However, States may make a declaration upon ratification under Article 24 to temporarily postpone their obligations in respect of the national mechanisms for a maximum period of five years.

can make recommendations to the State Party with a view to strengthening its capacity and mandate to prevent torture and ill-treatment.

It should also be underlined that the designation or setting-up of a national preventive mechanism should not be used by States to undercut visiting activities carried out by other domestic bodies, in particular by non-governmental organisations. Monitoring activities by different actors should be considered as complementary in the prevention of torture.

3.2.2 Form of national preventive mechanisms

The OPCAT does not prescribe any particular form that national preventive mechanisms must take. States Parties therefore have the flexibility to choose the type of body that is most appropriate to their particular country context. A national preventive mechanism could be a national human rights institution, an Ombudsman, a parliamentary commission, an NGO, a lay people scheme, or any specialised body set up specifically to monitor places of detention.

States Parties can decide to have several national preventive mechanisms because of the State structure (for example, federalism) or based on a thematic division. When a State decides to have several national preventive mechanisms, be they regional or thematic, it would be advisable to find a means to achieve cooperation between the different bodies, for example by having one coordinating body at the national level that works to harmonise the contribution of each visiting body.

3.2.3 Mandate of national preventive mechanisms

The preventive effect of visits to places of detention depends on the regularity of those visits and on the follow-up to those visits. Therefore the national preventive mechanisms are mandated to conduct regular visits to all places where people are deprived of their liberty and to make recommendations.

Scope of mandate (Art. 19)

National preventive mechanisms must be granted at least the power to:

- Regularly examine the treatment of persons deprived of their liberty in places of detention;
- Make recommendations to the relevant authorities for improvement;
- Submit proposals and observations on existing draft legislation.

Definition of places of detention

Places where people are deprived of their liberty are defined broadly in the OPCAT and include:

- Police stations
 - Security force stations
 - Pre-trial centres
 - Remand Prisons
 - Prisons for sentenced persons
 - Centres for juveniles
 - Immigration centres
 - Transit zones at international airports
 - Centres for asylum seekers
 - Psychiatric institutions
 - Places of administrative detention
 - Any other place where people are deprived of their liberty
-

3.2.4 Guarantees for national preventive mechanisms

The OPCAT sets out specific guarantees and criteria for national preventive mechanisms to ensure that they are free from any interference from the State. These provisions are interdependent and must be taken together in order to ensure the independence of these bodies.

As a guiding resource the OPCAT requires States Parties to give due consideration to the “Principles relating to the status and functioning of national institutions for the promotion and protection of human rights” (The Paris Principles)¹¹.

Guarantees and criteria for national preventive mechanisms (Art. 18)

In accordance with Article 18 of the OPCAT, national preventive mechanisms must be granted the following guarantees:

- Functional independence
 - Required capabilities and professional knowledge
 - Appropriate resources
-

Functional independence

The independence of national preventive mechanisms is essential to ensuring the effectiveness of these bodies in preventing torture and other forms of ill-treatment. In practice, this means that the national preventive mechanisms must be capable of acting independently of the State authorities. It is also essential that the national preventive mechanisms are *perceived* as independent of the State authorities.

11 These principles were adopted in October 1991 in Paris at an international workshop convened by the United Nations Centre for Human Rights. The Commission on Human Rights endorsed the recommendations in March 1992.

Functional independence of national mechanisms can be achieved by having:

■ **An independent founding basis**

In order to be established on a strong legal basis that would permit its continuity over time, the national preventive mechanisms should, ideally, be founded in the Constitution or in an act of Parliament.

■ **The ability to draft their own rules and procedures**

The rules of procedure must not be open to modification by external authorities;

■ **Separation from executive and judicial authorities**

In order to guarantee its effectiveness, as well as its perceived independence, the national preventive mechanism should not be formally attached to a Ministry or to a judicial body.

■ **An independent and transparent appointment procedure**

The appointment procedure should determine the method and criteria for appointment, as well as the duration of appointment, any privileges and immunity, the dismissal and appeals procedure. The Paris Principles specify that “In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. (...)”, Principle 3. The appointment procedure should also involve consultation with civil society.

■ **Financial independence**

Financial autonomy is a fundamental criteria, and includes adequate funding (see below) as well as the capacity to define and propose the budget independently.

■ **Transparent working practices and public reporting**

Through public reporting on its work and functioning, the national mechanism will reinforce its independence and, in addition, will be seen as independent.

Appropriate expertise and knowledge

State Parties shall take the necessary measures to ensure that the expert members have the required capabilities and professional knowledge regarding human rights and issues relating to deprivation of liberty. The OPCAT also advises seeking a gender balance and appropriate minority representation within the composition of the national preventive mechanisms¹².

Appropriate composition

For mechanisms conducting visits to places of detention a pluralistic composition is most appropriate, to include:

- Lawyers
- Nurses
- Doctors, including forensic specialists
- Psychiatrists and psychologists
- Other representatives from civil society and NGOs
- Specialists in issues such as human rights, humanitarian law, penitentiary systems and the police.

12 The provision is in line with the Paris Principles, which stress that national institutions should be established so as to ensure a pluralistic composition.

Adequate resources

Financial autonomy is a fundamental criterion, without which national preventive mechanisms would not be able to exercise independence in decision-making. The national preventive mechanism should be financially and independently capable of performing its basic functions. The Paris Principles stress the need for adequate funding which “should enable it to have its own staff and premises, in order to be independent of the Government and not to be subject to financial control”. (Principle 2)

3.2.5 Access to places where persons are deprived of their liberty

Under the OPCAT, the national preventive mechanisms must be allowed access to places where people are deprived of their liberty. Certain guarantees are to be assured in order for the national mechanisms to function effectively.

National mechanisms must be granted (Art. 20):

- Access to all places of detention, including their installations and facilities, of their choice;
- Access to all information concerning the number of persons deprived of their liberty;
- Access to all information relating to the treatment of persons deprived of their liberty as well as their conditions of detention;
- Access to conduct private interviews with persons deprived of their liberty, with their consent and without witnesses, and with any persons of their choosing. The authorities must also guarantee that persons coming into contact with the visiting team are not subjected to pressure, threats or ill-treatment by way of reprisal.

It is recommended that the national preventive mechanism be permitted:

Visits at any time, without prior notification to the detaining authorities. In any case, in all circumstances, access should be given as quickly as possible.

3.3 Follow-up of visits under the Optional Protocol

3.3.1 Reporting and recommendations

National preventive mechanisms shall produce an annual report that States Parties to the OPCAT are obliged to publish. The content of the annual report is for each national preventive mechanism to determine, but nothing prevents the inclusion of most information contained in visit reports. In any case, the annual report should mention the recommendations made to the authorities. The States Parties are not obliged to, but can give their consent to the publication of all visit reports by a national preventive mechanism.

The national preventive mechanism can also forward the report to the relevant UN Sub-Committee, if necessary, confidentially.

National preventive mechanisms must treat confidential information as privileged and can not publish any personal data without the express consent of the person concerned.

3.3.2 Complementary preventive action

National preventive mechanisms can also complement their visits and recommendations with other actions aimed at preventing ill-treatment and at improving conditions of persons deprived of their liberty such as:

- Organising training seminars for relevant personnel concerned with or in charge of persons deprived of their liberty;

- Public awareness-raising activities;
- Submitting proposals and observations concerning existing or draft legislation (in accordance with article 19 c).

3.3.3 Direct contact with the Sub-Committee

As stated above, the OPCAT contains an innovative approach based on complementarity between international and national efforts to prevent torture. The OPCAT requires national preventive mechanisms to have contact with the Sub-Committee. Furthermore, States Parties have the obligation to encourage and facilitate these contacts.

The national and international bodies can have substantial exchanges on methods and strategies to prevent torture. Therefore, the Sub-Committee and the national preventive mechanisms can meet and exchange information, if necessary on a confidential basis. The national preventive mechanisms can reciprocate and forward their reports and any other information to the international mechanism.

The Sub-Committee will also be able to offer training and technical assistance with a view to enhancing the capacities of the national preventive mechanisms. The Sub-Committee can in addition advise and assist them in evaluating the means necessary to improve the protection of persons deprived of their liberty.

4. COORDINATION BETWEEN VARIOUS VISITING BODIES

The multiplicity of visiting mechanisms at the national as well as at the international level implies that strong coordination will have to be established between all the bodies in order to avoid confusion and achieve the optimum impact.

4.1 Coordination between domestic visiting bodies

In a situation where several domestic visiting bodies exist within one country (for example national NGOs and an Ombudsperson), it is particularly important that they establish ways of coordinating their monitoring activities. Degrees of cooperation may vary: exchange of information on the monitoring activities, complementary action, co-operation on specific issues, or even partnership.

This coordination remains essential, even when one or several of these domestic bodies are designated as a “national preventive mechanism” under the OPCAT. The aim of the OPCAT is not to reduce the number of monitoring bodies but to enhance their effectiveness.

Coordination will enhance the efficiency of the monitoring programme and will also make it more effective in the eyes of the authorities.

Coordination should also be sought with field offices of international organisations (United Nations Human Rights Field Offices, Organisation for Security and Co-operation in Europe). Coordination should also be sought with the ICRC. Although technically an international organisation, in countries where it is present, its working methods in the area of detention resemble those of a domestic visiting body rather than an international one.

4.2 Coordination between international and national visiting bodies

As seen above, the OPCAT emphasises direct contact between the “national preventive mechanisms” and the Sub-Committee. This is essential to ensure complementary efforts by these bodies. Whilst the OPCAT only expressly provides for direct contacts between the designated national preventive mechanism(s) and the Sub-Committee, it is nevertheless likely to make the activities of other domestic bodies more effective if they also submit information and reports to the Sub-Committee.

Information and reports from domestic visiting bodies can also be sent to other relevant UN bodies, as well as to regional human rights mechanisms:

UN BODIES

Special procedures under the UN Human Rights Commission

- Special Rapporteur on Torture
- Special Rapporteur on the Independence of Judiciary
- Special Rapporteur on Extrajudicial Executions
- Special Representative on Human Rights Defenders
- Working Group on Arbitrary Detention

UN TREATY BODIES

- Committee on Human Rights
- Committee against Torture
- Committee on the Rights of the Child
- Committee on the Elimination of Discrimination against Women
- Other thematic bodies, depending on the issue (for example, Committee on the Elimination of All Forms of Racial Discrimination)

UN SPECIALISED AGENCIES

- UN High Commissioner for Refugees (particularly programmes for the protection of refugees and internally displaced people)
 - United Nations Development Programme (particularly judicial reform programmes)
 - UNICEF (particularly women and children in detention programme)
-

Regional organisations

In the Americas:

- Inter-American Commission on Human Rights

In Africa:

- African Commission on Human and Peoples' Rights (in particular its Rapporteur on Prisons and Conditions of Detention in Africa)

In Europe:

- Council of Europe (in particular the European Committee for the Prevention of Torture (CPT))
 - OSCE Office for Democratic Institutions and Human Rights (ODIHR)
-

4.3 Coordination between international visiting bodies

International visiting bodies are sometimes bound by strict rules of confidentiality that may limit the possibilities for coordination. They should, however, consult.

In the OPCAT, coordination between the Sub-Committee and existing regional visiting mechanisms is foreseen in Article 31, which encourages them “to consult and cooperate with a view to avoid duplication”.

The European Committee for the Prevention of Torture (CPT) made a proposal for States which are parties to both the OPCAT and the ECPT to agree “that visit reports drawn up by the CPT in respect of their countries, and their responses, be systematically forwarded to the Sub-Committee on a confidential basis. In this way, consultations could be held in the light of all relevant facts”¹³.

Where the reports are made public, which is the case for country reports of the Inter-American Commission on Human Rights and the Special Rapporteur on Prisons and Conditions of Detention in

Africa, consultation and cooperation with the Sub-Committee will be easier.

The OPCAT also specifies that “the provisions of the Protocol shall not affect the obligations of States Parties to the four Geneva Conventions nor the opportunity available to any State Party to authorise the ICRC to visit places of detention in situations not covered by international humanitarian law.” The future Sub-Committee and the ICRC will have to find ways of establishing contact, as is already being done in Europe between the CPT and the ICRC.

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STAGES OF A VISIT

WHEN?

PREPARATION OF THE VISIT

(sections 2 & 3)

VISIT

(section 4)

FOLLOW-UP TO THE VISIT

(section 5)

WHAT?

- Collect available information
- Define the objectives of the visit
- Organise the visiting team

- Initial talk to prison director
- Visit the premises
- Consult registers
- Interviews in private with detainees
- Talks other prison officials
- Final Talk with the prison director

- Internal notes on the visit
- Visit report
- Follow-up visit
- Global Report
- Follow-up activities
- Annual report

CHAPTER III

How to
monitor
places of
detention

1. THE FRAMEWORK OF MONITORING

Monitoring conditions of detention involves checking that these conditions correspond to national and international human rights standards and that those deprived of their liberty are treated with the respect due to their inherent dignity and value as human beings. The general standards relating to the deprivation of liberty are contained for the most part in the relevant international instruments (see chapter IV) and national legislation.

The UN Basic Principles for the Treatment of Prisoners form the most general standard-setting framework for the deprivation of liberty. They are applicable to any person deprived of freedom wherever he or she may be held, and provide a crucial reference for visiting bodies:

Basic Principles for the Treatment of Prisoners

adopted by the Assembly General of the United Nations in its resolution 45/111 of 14 December 1990

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.
4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.
 6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.
 7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.
 8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.
 9. Prisoners shall have access to health services available in the country without discrimination on the grounds of their legal situation.
 10. With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.
 11. The above Principles shall be applied impartially.
-

Monitoring is thus based on a four-step process:

- a) objective and professional documentation of the conditions of detention
- b) analysis of their conformity with national and international standards
- c) formulation of recommendations
- d) follow-up on the implementation of the recommendations.

a) Objective and professional documentation of the conditions of detention

The visiting body determines, as exhaustively as possible, the **state of affairs** as regards the conditions of detention – i.e., the practice – by **summarising**:

- the point of view of the authorities, the staff, and the different professionals taking care of the persons deprived of their liberty;
- the point of view of the persons deprived of their liberty;
- the point of view of other available sources (lawyers, families of detainees, associations, NGOs);
- what the members of the visiting team have observed in the places of detention.

It is important that before transmitting complaints to the higher authorities, and before drawing their conclusions, the members of a visiting body take into account all these sources of information. This is essential if the body is to reach a comprehensive analysis of the conditions of detention and make meaningful recommendations. Allegations of serious ill-treatment and torture, however, should be transmitted to the authorities immediately, and at a level that does not endanger the person or persons concerned by the allegation (see Chapter IV, Torture and ill-treatment).

b) Conformity with relevant national and international standards

In a second step, the visiting mechanism analyses whether the conditions of detention are in conformity with the relevant national and international standards.

The visiting mechanism should not limit itself to **noting** whether the aspects examined are in conformity with the standards: (i.e., what actually **is**, compared with what **should be**) but try to explain, at least in part, the causes of any deviations from the standards.

These are generally due to a combination of factors, e.g.:

- National legislation does not correspond to international standards;
- The standards are not applied or are only partially applied, for instance because:
 - they are not sufficiently developed in substance for them to provide a true framework for the work of the staff in charge of persons deprived of their freedom;
 - the staff's training is deficient as regards certain aspects of their work and, as a result, their professional culture is at variance with the standards;
 - the human or material resources available do not permit application of the standards.

c) Formulation of recommendations

The above analysis can be used in order to formulate more substantial and pragmatic recommendations, rather than simply reiterating the standards.

Moreover, understanding the problems and their causes means that one can also:

- identify the sensitive areas or the main problems;
- integrate the time factor in the recommendations (i.e., what can be done in the short, medium, and long term);

- propose original solutions to certain problems;
- contribute to development of the standards.

d) Follow-up on the implementation of recommendations

The ultimate aim in monitoring places of detention is to encourage the authorities to improve the treatment of detainees and the conditions of detention. Visiting places of detention and reporting are only the means to achieve this objective. Accordingly following up the implementation of the recommendations made is possibly the most important step in the monitoring process. When improvements are made they should be welcomed. When no measures are taken, the visiting mechanism should seek other ways of exerting pressure for implementation.

2. ESTABLISHING A MONITORING PROGRAMME

2.1 Establishing a programme of visits

The visiting programme should contain the following points:

- a list of places holding the categories of persons deprived of their liberty that the domestic visiting body is targeting;
- if the visits should be announced or not;
- the order in which the places will be visited; the intended length of each visit;
- the frequency with which visits will be repeated.

2.2 Choosing the places

Depending on the situation, the visiting body will decide to make regular visits to all places of detention or a selection.

Different criteria can be applied – in isolation or in combination – in prioritising and choosing places to visit:

The risks, potential or actual, to which people deprived of their liberty are exposed:

- places of detention where persons are interrogated;
- particularly vulnerable detainees, such as women, juveniles, foreigners, minorities;
- places in high-risk regions, towns, or districts;

The information available: the number of complaints (no complaints as well as many can be a sign of problem) the number of detained persons, capacity of the place of detention and level of overcrowding;

information received from other sources, such as other national or international visiting bodies.

Sample:

- Places deemed to be most representative of the situation in the country;
 - Places not visited frequently (often the most distant from urban centres);
 - Cross selection covering different categories of people or places of detention
-

2.3 Length of the visits

The visits should be as long as necessary to do a professional job. They should be long enough for the visiting team to be able to talk with the individuals in charge, their subordinates, and a representative

sample of the persons held there, and to examine the facilities and living conditions.

The length of the visit should also, however, reflect the fact that visits can disrupt or inhibit the work of the staff in charge of the persons deprived of their liberty. It is thus important to strike a balance between the need for efficient monitoring and the constraints inherent in the way such places function.

The length of the visit can be estimated on the basis of the following factors:

- the size of the visiting team;
- how much is already known about the places to be visited:
 - Has the mechanism already visited the place?
 - Has it received information from third parties which helps it to estimate the time needed for the visit?
- the size of the place of detention and the number of persons held there;
- the type of place of detention;
 - the security regimes applied (the higher the security, the longer it can take to move about within the detention facility);
 - Are there different categories of persons deprived of their liberty under different detention regimes held in the same place? This can mean that more time is needed to examine the different conditions of detention;
- the staffing or institutional conditions;
- the languages spoken by detainees and the possible need for interpretation;
- the work needed to compile the data, which must be done as quickly as possible at the end of the visit;

- the travelling time between different places of detention.
-

2.4 Frequency of the visits

Experience shows that visits will be much more effective in terms of the prevention of torture or ill-treatment, and promoting sustained improvement, if they take place regularly. How often a place of detention will need to be visited depends on several factors.

The **frequency of the visits** can be determined according to:

- the type of place of detention;
 - pre-trial detention facilities such as police stations should generally be visited more frequently than penal establishments because:
 - interrogations are held there;
 - detainees' contacts with the outside world are limited;
 - there is a rapid turnover of detainees;
 - the risks – known or presumed – to which persons deprived of their liberty are exposed, or any protection-related problems noted;
 - the balance to be struck, over time, between the needs of the visiting body and the needs of the officials in charge in order to carry out their work. Frequently repeated routine visits can, in the long run, be counter-productive if they disrupt the work of the staff without valid reason.
-

The frequency of visits also largely depends on the gravity of the protection problems encountered. In cases where the visiting

mechanism fears that reprisals might be taken against the detainees who talked to them, it is important to carry out a follow-up visit without delay and to meet the same detainees visited previously.

2.5 The visiting team

2.5.1 Composition

To monitor conditions of detention certain professional **skills** are needed in particular in the fields of law and public health. The visiting team should ideally contain at least one person with a legal background and one with a medical background, preferably a doctor. The presence in the team of a medical doctor is especially important when there are problems of torture and ill-treatment. It also facilitates contacts with the medical personnel of the place who can share experiences while respecting medical confidentiality.

Other professionals can also be very useful – for instance, educationalists, psychologists, engineers.

Apart from professional skills, personal skills are essential, in particular the capacity to interact with people in a sensitive manner that is respectful of their human dignity.

Experience has shown that it is a strong advantage to have a balance between **male and female members** in a visiting team. In most cultures, men and women have different opportunities to establish relationships based on trust with detainees and staff. Detainees and staff will prefer to talk to either a man or a woman, depending on the specific issue. In contexts dominated by a male culture, detainees may have less fear of losing face in front of a female visitor. A gender-balanced team will therefore increase the possibility of getting a full picture of the conditions of detention.

In places of detention where persons from different **ethnic or regional** backgrounds are held, it is a strong advantage for a visiting body to reflect those groups and regions in the composition of their team. Language skills are a further point to be taken into consideration.

2.5.2 Size

The **size of the visiting team** depends on a number of factors, for instance:

- the objectives of the visit;
- how much is already known about the place and its problems;
- the size of the establishment and the number of persons held there;
- any constraints laid down by the detaining authorities.

The ideal size for a visiting team can be estimated as being between 2 and 8 people.

2.5.3 Training

Monitoring places of detention is a difficult and sensitive task. It is therefore particularly important for the members of the visiting mechanism to receive adequate training, of both a theoretical and practical nature. Training should continue throughout the term of office.

Theoretical training should include at least the following:

- the basic principles of monitoring, in particular confidentiality and the necessity to always bear in mind the security of the detainees;
- the legal framework, in particular the relevant international standards, national laws and regulations;
- key issues and problems relating to the deprivation of liberty.

Practical training should include at least the following:

- the methodology of visits;

- how to conduct private interviews with persons deprived of their liberty;
 - the behaviour to adopt with the authorities, staff, and detainees;
 - the basic security rules to respect during the visit;
 - report writing;
 - mechanisms for cooperation and communication within your own mechanism.
-

3. PREPARING THE VISIT

3.1 Preparatory work

For a visit to take place in the best possible conditions it must be well prepared beforehand. The visiting mechanism should set aside the necessary time in order to:

Summarise the information available about the place to be visited:

- a summary of information obtained during earlier visits or from other sources (other visiting bodies, NGOs, media, released detainees, families of detainees, lawyers, charity association, volunteers working in places of detention, etc.);
- the authorities directly responsible and the higher authorities;
- the capacity of the place, the number and the status of the inmates;
- any known or alleged problems.

On the basis of this information, a list of issues can be drawn up.

Define the specific objectives of the visit:

- a general evaluation of the conditions of detention;
- a follow-up visit to check up on specific aspects of detention, individual cases or implementation of previous recommendations;
- other.

Organise the work of the visiting team:

- prepare a form, questionnaire or checklist¹⁴ on detention conditions, as a means of guaranteeing standardised collection of information;
- identify one person to head the team and be responsible for coordinating the visit;
- ensure that all team members have the same information on the place to be visited, the objectives, and the format of the visit;
- divide the different tasks among the team members according to their skills, the size and nature of the place to be visited and the intended length of the visit.

Plan any necessary prior contacts to be made with the place of detention:

- announcement of the visit; the visiting team should be able to carry out unannounced visits, but it can decide for practical reasons (e.g. distance, size of the place) to announce a particular visit;

14 See annex 1 for an example of such a checklist.

- present justification for and request authorisation for bringing any material (e.g. camera, recording device) which is usually prohibited.

Plan any contacts to be made outside the place of detention:

- political and administrative authorities;
 - judicial authorities;
 - State services working with the place of detention, for example, medical, social services, education;
 - any other players working with the place of detention;
 - others.
-

3.2 Setting the objectives for the visit

It is not reasonable or possible for visiting teams to examine all aspects of detention systematically during each visit (unless these are some years apart). An analysis should be made of the information collected in preparation for the visit, in particular the priorities as defined by detainees, ex-detainees and other credible sources, to help more closely define the objectives and priorities of the visit.

If several visits to a place are planned, the visiting programme may set different objectives for each visit: During first visits, for example, one could concentrate on the state of the material infrastructure: buildings, cells, common facilities. Once this has been established, it is suggested that the visitors pay closer attention to the following aspects:

- the complaints systems within the places of detention;
- the management of disciplinary punishments;
- contacts with the outside world;
- medical care;
- the relation between staff/management and detainees.

Chapter IV of this guide provides information on these different aspects of detention and guidance for visiting mechanisms on what to look for during the visit. A quick overview over relevant issues is given in the checklist in Annex 1.

4. THE VISIT ITSELF

4.1 Initial talk with the head of the place of detention

The first visit to a place of detention should begin with a talk between the visiting team and the person in charge, or the deputy. This talk, which is the first step in establishing a dialogue with the authorities, serves to:

-
- introduce the visiting mechanism and the members of the visiting team;
 - explain the meaning and objectives of the visits;
 - explain the working methods used, in particular the absolute need to talk in private with the persons deprived of their liberty and, if possible, the members of staff looking after them;
 - explain the use that will be made of the information collected;
 - reassure the person in charge of the place as to the behaviour of the members of the team during the visit (respect for rules and security regulations);
 - explain how the visit is to unfold and how long it will last;
 - request information about the place of detention, including whether there are any groups of prisoners with special needs (for example, deaf prisoners, prisoners with other disabilities) and whether there

have been any notable changes or events (particularly violent incidents, deaths or other emergencies) since the last visit;

- ask for the opinion of the person in charge regarding:
 - the conditions of detention and the persons in their charge,
 - any problematic aspects of these conditions and their causes,
 - his or her own proposals for improvements;
 - fix a meeting to talk about the results of the visit.
-

Once the visiting mechanism has carried out several visits to the same place without encountering any serious difficulties or noting any particular problems regarding the conditions of detention, the talk at the start of the visit can be limited to its formal or relational aspects.

4.2 Consultation of registers and other documents

In this section, registers are understood only as sources of information about the persons deprived of their liberty and their living conditions. Consulting the registers at the beginning of a visit can be useful, in particular if the visit is to take place over several days. The information obtained from the registers can then, if necessary, be verified during the visit.

Depending on the type of place of detention, there can be many different registers. Those most relevant here can be divided into three categories:

Registers relating to the persons deprived of their liberty:

- by category of detainee;

- entry and exit registers;
- registers of disciplinary measures;
- medical registers¹⁵;
- other.

Registers of material supplies for the persons deprived of their liberty:

- food, hygiene, clothes, bedding, etc;
- medicines and medical material;
- educational, sport, and leisure material;
- other.

Registers of events from the everyday life of the detention facility:

- use of force or firearms;
 - registers concerning the regime: meals, work, exercise, educational activities, etc.;
 - register of incidents.
-

These last three registers can be particularly important when reconstructing the circumstances of, and responsibility for abusive behaviour toward detainees. However, the authorities often refuse to let visitors consult precisely these registers.

Visitors should also ask to consult other documents which are important for a better understanding of the functioning of the place:

- internal rules,
- staff list,
- working schedule of the staff.

15 Due to the rule of medical confidentiality, checking personal medical files can only be done by a member of the visiting team who is a qualified medical practitioner.

4.3 Visiting the premises of detention facilities

During the first visit to a place of detention, it is particularly important to see all areas of the premises used by and for the detainees. A short general tour of the entire facility should be done with all the members of the team and with the person in charge of the place of detention, or an official able to give useful information about the layout of the premises and functioning of the services. After the general tour, or in subsequent visits, the team could divide into smaller groups, each with its own area of responsibility.

Visiting the premises makes it possible to:

- visualise the premises and their layout. The importance of this point must not be overlooked. The architecture of the place of detention and the physical security arrangements (fences, confining walls, etc.) have a very direct influence on the daily life of the detainees;
 - locate the detainees' living quarters (cells, dormitories, courtyards, refectories, study and leisure areas, sports rooms and fields, workshops, visiting rooms, etc.) as well as the various services and installations provided for them (kitchen, sick bay, sanitary installations, laundry, etc);
 - obtain a first impression of the atmosphere and mood in the place.
-

While all the premises should be seen, some should have absolute priority, as they most particularly serve as a measure of the level of respect accorded to the detainees. These are:

- the place where detainees are received and 'processed' on arrival;
- isolation cells and disciplinary cells;

- the sanitary installations;
- the cells and dormitories.

The visiting team can also ask the detainees what they consider to be the worst place, and visit it.

The visiting team should be aware that some cells or areas may be hidden from them. The team should cross-check their information during private talks. It is helpful to consult former detainees or previous visitors.

The facilities provided for staff should also be visited unless this is excluded from the objective of the visit.

4.4 Interviews with persons deprived of their liberty

4.4.1 General considerations

Talking with persons deprived of their liberty **forms the basis of the process of documenting the conditions of detention**. It is a very sensitive and delicate task.

At the start of each talk, whether as a group or in private, the members of the visiting team should try to gain the **confidence** of the detainees and introduce themselves and their visiting mechanism. They should explain clearly why they are there, what they can and cannot do and the confidential nature of the discussions.

A chart or a questionnaire for the talks in groups and for those with individuals is a very useful tool for assuring that all important elements are taken into consideration (see check-list in Annex 1). However, the visitors should also let enough space in the interview enabling the detainees to feel at ease and express their spontaneous thoughts. If used in a too static manner, a questionnaire risks to contribute to reproducing certain pattern of an interrogation. This should of course be avoided by any means.

It is important for visitors to express themselves in a clear, simple and understandable way. Comments or questions should not be for-

mulated in a manner that could limit or influence how the person responds to them. Visitors should use open-ended questions rather than leading questions.

Depending on the languages spoken by detainee, it might be necessary for the visiting team to be accompanied by an **interpreter**. The visiting team should beware of interpreters being drawn into the conversation and should avoid using local persons, co-detainees or families members rather than professional interpreters, unless absolutely necessary. The interpreter should be reminded of the duty to respect confidentiality. It will improve the work of the interpreter if a glossary of specific terms is made available in advance.

The **gender** composition of the visiting team is especially important for interviews in private. In cases of allegations of rape, sexual abuse and other violence, the victims, male or female, may wish to choose the sex of their interlocutor (see Chapter IV, Torture and ill-treatment).

In the vast majority of cases, the visitors will have to choose a limited number of persons with whom to talk. Those selected should be as representative as possible of the different categories of detainees at the site.

Visitors should take care to talk not just to those individuals who seek contact with them or to those proposed by staff.

Casual conversation with detainees and staff should be viewed as an essential part of building confidence and gathering information.

4.4.2 Group talk

Conducting group talks allows a visiting team to be in contact with more detainees, but tends to exclude the possibility of covering the most sensitive issues.

Group talks are useful for identifying common problems, spotting informal leaders, getting a sense of the mood or culture and determining whom to interview separately.

The length of the group talks should be fixed beforehand. It is a good idea to begin the discussion with an open question. The statements of those present can thus indicate what they see as the main problems (or those they dare to mention).

On subsequent visits talk should be more guided, with the aim of obtaining information about the main points you have identified as being of concern. Where contradictory or questionable information is obtained, it can be double-checked during private talks, by your own empirical observations, and by consulting other sources.

4.4.3 Talks in private

A talk in private is above all a meeting with a person who is living in an ab-normal situation (outside the norm of external society), that of deprivation of liberty. The person has a singular life story which cannot be reduced to the reasons why he or she is detained. This obvious fact is often overlooked in the generalising, and hence simplistic, attitudes both of officials, and sometimes external players.

The **choice of location** for the talk is crucial, as it will influence the attitude of the person deprived of liberty. Any location which would be likely to equate the visitor with the staff in the eyes of the detainee, (for instance the administrative offices), should be avoided. The team should not feel obliged to conduct the interview in a place prepared by the authorities. The living quarters of the detainee – cell, dormitory, visiting room, courtyard, library are all possible locations. Visitors should try to identify a place which appears to be most secure from eavesdropping. The opinion of the person with whom the talk is to be held should be taken into account.

In police stations the choice of location might be more limited.

The talk in private must be held out of hearing of the officials, but it is not always possible to hold it out of their sight. Visitors should use their good sense.

Security considerations

Restrictions proposed by staff for reasons of the personal security of visitors should be carefully considered, but it is ultimately the responsibility of the visiting team to decide whether they follow them or not. The mechanism should agree its conditions in advance.

Conducting the interview

One or two visitors can take part in the talk, one leading the discussion and the other taking notes. While this might seem overpowering to the person deprived of liberty, it has the advantage of enabling the person leading the talk to concentrate better; it should, however, be cleared with the detained person.

It is important to gain the confidence of the detainee. At the beginning of the interview, visitors should introduce themselves, explain clearly the reason for their presence, what they can and cannot do, and the confidential nature of the interview.

Visitors should be prepared to be patient. For any number of reasons – experience or emotional state, prolonged deprivation of liberty leading to loss of the notion of time, memory blackouts, obsessive thoughts, etc. – the way people deprived of their liberty express themselves can be rather confused.

The talks in private must be managed in such a way as to obtain the necessary information, respect the detainee's needs and make good use of the time available.

It is important to **strike a balance between:**

- the visitor's need to gather the information necessary to assess the conditions of detention and the detainees' need to express their preoccupations. Anything resembling an interrogation should be avoided at all costs;
- an attitude of empathy toward the person and the emotional distance needed for the visitor to carry

through the talk. The point of equilibrium will also depend on the emotional state of the person deprived of liberty;

- the distribution of time between the person's need to communicate and the visitor's need to obtain information, depending on the estimated length of time available as calculated beforehand.
-

Interviewing a person alleging torture is an extremely delicate process. Interviewing such a person in detention requires particular care. Excellent specialist literature on the subject exists, to which members of visiting mechanisms can refer, and which can be used for training:

- Giffard, Camille, *The Torture Reporting Handbook - How to document and respond to allegations of torture within the international system for the protection of human rights*, Human Rights Centre, University of Essex, United Kingdom, 2000, Part II – Documenting allegations, pp. 29-51;
- United Nations Office of the High Commissioner for Human Rights, Professional Training Series no. 8, *The Istanbul Protocol, Manual on the Effective investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York, Geneva, 2001, Chapter IV- General considerations for interviews.

See Annex 5 for how to obtain these publications and the languages in which they are available.

4.4.4 Talks with the staff in charge of persons deprived of liberty

The staff can usually be divided into two categories: those responsible purely for surveillance and delivering services to the detainees – food, medical or social care, education, work, etc. Talks with the latter

are held as part of the examination of the conditions of detention.

Talks with the surveillance personnel are often difficult to carry out for reasons stemming from the organisational structure and nature of their work.

The surveillance personnel are, however, an important element in the daily life of the persons deprived of their liberty, and it is thus important to organise talks with them in which the visiting team explains its mandate and the reasons for its work, answers their questions, and listens to their view-point. This will form a good basis for subsequent work by the mechanism.

Visitors can also organise talks in private with members of the staff, out of hearing and out of sight of other personnel, if they so request.

4.5 Final talk with the director

It is important to formally end the visit with a talk with the head of the institution. This final talk has to be prepared, and the whole visiting team has to meet in advance in order to share information and discuss what are the key points to convey.

It is important to establish a constructive dialogue with those in charge of the places visited, so that they are informed promptly of the result of the visit. The aim of the final talk is to transmit a summary of facts found and specific issues identified. Urgent cases, in particular regarding prevention of torture or other forms of ill-treatment, should be raised immediately. In cases where grave abuses have been noted, the visiting mechanism should address the authorities further up the hierarchy directly, so as not to incur the risk of reprisals against those who provided the information. This strategy should be used only in serious cases, to avoid unnecessarily damaging working relations with the person in charge.

When no specific problems have been encountered, the final talk with the director can be of a more formal or discursive nature.

5. FOLLOW-UP OF THE VISIT

The visit is not an end in itself: It is merely the beginning of a process aimed at improving the treatment and conditions of detention of persons deprived of their liberty. The phase which follows the visit is thus as important as the visit itself, if not more so. Visits should be followed by reports addressed to the authorities in charge, including recommendations for improving the situation. Implementation of these recommendations should also be closely monitored.

5.1 Internal follow-up

The visiting mechanism must be able to identify reference points or indicators which enable it to follow the evolution over time of the conditions of detention in the places that it visits regularly. This means that the information gathered by the visiting teams must be analysed, organised, and filed in such a way that it can be used as efficiently as possible when needed. Information which is neither analysed nor filed logically is lost information.

It is recommended that the visiting team draw up **internal notes** on the visit, on the basis of a standard format (see Annex 2). These notes constitute a written trace of the visit and contribute to the institutional memory of the visiting body. They are essential in preparing the next visit.

These internal notes could include:

- General information about the place and about the nature of the visit;
- Data concerning the establishment;
- Key information obtained during the visit: main problems identified, actions to undertake, points to verify at next visit.

The visiting mechanism might also check and complete the information obtained during visits by consulting:

- the higher authorities;
- State services other than those responsible for the place of detention (e.g., Ministry of Health);
- other actors such as lawyers or civil society organisations working in or with the place of detention;
- reports of other visiting mechanisms;
- the families of the persons deprived of their liberty and released detainees;
- transferred detainees visited in other places of detention.

5.2 Writing monitoring reports on conditions of detention

Reports are probably the most important of the tools that a visiting body has at its disposal for protecting detainees and improving their situation. The legal texts or agreements that provide the basis for visiting mechanisms therefore usually explicitly mention the right of the visiting body to make such reports and recommendations, and state the obligation of the detaining authority to consider them and enter into a dialogue.

There can be different types of report, with different objectives, targeting different interlocutors. The visiting body should determine its own strategy regarding reporting and follow-up. A visiting body can decide to report on each visit or to present a global report based on a series of visits. It can also decide to present only one global annual report.

5.2.1 Writing visit reports

The visiting mechanism should regularly inform the detaining authorities of the results of its assessment of the places of detention

visited. It is strongly recommended that information be contained in written reports. The oral transmission of information should be restricted to the periodic contacts which the mechanism will strive to establish and to maintain with the relevant authorities.

Visit reports that cover one visit to one place should present the principal facts and issues arising from the visit, as well as any important points arising from the final talk with the director. Such visit reports can be relatively brief and should be sent shortly after the visit. They should be addressed directly to the authorities in charge of the place visited, as they have the responsibility to find solutions and implement the recommendations. This reinforces the dialogue with the authorities by providing formal, written feed-back.

The visiting mechanism may take the point of view that not every individual visit need be the subject of an immediate written report to the authorities immediately. Reports will then be addressed to the authorities on a case by case basis, depending on the team's assessment of the gravity of the problems noted.

The visit report should contain certain general information:

- the composition of the visiting team and the date and time of the visit;
- the specific objectives of the visits carried out;
- how the information was gathered and checked.

Presentation of the conditions of detention:

The report should clearly present the principal concerns on the basis of the following issues listed in Chapter IV:

- Treatment
- Protection measures
- Material conditions

- Regime and activities
 - Medical services
 - Personnel
-

It is not necessary to go into great detail about those aspects of the conditions of detention which are adequate, although it is recommended that positive aspects be mentioned.

A priority ranking should be established for problematic areas:

- emphasis on the most serious problems,
- emphasis on the main problems which give rise to other problems;

When reporting on torture, ill-treatment or any situation the visitor has not witnessed, great caution should be adopted in expressing the information. The terminology adopted should clearly differentiate between what 'is' and what is 'alleged' or 'reported'. The objective is to ask the authorities to investigate and react.

The visiting body should also make absolutely certain that detainees' personal details are mentioned only with their express consent, and that the content of the body's reports does not jeopardise the individuals it has visited.

Recommendations

It is important for recommendations to be addressed to the right level of authority. In visit reports, recommendations should be addressed directly to the officials in charge of the place of detention, who have the authority to make changes and implement recommendations. If root causes lie outside the competence of the senior manager, then problems need to be addressed at a different level and in a different report.

The recommendations or corrective measures proposed should include a time factor: those which can be applied in the short term, the medium term, and the long term. These deadlines must be realistic and follow logically from the presentation of the problem.

5.2.2 Writing a global report

In addition to, or instead of visit reports, a visiting body can decide to produce analytical reports, an annual report or both.

Analytical report

The visiting mechanism can decide to draw up reports following a series of visits over a given period. Such a strategy enables the visiting mechanism to adopt a more comprehensive and analytical view of the issues that have arisen during the monitoring. A more thematic approach can also be chosen to focus on a limited selection of issues of particular concern.

Analysing several visits to several places assists in identifying a pattern of problems or violations. It can also highlight a whole spectrum of root causes of problems in places of detention. The recommendations can then address the different actors who need to intervene to address these causes, which may be external to the prison or Ministry (i.e., legislation, sentencing policy, provision of staff training).

Analytical reports can complement the visit reports on which they are based.

Annual report

The visiting mechanism can also decide to produce an annual report on its monitoring activities.

The content of the annual report can vary from one domestic body

to the other. Annual reports can be in the form of a compilation of visit reports and present in detail the facts found in the different places visited and the recommendations made. The reports can be more analytical and underline the main issues identified in the course of the year. Annual reports can also focus on one or a limited number of priority thematic issues, and propose relevant recommendations.

Under the OPCAT, national preventive mechanisms are expressly requested to present an annual report, and the State Party is required to publish and disseminate it. It is up to the national mechanism to decide whether the annual report should contain only general information on its monitoring activities or if visit reports and recommendations should also be included.

5.2.3 Dissemination of global reports

Global reports should not only be addressed to the authorities. It is important for both annual and analytical reports to be made available to the public, including other players who can use their influence to support and monitor the implementation of recommendations, such as parliamentarians and civil society organisations.

Depending on the monitoring body's communication strategy, the reports, or summaries thereof can also be passed to the media.

It should be noted that such reports can also be sent in future, confidentially or without any such limitation, to the Sub-Committee that will be established under the OPCAT. The reports will also be a useful source of information for other international bodies, in particular regional bodies such as the CPT, the Inter-American Commission on Human Rights and the Special Rapporteur on Prisons and Conditions of Detention in Africa, as well as the CAT when the State report is examined, the Special Rapporteur on Torture, etc. (See Chapter II, point 4: Coordination).

5.3 Follow-up on implementation of recommendations

Once the visit reports or the global report have been submitted to other actors, it is important to closely monitor their reaction.

The authorities have a duty to react to the report, so they should be given reasonable time to take a position in relation to any criticism or recommendations made. The authorities should enter into a dialogue with the visiting mechanism on the recommendations and their possible implementation.

The specific answers and general reaction of the authorities will help the domestic visiting bodies to adapt their visit programme. Visitors can check during subsequent visits whether the official replies correspond to the situation on the ground, and whether any measure or action has been taken.

In cases where the authorities display following receipt of the report unwillingness to consider the report and recommendations and to take any action, the visiting body should continue its monitoring work. It should consider other strategies for exerting pressure on the authorities, such as approaching parliamentarians, civil society, the media and international organisations.

5.4 Follow-up action outside the monitoring process

While visiting places of detention the visiting team confronts many different problems and needs. Visitors will receive many requests such as to provide legal or humanitarian aid, or establish contact with a family member. It is important that the visiting body discusses and adopts a clear policy on how to respond, in order not to raise false expectations. It is the responsibility of the detaining authority to ensure that the needs of the people in their care are met. The primary task of the visiting mechanism will usually be to examine the extent to which this is being done, to raise any problems and to make recommendations for improvement.

Nevertheless, some domestic visiting mechanisms, confronted with the specific needs and constraints in their countries, go beyond

the strict task of monitoring and reporting. Some follow up their observations by providing legal aid in individual cases, while others provide humanitarian aid and develop training activities for personnel as well as detainees.

In some countries visiting bodies' involvement in follow-up extends to taking part in revising national legislation. The OPCAT expressly states that national preventive mechanisms should have the mandate to "submit proposals and observations concerning existing or draft legislation" (art. 19 c).

Some domestic visiting mechanisms, in particular national human rights institutions, have "quasi-judicial" powers. They not only receive complaints but also investigate them and bring cases to court. Some visiting bodies can order the release of detainees and/or payment of compensation to those whose rights have been violated.

Further reading

United Nations, Office of the High Commissioner for Human Rights, *Professional Training Series n°7, Training Manual on Human Rights Monitoring*, New York, Geneva, 2001. (Chapter IX: Visits to persons in detention)

Giffard, Camille, *The Torture Reporting Handbook- How to document and respond to allegations of torture within the international system for the protection of human rights*, Human Rights Centre, University of Essex, United Kingdom, 2000.

United Nations Office of the High Commissioner for Human Rights, *Professional Training Series no. 8, Istanbul Protocol, Manual on the Effective investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York, Geneva, 2001.

APT/OSCE-ODIHR, *Monitoring places of detention: a practical guide for NGOs*, Geneva, 2002.

ISSUES TO EXAMINE

TREATMENT

- Torture and ill-treatment
- Isolation
- Means of restraint
- Use of force

PROTECTION MEASURES

- Inspection
- Complaints procedures
- Disciplinary procedures
- Registers of detention
- Separation of categories of detainees

MATERIAL CONDITIONS

- Food
- Lighting and ventilation
- Personal hygiene
- Sanitary facilities
- Clothing and bedding
- Overcrowding and accommodation

REGIMES AND ACTIVITIES

- Contacts with family and friends
- Contacts with the outside world
- Outdoor exercise
- Education
- Leisure activities
- Religion
- Work

MEDICAL SERVICES

- Access to medical care
- Specific health care for women and babies
- Specific health care for mentally ill detainees
- Transmissible diseases
- Medical staff

PRISON STAFF

- Generalities
- Training of personnel

CHAPTER IV

What aspects of detention to examine

1 TREATMENT

2 PROTECTION MEASURES

3 MATERIAL CONDITIONS

4 REGIME AND ACTIVITIES

5 MEDICAL SERVICES

6 PERSONNEL

7 DETENTION BY POLICE

List of abbreviations for standards:

ACHPR	African Charter on Human and Peoples' Rights – Adopted by the Organisation of African Unity on 27 June 1981
ACPR	African Charter on Prisoners' Rights – Draft adopted by the Fifth Conference of the Central, Eastern and Southern African Heads of Correctional Services (CESCA), meeting in Windhoek, Namibia, 4 to 7 September 2001 ¹⁶
BPP	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment - Adopted by the United Nations General Assembly resolution 43/173 of 9 December 1988
BPTD	Basic Principles for the Treatment of Detainees- Adopted by the United Nations General Assembly in its resolution 45/111 of 14 December 1990
CPT GR2	2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991; CPT/Inf (92)3, 13 April 1992
CPT GR3	3rd General Report on the CPT's activities covering the period 1 January to 31 December 1992; CPT/Inf (93) 12, 4 June 1993
CPT GR10	10th General Report on the CPT's activities covering the period 1 January to 31 December 1999, CPT/Inf (2000) 13, 18 August 2000
CPT GR11	11th General Report on the CPT's activities covering the period 1 January to 31 December 2000, CPT/Inf (2001)16, 3 September 2001
CPT GR12	12th General Report on CPT's activities covering the period 1 January to 31 December 2001, CPT/Inf (2002) 15, 3 September 2002
EPR	European Prison Rules; Recommendation R(87)3, adopted by the Council of Europe Committee of Ministers on 12 February 1987
GC	General Comments of the Human Rights Committee on the implementation of ICCPR's provisions
ICCPR	United Nations International Covenant on Civil and Political Rights, 1966
ICPRT	Inter-American Convention to Prevent and Punish Torture – Adopted by the Organization of American States on 28 February 1987.
IDRCPL	Draft Inter-American Declaration Governing the Rights and Care of Persons Deprived of Liberty ¹⁷
R(89)12	Recommendation of the Committee of Ministers to Member States on Education in Prison (adopted by the Council of Europe Committee of Ministers on 13 October 1989)
R(98) 7	Recommendation of the Committee of Ministers to Member States concerning the ethical and organisational aspects of health care in prison (adopted by the Committee of Ministers on 8 April 1998).
RIG	Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines), 2002.
RPJDL	United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990.
SMR	Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC in its resolutions 633C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

This chapter presents the different elements which can be examined during a visit. It aims at providing a practical tool that gives rapid access to the international standards on conditions of detention, and guidance as to what to look for on the ground. Areas that may pose particular difficulty for visiting mechanisms are highlighted, as well as some strategies for dealing with these. The 'points of reference' given at the end of each sub-section are not exhaustive, and it is envisaged that visiting mechanisms will develop their own checklists based on the particular needs of the system to which they are attached.

16 This Charter is a draft prepared by the CESCA.

17 This Declaration is for the time being a Draft prepared by Penal Reform International and sponsored by the Costa Rican government.

TREATMENT

Respect for the dignity of detainees as human beings should be the fundamental ethical value for those responsible for, and working in places of detention, and equally for visiting bodies charged with their oversight. The basic principle is clearly stated in Article 10 of the International Covenant on Civil and Political Rights (ICCPR): “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁸

Above all, torture and inhuman or degrading treatment are absolutely prohibited and cannot be justified under any conditions.

Certain measures can amount to torture or ill-treatment if put to improper use. This relates in particular to solitary confinement, other means of restraint and use of force. This is why recourse to such measures must be accompanied by a series of guarantees and why visiting bodies should pay particular attention to the way in which such measures are administered.

Treatment

- Torture and ill-treatment
 - Isolation
 - Means of restraint
 - Use of force
-

18 See also, Principle 1 of the Basic Principles on Detention and Principle 1 of the Body of Principles.

TORTURE AND ILL-TREATMENT

Standards

“No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.” *BPP, Principle 6*

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.” *ICCPR, Art. 7*

“No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person”. *Article 5, American Convention on Human Rights, 1978*

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” *Article 3 of the European Convention on Human Rights, 1950*

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” *Art. 5, ACHPR*

“For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person personal information or a confession, punishing him for an act he or a third person has committed or is suspected to

have committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of with the consent or acquiescence of a public official or other person acting on an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” *Art. 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), 1984*

“For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.” *Art. 2, ICPRT.*

“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. (...)” *Art. 16 UNCAT*

“Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.” *SMR, Rule 31*

Juveniles

“State parties shall ensure that

a) No child be subjected to torture or other cruel, inhuman or degrading treatment or punishment. (...)” *UN Convention on the Rights of the Child Art. 37*

Comments

Prisoners are most vulnerable to torture during the earliest stages of their detention, particularly during interrogation and investigation. Even if the mandate of a particular visiting body does not include police or other pretrial custody, they should ensure that they see and speak to prisoners who have recently arrived from such custody and monitor whether they have had an opportunity to have their concerns and physical state documented and made the subject of official complaints, where relevant.

Torture is one of the most difficult areas for visitors to handle, requiring careful protocols, preparation and training. It is an extremely sensitive task to interview people who have been tortured.

Torture can be difficult to prove, particularly when time has elapsed. Visitors should ensure that they are well briefed on local practices, including ways employed to cover up violations, and the most commonly detected methods. They should also be briefed on administrative measures in place to prevent torture (such as logs).

Visitors should note that the following have been considered as amounting to torture or cruel, inhuman or degrading treatment by the jurisprudence of international bodies:

- Conditions of detention, alone or in combination with other elements
- Solitary confinement (See the section in this Chapter: ISOLATION)
- Denial of appropriate medical treatment
- Sensory deprivation

Absolute prohibition of torture

Torture is absolutely prohibited under international law and cannot be justified under any circumstances. Protection from torture is a non-derogable human right, allowing no state derogations on any ground, be this public emergency, state security or any other. Torture and ill-treatment are also regarded as prohibited under customary international law.

Forms of torture and ill-treatment

The CAT definition of torture contains three essential elements which constitute torture

- The infliction of severe mental or physical pain or suffering
 - By or with the consent or acquiescence of the State authorities
 - For a specific purpose, such as gaining information, punishment or intimidation
-

Torture can be both mental or physical and can take very different forms, including: electric shocks, beatings on the sole of the foot, suspension in painful poses, beating, rape, suffocation, burning with cigarettes deprivation of food, sleep, and communication, intimidation, mock execution....

Sexual abuse is a method of both physical and psychological incapacitation.

Visiting teams should be aware of the fact that practices exist which may not fall under a classic definition of torture, that are difficult to detect, and which can, in the long run, destroy the psychological balance of those deprived of their liberty. These are all the more harmful as detained victims of these practices may be so accustomed to this treatment that they are not in a position to identify and report the practices in an explicit manner. The facts may be conveyed

through a general statement. The following are examples of such practices:

- systematically ignoring a request until it is repeated several times;
- speaking to persons deprived of their liberty as if they were small children;
- never looking detainees directly in the eyes;
- entering detainees' cells suddenly and without reason;
- creating a climate of suspicion among the detainees;
- authorising departures from the regulations one day and punishing them the next, etc.

Inter-prisoner violence

Visitors should remember that the staff duty of care includes the responsibility to protect detainees from other prisoners. Acts of violence committed by fellow detainees should not be ignored – for example: hitting and injuring, rape, and other sadistic behaviour. This type of violence is often not reported by the victims for fear of reprisals. It may be tolerated by the staff, who may consider that it is “the detainees’ own business” and look the other way rather than make enemies among precisely those detainees who are most capable of causing trouble.

Visitors need to create a climate and circumstances in which weaker prisoners feel they can approach them with their concerns.

Visitors should be aware of the possibilities available to staff for limiting violence between detainees and monitor the extent to which such possibilities are being utilised:

- separation of different categories of detainees;
- careful choice of detainees who share living quarters;
- an easily accessible and confidential complaints system;
- sufficient numbers of trained staff;

- refraining from using prisoners in disciplinary or control roles;
- explicit and well publicised 'anti-bullying' policies.

Dealing with allegations of torture

During private interviews, members of visiting bodies may receive allegations of torture. These may refer to treatment experiences prior to arrival at the current place of detention. Understandably, while still in the place where torture is being or has been inflicted, detainees will be less willing to make allegations, for fear of reprisals. Allegations may concern individual incidents, such as abuse by a guard, or a specific event such as a riot or disciplinary punishment. The visitor should not forget that general conditions in the institution can also amount to torture.

For a person who has been subjected to torture or ill-treatment it is often difficult to talk about this extremely humiliating experience. The collecting of information about ill treatment is therefore an especially sensitive task for visitors. Visitors should receive special training in handling allegations of torture, to develop a fine sense of how far they can go with their questions or indeed whether instead specialist intervention is necessary. It is particularly difficult to strike a balance between obtaining the information that seeking redress requires, and avoiding the possibility of retraumatisation.

For the protection of the detainee, it is crucial that you ask if and how you can use the allegation (whether you can mention personal data, use the information only in a general way or not use it at all).

It is important for medical personnel to be able to document the allegations as soon as possible through a medical examination that addresses both physical and psychological evidences.

For detailed information about interviewing torture victims as well as gathering medical evidence, see:

- Camille Giffard, *The Torture Reporting Handbook - How to document and respond to allegations of torture within the international*

system for the protection of human rights, Human Rights Centre, University of Essex, United Kingdom, 2000. Part II – Documenting allegations, pp. 29 to 51;

- United Nations Office of the High Commissioner for Human Rights, Professional Training Series no. 8; *Istanbul Protocol, Manual on the Effective investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York, Geneva, 2001. Chapter IV- General considerations for interviews

It is not the role of the visitor to decide whether the treatment alleged constitutes torture. Allegations of torture or ill-treatment should be transmitted, barring any serious doubts as to their veracity, to the authorities responsible for investigation (administrative and penal), with the above-mentioned precautions regarding representations made in the name of individuals, and following a procedure which does not endanger the person concerned by the allegation. The burden of proof, that is, the responsibility for establishing the truth of the allegation by means of an appropriate investigation, lies with the authorities in charge, not the alleged victim.

Information that visitors may gather in cases of allegations of ill-treatment:

- full identity of the person;
- date when and place where the allegation was noted;
- detaining authorities;
- date and place of ill-treatment;
- authorities responsible for the ill-treatment;
- circumstances of the ill-treatment;
- witnesses to the acts;

- detailed description of the ill-treatment (what, how, how long, how often, by whom), the effect it had on the detainee immediately and later, any visible marks;
- medical certificate and other evidence such as photographs.

If the visiting team includes medical personnel they may document:

- Physical evidence;
- Psychological evidence;
- Need for medical treatment.

Follow-up action taken or ensuing:

- Who has already been informed of this allegation, and with what results?
 - Is there a possibility of lodging an administrative or penal complaint?
 - Has the person authorised transmission of his/her allegation?
 - Has there been any official response to the incident (including no response or a response equivalent to no response)
 - Where a complaint was lodged, what were the consequences (for the author; for the victim)?
 - Personal observations of the visitors.
-

ISOLATION

Standards

“Efforts addressed for the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.” *Principle 7, BPTP*

“Prolonged solitary confinement of the detained or imprisoned may amount to prohibited acts of torture”, *GC n° 20/44 on Article 7 ICCPR*

“The CPT pays particular attention to prisoners held, for whatever reason (for disciplinary purposes; as a result of their ‘dangerousness’ or their ‘troublesome’ behaviour; in the interests of a criminal investigation; at their own request), under conditions akin to solitary confinement.

The principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary confinement-type regime, which is a step that can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.

In the event of such a regime being imposed or applied on request, an essential safeguard is that whenever the prisoner concerned, or a prison officer on the prisoner’s behalf, requests a medical doctor, such a doctor should be called without delay with a view to carrying out a medical examination of the prisoner. The results of this examination, including an account of the prisoner’s physical and mental condition as well as, if need be, the foreseeable consequences of continued isolation, should be set out in a written statement to be forwarded to the competent authorities.” *CPT, GR2, § 56*

See also *IDRC PDL, art. 48*.

Comments

The visiting team should pay particular attention to detainees held, for whatever reason, in a regime of isolation (no contact with other detainees, limited or no contact with the outside world).

Placing a human being in solitary confinement is a serious sanction which, if applied for an extended period of time and/or if repeated, can constitute inhuman or degrading treatment or even an act of torture. It can also make a prisoner more vulnerable to such treatment. Isolation must therefore be exceptional and limited in duration; it must be as short as possible. Solitary confinement must be accompanied by a series of guarantees, such as systems for review and appeal. Visiting teams may be involved in oversight of the extent to which these systems provide adequate protection for the prisoner.

Isolation may sometimes need to be used as a protective measure. In that case, the prisoner's regime should be less restrictive than that which applies to a prisoner isolated as a disciplinary sanction. Any system for review should also apply to such prisoners.

Juveniles should never be held under solitary confinement.

Solitary confinement should not:

- Be indeterminate
- Be prolonged
- Be repeated

Reference points

- What is the maximum length permitted for solitary confinement?
- On what date was isolation imposed?

- Who decides that solitary confinement is to be imposed?
 - For what reasons can solitary confinement be imposed?
 - What system of review and appeal is in place?
 - Does the person in isolation still have at least one hour of outdoor exercise each day?
 - What regime is available to prisoners in isolation?
 - Is a medical examination carried out before solitary confinement, and does that examination focus on the well-being of the prisoner?
 - How frequently is such examination carried out during confinement?
 - Does the detainee in isolation have access to a doctor on request?
 - Who has access to the isolated detainee and how is this recorded?
 - Is there any evidence that isolation is being disproportionately applied to any minority groups?
-

MEANS OF RESTRAINT

Standards

“Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.”
SMR, Rule 33

“The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer than is strictly necessary.” *SMR Rule 34*

“The patterns and manner of use of the instruments of restraint authorised in the preceding paragraph shall be decided by law or regulation. Such instruments must not be applied for any longer time than is strictly necessary.” *EPR, Rule 40*

“In those rare cases when resort to instruments of physical restraint is required, the prisoner concerned should be kept under constant and adequate supervision. Further, instruments of restraint should be removed at the earliest possible opportunity; they should never be applied, or their application prolonged, as a punishment. Finally, a

record should be kept of every instance of the use of force against prisoners.” *CPT, GR 2, §53*

See also *ACPR, A-5; IDRCPLD, art. 46 and EPR, Rule 39.*

Juveniles

“Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.” *RPJDL, 63*

“Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.” *RPJDL, 64*

Comments

Some means of restraint are absolutely forbidden.

All permitted means of constraint should be resorted to on an exceptional basis. They should never be used as a disciplinary sanction. Furthermore, they must be accompanied by a series of guarantees:

- Prisoners should be restrained for the minimum time necessary;
- The use of means of constraint (or force) must be recorded in a register;
- The director must be informed immediately.

The role of the medical doctor in the use of coercive means is particularly sensitive. The SMR and other rules mention that the doctor can give his advice on certain measures on medical grounds. As made explicit by the comments of the CPT, in case of use of restraints the detainee has the right to be examined immediately by a doctor. This should under no circumstances be interpreted as asking the medical doctor to attest 'fitness for punishment'. Such a role for a medical doctor is in fact explicitly prohibited by international standards and is contradictory to a doctor's professional ethics (see also the section: Medical Services).

It will normally be incompatible with the role of the visiting team in ensuring respect for human dignity in places of detention, that they should conduct interviews while prisoners are in restraint.

Reference points

- In what cases is the use of means of constraint authorised?
 - How frequently is it used?
 - Are all the cases recorded in a register?
 - Do the persons so treated have access to a doctor?
 - For how long are the means of constraint imposed?
 - Is there any evidence that means of constraint are being disproportionately used in the case of minority groups?
-

USE OF FORCE

Standards

“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 or 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 in 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. (...)”. *SMR, Rule 54 (see also EPR Rule 63)*

“Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.” *Code of conduct for law enforcement officials, Article 3*

“Law enforcement officials shall not use firearms against persons except in self defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of force may only be made when strictly unavoidable in order to protect life”. *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9*

“Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institutions or when personal safety is threatened.” *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 15*

“Law enforcement officials, in relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9”, *Use of Force and Firearms by Law Enforcement Officials, Principle 16*

“Prison staff will on occasion have to use force to control violent prisoners and, exceptionally, may even need to resort to instruments of physical restraint. These are clearly high risk situations insofar as the possible ill-treatment of prisoners is concerned, and as such call for specific safeguards.

A prisoner against whom any means of force have been used should have the right to be immediately examined and, if necessary, treated by a medical doctor. This examination should be conducted out of the hearing and preferably out of the sight of non-medical staff, and the results of the examination (including any relevant statements by the prisoner and the doctor’s conclusions) should be formally recorded and made available to the prisoner. (...) Finally, a record should be kept of every instance of the use of force against prisoners.” *CPT, GR 2, §53*

Juveniles

“The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.” *RPJDL, 65*

Comments

The visiting team should examine whether use of force is the exceptional response or the norm.

They should consider whether the principles of necessity and proportionality are observed.

They should look at whether instructions and restrictions on use of force are included in prison regulations and accessible to detainees and what training staff receive in control and restraint techniques that would permit them to maintain control without injuring themselves or the detainees.

As a general principle, staff in direct contact with detainees should not carry firearms. If they carry arms such as truncheons, it should not be done in an ostentatious or provocative manner.

Any incidents involving the use of force or firearms should be reported in writing to the director, noted down in the official register and investigated.

Reference points

- Do the staff carry any weapons?
 - Which staff are allowed to carry firearms, according to local regulations?
 - How frequent are incidents involving use of force (according to detainees, the director, the registers, other sources?)
 - Is there any evidence that force is used disproportionately in relation to any minority groups?
-

Further reading

Amnesty International, *Combating torture: a manual for action*, London, 2003. (Chapter 5.5: Conditions of detention; Discipline and security pp. 127-132)

Camille Giffard, *The Torture Reporting Handbook, How to document and respond to allegations of torture within the international system for the protection of human rights*, Human Rights Centre, University of Essex, United Kingdom, 2000.

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Andrew Coyle, *Human Rights Approach to Prison Management. Handbook for prison staff*. International Centre for Prison Studies, 2003, pp. 69-81.

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PROTECTION MEASURES

The aim of this section is to examine the different kinds of measures safeguarding the rights and dignity of the detainees while enabling the penal systems to function smoothly. Thus, while it is essential that order be maintained within the prison, discipline can be exercised only according to clearly and strictly defined rules and procedures. Disciplinary sanctions must be accompanied by guarantees, and it must be possible for detainees to address complaints effectively, easily, and without risk of reprisals, to entities both within the establishment and outside it. Independent inspection mechanisms also play a role in monitoring respect for the rights of persons deprived of their liberty.

Lastly, other measures help to guarantee that the establishment is run in a non-arbitrary fashion and/or to monitor the way it is run, namely: separating the different categories of detainee, keeping registers, and informing people about how the establishment functions.

Protection measures:

- Registers;
 - Informing the persons deprived of liberty;
 - Inspection;
 - Disciplinary procedures;
 - Complaints procedures;
 - Separation of categories of detainees
-

DETENTION REGISTERS

Standards

- 2
- “1. There shall be duly recorded:
- (a) The reasons for the arrest;
 - (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
 - (c) The identity of the law enforcement officials concerned;
 - (d) Precise information concerning the place of custody.
2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.” *BPP, Principle 12*

- “1. In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:
- (a) Information concerning his identity;
 - (b) The reasons for his commitment and the authority therefore;
 - (c) The day and hour of his admission and release.
2. No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.” *SMR, Rule 7*

- “1. No person shall be received in an institution without a valid commitment order.
2. The essential details of the commitment and reception shall immediately be recorded.” *EPR, Rule 7*

“To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.” *GC 20, para 11.*

States should

“Ensure that comprehensive written records of those deprived of their liberty are kept at each place of detention, detailing, inter alia, the date, time, place and reason for the detention.” *RIG, provision 30*

See also *IDRCPLD, art. 18.*

Comments

The official registration of is an essential protection measure. It is also an important element in guaranteeing transparency of the authorities and protection of those detained.

Registers of particular interest to visiting teams will include those that record the movement of prisoners into and out of the places of detention; use of force; and disciplinary measures.

Records must be kept of:

- the identity of the person detained;
- the legal reasons for deprivation of liberty;
- the time of arrest;
- the time when the arrested person arrived at the place of detention;
- the time when taken out (for example in the framework of investigation or court hearing) and returned to the place of detention;
- the prisoner’s physical state on departure and arrival;

- the time when he/she first appeared before a judicial or other authority;
- the identity of those responsible for application of the relevant laws;
- precise information about the place where the person is detained (quick location of all persons deprived of their liberty should be possible).

There should also be a register in which any incidents are systematically recorded (use of force, disciplinary measures,...).

In some contexts one of the explicit objectives of a visits programme is the protection from disappearance. In such cases the follow-up on the information from the registers is crucial. The follow-up to a visit will therefore include verifying information on transfers to other places of detention or releases. This verification can take place at the occasion of a follow-up visits to other places of detention or through contact with families of detainees and released detainees.

Some reference points

- Are entry and exit registers rigorously kept?
- Are all important incidents recorded in a register?
- How is the information in registers used?

Is there a register of dates when detainees are legally entitled to be considered for release?

INFORMING THE DETAINEES

Standards

“Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.” *BPP; Principle 13*

“1. Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

2. If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.” *SRM, Rule 35*; (similar wording in *EPR, Rule 41*)

“States should ensure that all detained person are informed immediately of the reasons for their detention” *RIG, provision 25*

See also *ACPR, A-9 and IDRCPLD, art. 53*.

Comments

The visiting team should examine the extent to which detainees are informed of their rights and obligations; the appropriateness of the method of conveying this information; the extent to which prisoners understand and have subsequent access to the information.

Detainees may be confused and vulnerable when they first arrive

in the place of detention. The manner of conveying information should take this into account.

Visiting mechanisms should check whether detainees' families have access to information on the functioning of the establishment, in particular as regards visits, correspondence, property and telephone contact.

2

Reference points

- What information do people deprived of their liberty receive on entering the place of detention?
 - In what form?
 - Is the language actually understood (and in the case of foreign nationals, is any special provision for ensuring that they are informed?) and cases of illiteracy taken into consideration?
 - Are the internal regulations on display and easy to consult at all times?
 - Does their content correspond to the spirit of the standards for treatment of persons deprived of their liberty?
 - Are they clearly worded?
-

INSPECTION

Standards

“1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.” *BPP, Principle 29*

“There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.” *SMR, Rule 55*

“Effective grievance and inspection procedures are fundamental safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them both within and outside the context of the prison system, including the possibility to have confidential access to an appropriate authority. The CPT attaches particular importance to regular visits to each prison establishment by an independent body (e.g. a Board of visitors or supervisory judge) possessing powers to hear (and if necessary take action upon) complaints from prisoners and to inspect the establishment’s premises. Such bodies can inter alia play an important role in bridging differences that arise between prison management and a given prisoner or

prisoners in general.” *CPT, GR 2, §54*

See also *ACPR, A-16 and IDRCPLD, art. 9 and art. 10 para. 1.*

2

Comments

As seen in Chapter I, a variety of complementary internal and external inspection systems is necessary to safeguard the rights of those deprived of their liberty. You, as a visiting mechanism, constitute one of those systems.

Detainees should be able to communicate freely and confidentially with the inspection mechanisms.

Visiting mechanisms should monitor the extent to which places of detention react to the observations and recommendations of such bodies.

Reference points

- Is there an internal inspection mechanism?
 - What is its composition?
 - How frequent are the inspections?
 - Do persons deprived of their liberty have confidential access to this body?
 - Can it receive and examine complaints?
 - Who has access to the reports? Are the reports made public?
 - What are the results/outcomes of the inspections?
-

DISCIPLINARY PROCEDURES

Standards

“1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.” *BPP, Principle 30*

“Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.” *SMR, Rule 27*

“The following shall always be determined by the law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of punishment which may be inflicted;
- (c) The authority competent to impose such punishment.” *SMR, Rule 29*

“Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.” *SMR, Rule 31* (see also *Rule 28, 30.*)

“It is also in the interests of both prisoners and prison staff that clear disciplinary procedures be both formally established and applied in practice; any grey zones in this area involve the risk of seeing

unofficial (and uncontrolled) systems developing. Disciplinary procedures should provide prisoners with a right to be heard on the subject of the offences it is alleged they have committed, and to appeal to a higher authority against any sanctions imposed.

Other procedures often exist, alongside the formal disciplinary procedure, under which a prisoner may be involuntarily separated from other inmates for discipline-related/security reasons (e.g. in the interests of 'good order' within an establishment). These procedures should also be accompanied by effective safeguards. The prisoner should be informed of the reasons for the measure taken against him, unless security requirements dictate otherwise, be given an opportunity to present his views on the matter, and be able to contest the measure before an appropriate authority." *CPT, GR 2, §55*

See also *ACPR A-3, A-6, A-12, and IDRCPL art. 47 para. 1 and art. 49.*

Comments

Visiting mechanisms should examine whether the system of punishment is formalised in a clear set of rules conveyed to and understood by staff and prisoners; and whether the list of all acts constituting breaches of discipline is published. Mechanisms should consider whether the rules are explicit not only on what constitutes an offence but also the ensuing punishment; the hierarchical level which may impose the disciplinary sanctions; and the procedure by which the sanctioned person can make his/her viewpoint heard, and appeal.

The mechanism will be interested in the manner in which the rules are conveyed and where they are displayed.

The mechanism will also be concerned by the nature of the disciplinary rules (are they founded on the principle of proportionality between the need for order and smooth organisation and the need to respect the dignity of individuals).

The nature of the proceedings will also be a relevant subject for inquiry. Proceedings should, as much as possible, comply with due process guarantees, for example regarding representation.

Visiting mechanisms will need to bear in mind that disciplinary sanctions become ill-treatment if they are disproportionate to the offence committed, if they are arbitrary, or if they are an unjustifiable source of frustration or suffering.

Mechanisms should look out for any tendency to devolve discipline to an informal hierarchy of detainees. This is prohibited.

Reference points

- What behaviour and acts are subject to sanction?
 - Who determines the sanctions and on what basis (written/oral report)?
 - Does the person have the possibility to defend him – or herself?
 - Is the person informed of the charges they face?
 - What are the nature and length of the sanctions imposed?
 - How does the appeal mechanism work?
 - Have any appeals resulted in a favourable outcome for the detained person?
 - How many were punished over a given period as compared with the total number of persons deprived of their freedom?
 - Is there any indication that punishment, or particular punishments, are disproportionately applied to minority groups.
 - Is there any indication that prisoners are involved in application of disciplinary measures?
-

COMPLAINTS PROCEDURES

Standards

2 “1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.” *BPP, Principle 33*

“1. Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

2. It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

3. Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

4. Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.” *SMR, Rule 36*

See also *ACPR, A-7-a), b) and c), IDRCPLD, art. 50 para 1 and art. 54.*

Comments

The visiting mechanism should examine whether prisoners have recognised means to discuss or contest aspects of their life in detention. The form and content of complaints procedures, or their absence, can be an important indicator of the level of respect accorded to the detainees.

How many levels of complaint are available? The first level may be addressed directly to the director of the establishment. Does the detainee have the possibility of uncensored and confidential complaint to a higher instance?

The mechanism should examine whether prisoners have uncensored access to an outside authority, independent of the prison system.

The visiting mechanism should monitor the system of complaint.

- Does the procedure meet standards of fairness and justice?
- How accessible is it to prisoners?
- Is confidentiality respected?
- Is the procedure transparent?

- Do those handling the complaint behave in an objective, non-partisan manner?
 - Is the system adapted to the needs of the prisoner and situation? (flexibility)
 - Does the complainant receive a timely response that addresses the substance of the complaint? (efficiency)
 - Are statistics on responses to complaints kept, analysed and acted upon?
-

Mechanisms for complaint should be examined in conjunction with the point on inspections, as the inspection bodies should have the possibility of receiving and examining complaints (see the section: Inspection).

Reference points

- What avenues of complaint do persons deprived of their liberty have?
- What is the nature of the appeal – administrative/ judicial?
- What is the appeal procedure – to whom and how?
- Is the procedure easily accessible to any person deprived of his or her liberty (including foreign nationals and illiterate or semi-literate people)?
- Are there possibilities for an outsider to complaint on behalf of a prisoner to the administration of the place?
- Are there possibilities for an outsider to complaint on behalf of a prisoner to the administration responsible for supervision?
- What is the time-frame for handling complaints?

- How many complaints have been lodged over the last six months (compared with the average number of persons held in the place)?
 - What is the nature of the current pattern of complaints?
 - What is the most usual outcome or result of appeal?
 - How many complaints have been decided in favour of the complainant?
 - Are there any allegations of retaliation for pursuing a complaint?
-

SEPARATION OF CATEGORIES OF DETAINEES

Standards

2 “2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.” *ICCPR, Art. 10.2*

“Article 10, paragraph 2 (a), provides for the segregation, save in exceptional circumstances, of accused persons from convicted ones. Such segregation is required in order to emphasize their status as unconvicted persons who at the same time enjoy the right to be presumed innocent as stated in article 14, paragraph 2.” *GC 21, para. 9.*

“The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

(b) Untried prisoners shall be kept separate from convicted prisoners;

(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

(d) Young prisoners shall be kept separate from adults.” *SMR, Rule 8.*

“1. In allocating prisoners to different institutions or regimes, due account shall be taken of their judicial and legal situation (untried or convicted prisoner, first offender or habitual offender, short sentence or long sentence), of the special requirements of their treatment, of their medical needs, their sex and age.

2. Males and females shall in principle be detained separately, although they may participate together in organised activities as part of an established treatment programme.

3. In principle, untried prisoners shall be detained separately from convicted prisoners unless they consent to being accommodated or involved together in organised activities beneficial to them.

4. Young prisoners shall be detained under conditions which as far as possible protect them from harmful influences and which take account of the needs peculiar to their age.” *EPR, Rule 11*

“As a matter of principle, women deprived of their liberty should be held in accommodation which is physically separate from that occupied by any men being held in the same establishment. That said, some States have begun to make arrangements for couples (both of whom are deprived of their liberty) to be accommodated together, and/or for some degree of mixed gender association in prisons. The CPT welcomes such progressive arrangements, provided that the prisoners involved agree to participate, and are carefully selected and adequately supervised.” *CPT, GR10, §24*

See also: *SMR Rule 85; EPR Rules 12 and 13 and ACPR, B-1-b) and IDRC PDL, art. 16.*

Juveniles

“Under article 10, paragraph 3, juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status in so far as conditions of detention are concerned”. *GC 20 para 13.*

“In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.” *RPJDL, Rule 29.*

Comments

The principle governing separation of detainees is protection, as well as recognition of the specific needs or status of different categories. Detainees should not be separated for reasons that are not governed by this principle.

Detainees are normally separated according to:

- sex and age: men from women and minors from adults;
- judicial or legal situation: charged or sentenced.

The visiting mechanism should examine detention conditions from the point of view of protection and special need. Separation should be based on an objective assessment of the risk for the detainee. Detainees should have the opportunity to request separation where there are genuine protection issues. Some detainees may need to be separated because of specific threats to their safety from other detainees, for example for reasons of ethnic origin, religious belief, sexual orientation. Mechanisms should beware of separation having a disadvantageous impact on different categories of detainees. For example, because women and juveniles form a minority in the overall prison population, providing them with separate facilities often results in deprivation of contact with family and friends. Prisoners awaiting trial are often, despite their legal status of presumed innocence, kept in poorer conditions and with less access to the outer world than those who have been convicted.

There is no medical justification for segregating detainees only on the grounds that they are HIV-positive.

Visiting mechanisms should consider whether the special needs of disabled and aged detainees are being met by keeping them in the same place of detention as the able-bodied majority of the prison population.

Mechanisms should not forget the protection of detainees during transport.

Minors who are deprived of their liberty must be held in structures and in conditions that are adapted specifically to their needs.

Reference points

- Are minors effectively separated from adult prisoners at all times of the day?

In places of detention where different categories of persons are detained:

- Are women effectively separated from male prisoners 24 hours a day?
- Are they under the responsibility of mainly female staff?
- Are groups of detainees who could be qualified as vulnerable given separate accommodation where there are genuine grounds to fear for their security?

Where there are communal detention premises:

- Who assigns the accommodation and on what basis?
- Can detainees ask to change their place of accommodation?
- If so, on what basis?
- How do staff prevent and deal with the risks of abuse,

in particular sexual abuse, committed against fellow detainees of the same sex?

- Is there any evidence that minority groups are separated for reasons other than genuine security grounds?
-

Further readings

PRI, *Making standards work*, London 2001. (Section II Due process and complaints, pp. 29-54; Section VIII, Inspections, pp. 167-174)

UN HCHR, *Human Rights and Prisons*, Geneva 2003 (Section 5 Making prisons safe places, pp. 72-75)

Andrew Coyle, *A Human Rights Approach to Prison Management*, 2003. (Chapter 6: Disciplinary procedures and punishments, pp.75-82; Chapter 9 Requests and complaints pp.105-110, Chapter 10: Inspection procedures, pp.111-116)

AI, *Combating torture*, London 2003. (Chapter 5 Conditions of detention, pp. 133; 139-143)

MATERIAL CONDITIONS

Visiting mechanisms are likely to devote a large part of their time to examination the material conditions in which detainees are held.

By depriving a person of his or her liberty the authorities assume responsibility for providing for that person's vital needs. The deprivation of liberty in itself bears a punitive character. The state has no authority to aggravate this by poor conditions of detention that do not meet the standards the state has committed itself to upholding.

Decent living conditions in places of detention are essential for the preservation of the detained person's human dignity. Living areas, food, and hygiene are all factors which contribute to the detainee's sense of dignity and well-being.

Visitors should examine the overall structural conditions of the place of detention; power supply, water supply, waste management and cleaning are all important issues for human dignity.

Visitors should not forget that the detainees' living conditions are also the staff's working conditions.

Among detention conditions, the problem of overcrowding is one of the most important, above all because it has a negative influence on all other aspects of detention and on the general climate in the establishment. When it reaches certain levels, or when it is combined with other negative factors, overcrowding can even constitute inhuman or degrading treatment.

Material conditions

- Food
 - Lighting and ventilation
 - Personal hygiene
 - Sanitary facilities
 - Clothing and bedding
 - Overcrowding and accommodation
-

FOOD

Standards

“1. Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

2. Drinking water shall be available to every prisoner whenever he needs it.” *SMR, Rule 20*

“1. The medical officer shall regularly inspect and advise the director upon:

(a) the quantity, quality, preparation and service of food” *SMR, Rule 26*

“1. In accordance with the standards laid down by the health authorities, the administration shall provide the prisoners at the normal times with food which is suitably prepared and presented, and which satisfies in quality and quantity the standards of dietetics and modern hygiene and takes into account their age, health, the nature of their work, and so far as possible, religious or cultural requirements.

2. Drinking water shall be available to every prisoner.” *EPR, Rule 25*

See also *ACPR, A-11 and IDRCDDL, art. 32.*

Juveniles

“The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose”. *RPJDL, Rule 67.*

Comments

Visiting mechanisms need to develop a methodology that allows them to check on a regular basis that the prisoners' diet is sufficient as regards quantity, quality, and variety so that the persons deprived of their liberty are healthy and do not succumb to the medical conditions that accompany poor nutrition. The detainees must have permanent access to drinking water.

In some countries food may be or has to be complemented by that provided by families. In this case, the mechanism needs to monitor the situation of those without outside support, in particular, whether the prison ensures that the establishment identifies these individuals and addresses their particular needs.

Mechanisms should also pay attention to hygiene and other issues relevant to the dignity of the prisoner, such as the times at which meals are served, the time allowed for eating the meals and the manner in which they are served.

Reference points

- What standards exist concerning the quantity, quality, and variety of the meals? Who decides on the menus? Do medical personnel play a regular role?
- What is the annual budget for food (and the amount allowed per detainee per day)?
- When are meal times? Are the intervals between meals appropriate?
- Are prisoners served with respect? Is any negative discrimination discernible in the way that food is distributed, and in allocation of prisoners to canteen duties?
- Do persons have access to food and water outside meal times?
- What sort of water supply is available? Is it clean and available all year round?

- Are there special diets for the sick, the elderly, children accompanying their mothers?
 - Are dietary restrictions for religious reasons respected?
 - Does the food available reflect the ethnic composition of the detainees?
 - Is there a canteen or shop inside the place where detainees can buy food and under what circumstances? Who decides on the stock?
 - What are the regulations and practices for families bringing in food?
 - What are the conditions in the kitchen where the food is prepared? Are they regularly inspected for health and safety?
-

LIGHTING AND VENTILATION

Standards

“In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.” *SMR, Rule 11* (see also *EPR Rule 16*)

“1. The medical officer shall regularly inspect and advise the director upon:

(c) The sanitation, heating, lighting and ventilation of the institution.” *SMR, Rule 26*

“The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pretrial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners. However, the imposition of measures of this kind should be the exception rather than the rule. This implies that the relevant authorities must examine the case of each prisoner in order to ascertain whether specific security measures are really justified in his/her case. Further, even when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy; moreover, the absence of these elements generates conditions favourable to the spread of diseases and in particular tuberculosis.

The CPT recognises that the delivery of decent living conditions in penitentiary establishments can be very costly and improvements are hampered in many countries by lack of funds. However, removing devices blocking the windows of prisoner accommodation (and fitting, in those exceptional cases where this is necessary, alternative security devices of an appropriate design) should not involve considerable investment and, at the same time, would be of great benefit for all concerned.” *CPT, GR 11, §30*

Comments

Visiting mechanisms will need to monitor the extent to which detainees have access to natural light, fresh air, and adequate temperatures, both by their own observations and by questioning prisoners and staff.

Visitors should consider ventilation in terms of the size of the inhabited space and the occupancy rate. Windows should not be obstructed and it should be possible to open air vents. Detainees should be able to switch the lights inside the cell on and off themselves.

The basic standards that apply to normal accommodation in the place of detention should also apply in punishment cells.

Reference points

- Is the ventilation in the cells adequate?
 - Is the temperature in the cells adequate?
 - What is the size of the window? Can it be opened?
 - Can detainees regulate the lighting, ventilation and heating themselves?
 - How is heat provided and is the heating system safe?
 - Is the lighting good enough for reading?
-

SANITARY FACILITIES

Standards

“The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.” *SMR, Rule 12* (see also *EPR, Rule 17*)

“Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment.

In this connection, the CPT must state that it does not like the practice found in certain countries of prisoners discharging human waste in buckets in their cells (which are subsequently ‘sloped out’ at appointed times). Either a toilet facility should be located in cellular accommodation (preferably in a sanitary annex) or means should exist enabling prisoners who need to use a toilet facility to be released from their cells without undue delay at all times (including at night).” *CPT, GR 2, §49*

See also *IDRCPLD, art. 31*.

Comments

Visiting mechanisms should visit the sanitary installations to check whether they are in working order, provide adequate privacy and are maintained in hygienic conditions. They will probably wish to talk to prisoners about whether any unreasonable restrictions are placed on their access to such facilities.

Visitors should check that when toilets are in the cell, they are separated by a wall or partition. Where there are no flushable toilets, visitors should check how frequently containers are emptied.

When toilets are situated outside the living premises, it should be checked that they can be reached without delay.

Visitors should consider whether an adequate level of maintenance is provided for by the detaining authorities.

Reference points

- What is the ratio of toilets to the number of detainees and does this correspond to minimum standards?
 - Do all detainees have access to them in decent conditions allowing privacy?
 - If there are no toilets inside the detention premises:
 - How long must persons wait before being able to use the outside toilets?
 - How can people who are locked in satisfy their needs during the night?
 - by asking the surveillance personnel;
 - by using slop pails with lids?
 - How clean and hygienic are the sanitary installations? What are the provisions for maintaining them in a clean and working condition?
 - Is there any evidence of negative discrimination against minority groups in access to sanitary facilities?
-

PERSONAL HYGIENE

Standards

“Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.” *SMR, Rule 13* (similar wording in *EPR Rule 18*)

“Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.” *SMR, Rule 15*

“In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be able to shave regularly.” *SMR, Rule 16*

“Further, prisoners should have adequate access to shower or bathing facilities. It is also desirable for running water to be available within cellular accommodation.” *CPT, RG 2, §49*

“The specific hygiene needs of women should be addressed in an adequate manner. Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of items of hygiene, such as sanitary towels and tampons, are of particular importance. The failure to provide such basic necessities can amount, in itself, to degrading treatment.” *CPT, GR 10, §31*

See also *ACPR A-11 and IDRCPDL art. 31*.

Comments

Maintaining good bodily hygiene is a question of health and of respect toward others and toward oneself. Personal hygiene can also be linked with religious practices that have to be respected. Access to proper sanitation as well as to shower and bathing facilities is essential as a means of reducing the possible spread of illness among detainees and staff. This becomes particularly important if detainees are kept for long periods of times in overcrowded living accommodations.

Personal hygiene, and hygiene in the detention premises, must also be looked at from the point of view of the treatment of the detainees by the detaining authorities. To be kept forcibly in poor hygienic conditions is humiliating and degrading.

The detaining authorities must supply the articles necessary for persons to maintain bodily hygiene.

It is important that the arrangements in place do not humiliate the detainees, for example by obliging to shower in public.

Women must receive regularly, and in a manner which respects their sense of intimacy, the usual and necessary hygienic articles for menstruation. If they are accompanied by young children, they should receive additional articles suitable for the children.

The frequency of showers must take into account the climate and the level of activities of the persons deprived of their liberty.

Reference points

- Have detainees permanent access to water for washing?
- How often do persons (working, and not working) have access to bathing facilities?
- Are the bathing facilities sufficient in number?
- What is their state of repair and cleanliness?

- What items of hygiene are distributed by the authorities and how often?
 - Are religious and cultural needs provided for?
 - Is there any evidence of negative discrimination in minority groups' access to bathing facilities?
 - Are the needs of menstruating women met (in terms of access to the necessary supplies and washing facilities)?
-

CLOTHING AND BEDDING

Standards

“1. Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

2. All clothing shall be clean and kept in proper condition. Under clothing shall be changed and washed as often as necessary for the maintenance of hygiene.

3. In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.” *SMR, Rule 17* (see also *EPR, Rule 22*)

“If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.” *SMR, Rule 18*

“Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, sufficient bedding, clean when issued and changed often enough to ensure its cleanliness.” *SMR, Rule 19*

“Every prisoner shall be provided with a separate bed and separate and appropriate bedding which shall be kept in good order and changed often enough to ensure its cleanliness.” *EPR, Rule 24*

See also *ACPR, A-11 and B-1-e) and IDRC PDL, art. 31.*

Comments

Visiting mechanisms will wish to check stores and talk to staff and detainees to make sure that detainees have clothes, which are adapted to the climate and maintain their dignity. No circumstances justify the use of humiliating clothing as part of the punitive framework. It is preferable if the detainees can keep their own clothes or wear civilian clothing, which permit a sense of individual identity.

Each prisoner should have access to laundry facilities so that all clothes, especially those worn next to the skin, can be washed regularly, either communally or by the detainee.

Detainees should have individual beds and bedding that are clean and in good condition. Sharing beds or sleeping on a rota basis are not acceptable. If overcrowding reaches such high levels, the government bodies responsible for the places of detention have to take immediately appropriate measures in order to improve the situation.

Sheets must be changed regularly.

Some reference points

- What kind of clothes do the detainees wear?
- Is clothing (shoes and other garments) appropriate to climate and season?
- Do working prisoners have access to appropriate clothing?
- What access do detainees have to laundry, including drying, facilities?
- Does each detainee have a separate bed and bedding?
- How frequently is bedding laundered? Are there sufficient stores of clothes and bedding?
- Are they in a good state of repair?

- Do detainees have access to their own clothes for court hearings?
 - Are clothes and bedding distributed on a fair, non-discriminatory basis?
-

OVERCROWDING AND ACCOMMODATION

Standards

“1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary over-crowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

2. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.” *SMR, Rule 9*

“Overcrowding is an issue of direct relevance to the CPT’s mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.” *CPT, GR 2, §46*

“The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports. As the CPT’s field of operations has extended throughout the European continent, the Committee has encountered huge incarceration rates and resultant severe prison overcrowding. The fact that a State locks up so many of its citizens cannot be convincingly explained away by a high crime rate; the general outlook of members of the law enforcement agencies and the judiciary must, in part, be responsible.

In such circumstances, throwing increasing amounts of money at the prison estate will not offer a solution. Instead, current law and practice in relation to custody pending trial and sentencing as well as the range of non-custodial sentences available need to be reviewed. This is precisely the approach advocated in Committee of Ministers Recommendation N° R (99) 22 on prison overcrowding and prison population inflation. The CPT very much hopes that the principles set out in that important text will indeed be applied by member States; the implementation of this Recommendation deserves to be closely monitored by the Council of Europe.” *CPT, GR 11, §28*

“1. Prisoners should normally be lodged during the night in individual cells except in cases where it is considered that there are advantages in sharing accommodations with other prisoners.

2. Where accommodation is shared it shall be occupied by prisoners suitable to associate with others in those conditions. There shall be supervision by night, in keeping with the nature of the institution.” *EPR, Rule 14*

“In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions. No doubt, various factors – including those of a cultural nature – can make it preferable in certain countries to provide multi-occupancy accommodation for prisoners rather than individual cells. However, there is little to be said in favour of – and a lot to be said against – arrangements under which tens of prisoners live and sleep together in the same dormitory.

Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives. Moreover, the risk of intimidation and violence is high. Such accommodation arrangements are prone to foster the development of offender subcultures and to facilitate the maintenance of the cohesion of criminal organisations. They can also render proper staff control extremely difficult, if not impossible; more specifically, in case of prison disturbances, outside interventions involving the use of considerable force are difficult to avoid. With such accommodation, the appropriate allocation of individual prisoners, based on a case by case risk and needs assessment, also becomes an almost impossible exercise. All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

The CPT must nevertheless stress that moves away from large-capacity dormitories towards smaller living units have to be accompanied by measures to ensure that prisoners spend a reasonable part of the day engaged in purposeful activities of a varied nature outside their living unit.” *CPT, GR 11, §29*

“All the premises used by or for the detainees must be kept permanently clean. In general, it is the detainees themselves who see to the upkeep of the premises. They should therefore be given the means and products necessary to carry out this task.” *Rec. 99 Committee Ministers*

See also *ACPR, A-11 and IDRCPLD, art.11 paras 1 and 2, and art. 31.*

Comments

In many contexts, overcrowding in detention premises is a major problem and the source of a whole range of serious secondary problems in the domains of treatment, health, security and rehabilitation.

Generally speaking, the international standards do not specify a minimum floor space or cubic area for each detainee. In recent years the CPT has, however, started to move in this direction. It recommends that a single cell should measure not be less than 7 m². For multi-occupancy cells, the CPT has found the following acceptable: 10 m² for 2 prisoners, 21 m² for 5 prisoners, 35 for 7 prisoners and 60m² for 12 prisoners.

Visiting mechanisms need to know the official maximum capacity of the various areas of the prison, and the basis on which that is calculated. This is normally the relationship between the surface area (in square meters) of the accommodation and the number of persons occupying it. However, visitors should not rely on mathematical formula; there will always be other relevant considerations, such as the amount of time spent in that space within a 24-hour period, and the particular design of the place of detention. Each detainee has to have at least a separate bed.

The visiting team will need to address its observations and recommendations regarding overcrowding to a number of different authorities who are in the position to take adequate measures. Recommendations for improving the situation will depend on the context. It may be that unused space in a particular prison could be adapted to alleviate cramped conditions, but visiting mechanisms may need to address legal or judicial reform and the promotion of alternatives to imprisonment. Visiting bodies should be aware that constructing additional places of detention is rarely a solution in the long term.

International standards recommend individual over collective accommodation. In some cultural contexts there might be a preference among detainees for accommodation in proportionally sized communal rooms. Collective accommodation should be limited as regards the number of persons sharing it, and it is important to select persons sharing accommodation in such a way as to limit the risks of abuse among detainees.

Visitors will need to pay attention to the cleanliness of the detainees' accommodation.

Reference points

- Are the living quarters adequate as regards:
 - the number of m² per person?
 - the number of hours that persons must spend in their cells (number of hours spent locked in over a 24-hour period)?
 - ventilation and the amount of air available when the premises are closed?
 - the planned length of detention?

Does all detainees have their own bed?

- Is the accommodation regularly maintained and are cleaning materials available?
 - In communal cells: how are the groups sharing a room composed and what are the criteria for allocating the detainees to rooms?
 - Is space in communal cells allocated fairly and in a non-discriminatory manner?
 - In case of overcrowding: is there space outside the cells or dormitories that is un-used and could be adapted?
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Further reading

PRI, *Making standards work*, London 2001. (Section III Physical conditions – Basic necessities, pp.55-68)

UN HCHR, *Human Rights and Prisons*, Geneva 2003. (Section 3: Right to an adequate standard of living, pp.34-45)

AI, *Combating torture*, London 2003. (*Chapter 5 Conditions of detention*, pp. 120-122)

REGIME AND ACTIVITIES

The responsibilities of the detention authorities go beyond just providing a decent physical environment. The authorities must encourage the personal development of the detainees and facilitate re-integration into society after release. This is in the interest of both the detainee and society as a whole. Family visits, access to education, vocational training and work and leisure activities all have to be seen from this perspective. Such activities are not a favour but a right for all detainees.

As representatives of civil society and (usually) the local community, visiting mechanisms' observations, recommendations and even, where relevant, practical support can be of particular value to the authorities in fulfilling this challenging task.

It is essential for the physical and mental well-being of those subjected to all forms of deprivation of liberty, including detainees under interrogation and in pre-trial detention, that they spend time outside their cells engaged in purposeful activities of a varied nature

Visiting mechanisms can check that providing a varied and appropriate regime is seen as an important goal of the prison authorities and allocated sufficient resources. Visitors will wish to ensure that adequate arrangements exist for family visits, access to education, vocational training and work (the latter should not be compulsory for unsentenced prisoners).

It is important to consider whether the activities provided in the place of detention are relevant to the outside world, for example, whether vocational training and work correspond to the needs of the outside labour market, and whether educational standards are equivalent to those outside the walls of the prison.

Regime and activities

- Contact with family and friends
 - Contact with the outside world
 - Education
 - Outdoor exercise
 - Leisure activities
 - Religion
 - Work
-

CONTACTS WITH FAMILY AND FRIENDS

Standards

“Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.” *BPP, Principle 15*

“A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.” *BPP, Principle 19*

“Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.” *SMR, Rule 37*

“Untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of security and good order of the institution.” *SMR, Rule 92*

“It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations.

The CPT wishes to emphasise in this context the need for some flexibility as regards the application of rules on visits and telephone contacts vis-à-vis prisoners whose families live far away (thereby rendering regular visits impracticable). For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families.” *CPT, GR 2, § 51*

“States should:

Ensure that all persons deprived of their liberty have (..) the right to be visited by and correspond with family members” *RIG, provision 31.*

See also *CDD, A-8-b), B-1-f) and B-3-b) and IDRCDDL, art 36 para. 1 and 2 and art. 38*

Juveniles

“Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. (.....).” *RPJDL, Rule 59.*

“Under article 10, paragraph 3, juvenile offenders shall (...) accorded treatment appropriate to their age and legal status in so far as conditions of detention are concerned, such as (...) contact with relatives, with the aim of furthering their reformation and rehabilitation.” *GC 21 para. 13.*

See also *RPJDL 60, 61 and 62 and IDRCDDL art. 39.*

Comments

Visiting mechanisms need to be aware that the conditions of access for families are tremendously important. Most detainees will one day return to freedom. If they are allowed and encouraged to maintain as many links as possible with their family and friends, this will facilitate their reintegration upon release.

Visitors should monitor whether a healthy balance is maintained between the need for security and humanity. Contact with family and friends should not be a privilege for certain detainees, but a right for all. Prisoners should not be deprived of visits and communication as a disciplinary measure. Searches and body searches should be conducted with respect, decency and tact. The rights of family members and friends are also an appropriate area of concern for the visiting mechanism.

Visits are the best means of maintaining links. Visiting mechanisms should monitor the conditions in which the visits take place, as this is a gauge of the respect accorded to prisoners and their families by the prison authorities. Normally, physical contact should be permitted with the detainee. Private or family visits in special rooms allowing for more intimacy should be encouraged. This should be extended to offer intimate (or conjugal) visits with the partner. In order to facilitate regular family visits, detainees should be held in the appropriate place of detention located nearest to their home.

Visiting teams should check with prisoners whether provision for telephone communication is adequate (particularly for foreign nationals) and whether detainees are receiving mail intact and on time. Visiting mechanisms should know what system of censorship or monitoring is in place and whether it is proportionate to the potential risks posed by the specific individual. The situation of foreign detainees requires sustained attention. Visiting mechanisms should monitor what support is available in resolving the particular problems they face in terms of contact with family and friends, arrangements for release and return to home countries.

Juveniles and women also require special attention from visiting mechanisms. The vulnerable status of juveniles makes it particularly important for their reintegration that they can maintain and develop the relationship with their families, and in particular their parents. Women in many cultures take prime responsibility for childcare, and the imprisonment of a mother affects her children. Visiting mechanisms should monitor what special provision is made for assisting the families of juvenile and women detainees, because of the greater distances they normally have to travel for visits (facilities for juveniles and women are fewer in number and they are therefore more likely to be located far from home).

Visiting mechanisms should check what provision the prison makes for re-establishing contact for detainees who have lost touch with their family due to armed conflicts or natural disasters. The prison should establish links with the ICRC Central Tracing Agency, either directly or through the National Red Cross or Red Crescent Society.

Reference points

Visits

- How often are visits from outside persons authorised?
- What is the length of such visits?
- Are there visit restrictions for certain categories of detainee?
- If so, on what basis are these restrictions applied?
- How are families received in the place of detention?
- What information is provided to enable families to contact and visit detained family members?
- Are any special provisions made for visiting children?
- Does the prison or an outside agency provide a building where families can wait?

- What are the material conditions of the visits?
- What is the level of supervision of the visits?
- Does the prison make any alternative arrangements for detainees who never receive outside visits?
- Are there special arrangements for family contacts for foreign nationals (in particular regarding phone calls)?

Correspondence

- Is private mail subject to censorship?
- If so, what are the criteria for censorship and are they known to staff and those deprived of their liberty?
- What are the conditions for receiving parcels? How often may they be received?

Telephone

- Is there a possibility for detainees to make phone calls?
 - How often? What is the system for payments?
 - Is access to visits, correspondence and telephone calls allocated in a fair, transparent and non-discriminatory manner?
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CONTACT WITH THE OUTSIDE WORLD

Standards

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

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3. The right for a detained or imprisoned person to be visited by and to consult and communicate without delay or censorship and in full confidence with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.” *BPP, Principle 18* (see also *SMR Rule 93*)

“Prisoners shall be kept informed regularly of the more important items of news by reading the newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lecture or by any similar means as authorised or controlled by the administration.” *SMR, Rule 39*

Juveniles

“Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society.” *RPJDL, Rule 59*

Foreigners

“1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

2. Prisoners who are nationals of States without diplomatic or consular representation in the country and stateless persons shall be allowed similar facilities to communicate with the diplomatic representatives of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.” *SMR, Rule 38.*

“With the view of facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.” *Vienna Convention on Consular Relations, Art. 36.*

Comments

4 Visiting mechanisms will wish to speak to prisoners about any difficulties they may have making contact with permitted persons. Communication with a legal adviser, in confidentiality and with no interference, is of particular importance for all detainees. Detainees should also be able to have contact with religious representatives of their choice (see section: Religion).

Foreign detainees should have the right to get in contact with the diplomatic representative of the State they belong to or, if no diplomatic mission exists, with the mission of a state or an organisation which represents or protects them. If a foreign national does not want to notify his diplomatic mission, this wish should be respected. Persons claiming refugee status have the right to be visited by a representative of the office of the UN High Commissioner for Refugees.

Contact with the outside world also implies that detainees may keep in touch with developments in their society. Visiting mechanisms should monitor whether detainees, in particular those detained for long periods of time, have access to a variety of media, including newspapers, magazines, radio and television.

Visiting mechanisms should be aware of detainees’ rights under national law with regard to voting, and check whether they can exercise it in practice.

Reference points

Access to legal counsel

- Are the detainees able to communicate freely and confidentially with their legal counsel?
- In what conditions do visits with legal counsel take place?

Foreign nationals' contact with the outside world

- Are all foreign nationals in contact with their missions?
- What happened to those who refused contact?
- What happens if a mission does not respond to the demand from detained fellow nationals (particularly important in the case of lost or expired national documents)?

Access to external information

- What access do persons deprived of their freedom have to the media (newspapers, television)?
 - Are there any restrictions and what are the criteria?
 - Does the prison provide detainees with access to a radio or television set or facilitate such access?
 - Do the authorities provide newspapers, magazines, and other periodicals free of charge? If not, are the detainees able to purchase or receive them?
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EDUCATION

Standards

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

2. So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.” *SMR, Rule 77*

“All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.” *BPTD, Principle 6*

“A comprehensive education programme shall be arranged in every institution to provide opportunities for all prisoners to pursue at least some of their individual needs and aspirations. Such programmes should have as their objectives the improvement of the prospects for successful social resettlement, the morale and attitudes of prisoners and their self-respect.” *EPR, Rule 77*

“Education should be regarded as a regime activity that attracts the same status and basic remuneration within the regime as work, provided that it takes place in normal working hours and is part of an authorised individual treatment programme.” *EPR, Rule 78*

“All prisoners should have access to education, which is envisaged as consisting of classroom subjects, vocational education, creative and

cultural activities, physical education and sports, social education and library facilities.” *R(89)12, §1*

“h) Wherever possible, prisoners should be allowed to participate in education outside the prison;

i) Where education has to take part inside the prison, the outside community should be involved as fully as possible.” *Resolution 1990/20 of the UN Economic and Social Council on education in prisons.*

See also: *the whole text of recommendation R(89)12, §1 and of ECOSOC resolution 1990/20; SMR, Rule 82; EPR Rules 79 to 82, as well as the UNESCO recommendations on education in prisons.*

Pre-trial detention

“A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. The CPT has observed that activities in many remand prisons are extremely limited. The organisation of regime activities in such establishments – which have a fairly rapid turnover of inmates – is not a straight-forward matter. Clearly, there can be no question of individualised treatment programmes of the sort which might be aspired to in an establishment for sentenced prisoners. However, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable.” *CPT, GR 2, §47*

Women

“Women deprived of their liberty should enjoy access to meaningful activities (work, training, education, sport, etc..) on an equal footing with their male counterparts. (...) CPT delegations all too often encounter women inmates being offered activities which are deemed “appropriate” for them (such as sewing or handicrafts) whilst male prisoners are offered training of a more vocational nature. In the view of the CPT, such a discriminatory approach can only serve to reinforce outmoded stereotypes of the social role of women. Moreover, depending on the circumstances, denying women equal access to regimes activities could be qualified as degrading treatment.” *CPT GR 10, § 25*

See also *ACPR, A-14-a) and IDRC PDL, art. 35*.

Juveniles

“Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty.(...)” *RPJDL, Rule 38*.

“Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.” *RPJDL, Rule 39*.

Comments

Visiting mechanisms will need to check what education is provided, and the priority it is allocated in the prison system.

Education is an important element in preparing the detainee for reintegration into society and for stimulating the detainees' personal development. It can moreover respond to specific needs within the prison population, such as learning the local language or learning to read, write and count.

The international standards set education as one element in an integrated approach for an individual rehabilitation programme preparing the detainees for release in accordance with their needs and potential.

In the view of reintegration into society and contact with the outside world, it is a strong advantage if educational activities are provided by members of the community (e.g. local schools or colleges, local schoolteachers). It may even take place in the community. The qualifications gained should be those recognised in the outside world.

Education should be remunerated in the same way as work.

Reference points

- What type of education is on offer?
- What is the percentage of detainees participating in educational activities?
- Can all detainees who so wish access educational activities?
- What statistics are kept of educational access and achievement?
- Is the education available compatible with the goal of? Are activities adapted to individual needs and the needs of particular categories of detainees (for example, foreign nationals)?
- Is education remunerated?

- Does the teaching or training involve outside teachers or trainers?
 - Where do the educational activities take place?
 - Under what conditions do detainees have access to the library?
 - Does the library contain works in the different languages spoken by the detainees?
 - Do women have access to the same quality of education and under the same conditions as male detainees?
 - Are detainees' educational opportunities comparable to those available in the outside world?
 - Is access to education provided in a fair and non-discriminatory manner?
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OUTDOOR EXERCISE

Standards

“1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.” *SMR, Rule 21*

“Every prisoner who is not employed in outdoor work, or located in an open institution, shall be allowed, if the weather permits, at least one hour of walking or suitable exercise in the open air daily, as far as possible, sheltered from inclement weather.” *EPR, Rule 86*

“Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard (preferably it should form part of a broader programme of activities). The CPT wishes to emphasise that all prisoners without exception (including those undergoing cellular confinement as a punishment) should be offered the possibility to take outdoor exercise daily. It is also axiomatic that outdoor exercise facilities should be reasonably spacious and whenever possible offer shelter from inclement weather.” *CPT, GR 2, §48*

See also *ACPR, A-11 and IDRCPLD, art. 33*.

Juveniles

“Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. (...)” *RPJDL, Rule 47.*

Comments

Visiting mechanisms will wish to talk to prisoners and staff to check that at least one hour of daily physical activity is provided on a regular basis for all prisoners without exception. However, time spent outside the cell or dormitory should not be limited to this period, especially if detention lasts more than a few days.

During exercise the detainees should have access to relatively large areas and ideally be able to see natural growth and vegetation. Small walled yards – in effect cells without roofs cannot be considered to satisfy the obligation to give the opportunity to exercise in open air.

Visiting mechanisms should take the opportunity to observe the way in outdoor exercise is conducted, visit the location foreseen for this exercise and observe what activities are available to the prisoners during exercise.

Reference points

- Is the minimum rule of one hour of physical exercise in fresh air per day respected for all detainees?
- What is the size and nature of the exercise space?
- During the time allocated for outdoor exercise, what activities can detainees engage in (sport, walking?)

- What is the total time spent outside the cell?
 - Where the time spent outside the cell or dormitory is limited in length, what reasons do staff give for such restrictions:
 - an excessively repressive detention regime,
 - a failing security infrastructure,
 - insufficient personnel,
 - the architecture and space available,
 - short-term restrictions due to particular events,
 - other.
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LEISURE AND CULTURAL ACTIVITIES

Standards

“Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.” *SMR, Rule 78* (see also Rule 82.)

4 “A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.” *BPP, Principle 28*

“Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.” *SMR, Rule 40*

“The prison regimes shall recognise the importance to physical and mental health of properly organised activities to ensure physical fitness, adequate exercise and recreational opportunities.” *EPR, Rule 83*

“Thus a properly organised programme of physical education, sport and other recreational activity should be arranged within the framework and objectives of the treatment and training regime. To this end space, installations and equipment should be provided.” *EPR, Rule 84*

See also *EPR, Rule 85 and ACPR, A-11.*

Juveniles

“The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. (...).” *RPJDL, Rule 32*

“Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.” *RPJDL, Rule 47.*

Comments

As in society in general those in prison need access to leisure activities. Sport in particular can contribute to detainees’ well-being, as it enables them to expend physical energy. It can also promote good relations with the other detainees and staff. Visiting mechanisms should monitor the effort that the authorities make to provide a range of pastimes from which prisoners can derive satisfaction and feelings of self-worth. It is important to know what facilities are available and whether they are fully utilised for the good of the prisoner.

Reference points

- What sport activities are available to the detainees, how often and for how long?
- What other activities, including cultural activities, are available?

- If the range of activities and time allocated to them are limited, what reasons are given for this and what do you see as the reasons?
 - Is there a library? What are the conditions of access? Are books available in foreign languages spoken by detainees?
 - Is there room or space dedicated to leisure activities? What types of leisure are available?
 - Is access to all activities equally available to all and allocated in a fair, transparent and non-discriminatory manner?
-

RELIGION

Standards

“1. If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

2. A qualified representative appointed or approved under paragraph 1 shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper time.

3. Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.” *SMR, Rule 41*

“So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.” *SMR, Rule 42*

“It is, however, desirable, to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.” *BPTD, Principle 3*

“So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious, spiritual and moral life by attending the services or meetings provided in the institution and having in his possession any necessary books or literature.” *EPR, Rule 46* (See also *EPR, Rule 47*)

See also *ACPR A-11 and IDRCPLD art. 43*.

Comments

Freedom of religion is a basic human right, and prisoners should have the possibility of exercising it, including the collective right to attend religious services. It is, however, not an obligation. Detainees who do not adhere to any religious belief and who do not wish to practice a religion should not be obliged to do so or receive discriminatory treatment.

Visiting mechanisms will wish to ensure that the right to worship is not restricted to members of the majority or state religion, and that the rights of minority groups are not forgotten.

Detainees should be able to receive visits from a religious representative, and such contact should be in private, at least out of hearing of the prison staff.

Points of reference

- What are the criteria for appointing a religious representative to the place of detention (for example, a minimum number of believers)?
 - What religions are represented by appointed ministers or organised services or gatherings? Do they correspond to the religions practised by all the detainees?
 - Are any conditions imposed on prisoners in order for them to have access to religious representatives?
 - When (including how frequently) and where are services conducted? Are appropriate arrangements in place to allow those who wish to attend? What is the average number of participants?
 - Are arrangements made to enable detainees to observe religious practices in the matter of food, clothing, and hygiene and private prayer?
-

WORK

Standards

“Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country’s labour market and permit them to contribute to their own financial support and to that of their families”, *BPTP, Principle 8*

“1. Prison labour must not be of an afflictive nature.

2. All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

3. Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

4. So far as possible the work provided shall be such as will maintain or increase the prisoners’ ability to earn an honest living after release.

5. Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

6. Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.” *SMR, Rule 71* (similar wording in *EPR, Rule 71*)

“No one shall be required to perform forced or compulsory labour.” *ICCPR, Article 8.3 (a)*.

“1. The organisation and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

2. The interest of the prisoners and their vocational training, however, must not be sub-ordinated to the purpose of making a financial profit from an industry in the institution.”, *SMR, Rule 72* (similar wording in *EPR Rule 72*)

“1. The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or customs in regard to the employment of free workman.

2. The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of prisoners.” *SMR, Rule 75*

“1. There shall be a system of equitable remuneration of the work of prisoners.

2. Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release”. *SMR, Rule 76* (similar wording in *EPR Rule 76*)

See also *SMR, Rules 73, 74, ACPR, A-15 and IDRCPLD, art. 34 para. 1.*

Juveniles

“Under article 10, paragraph 3, juvenile offenders shall be (...) afforded treatment appropriate to their age and legal status in so far as conditions of detention are concerned, such as shorter working hours (...) with the aim of furthering their reformation and rehabilitation.” GC 21, para. 13

“With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.” *RPJDL, Rule 43.*

“Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.” *RPJDL, Rule 45*

Comments

Visiting mechanisms will want to ensure that the priority for prison administrations is training rather than exploiting the prison workforce for profit. The standards relating to detainees’ labour aim at guaranteeing for each prisoner the opportunity of being engaged in meaningful, remunerated activity, without – on the other hand – being exploited as cheap labour.

Regular and meaningful work is seen as a crucial element in preparing prisoners for reintegration into society and into a workplace outside the prison. In the view of reintegration, the prisoners should have the opportunity to acquire skills which will increase their potential to find a legal occupation in the future. Vocational skills training adapted to the outside labour market will play a major role in this.

Sentenced prisoners can be obliged to work, but only under certain conditions. Compulsory or forced labour is prohibited, but not all obligatory work undertaken by prisoners does fall under this category. In some countries, hard labour continues to be imposed as a

punishment by the courts, which is in contradiction of the ILO Convention on Forced Labour.

Persons in pre-trial detention cannot be forced to work, but they should be given the possibility of doing so if they wish.

Only those detainees who are capable of working should do so. In the case of a worker falling sick, a doctor must examine the detainee, and if necessary a certificate should be issued to ensure that the detainee does not lose wages.

Female prisoners should be given equal access to labour opportunities that may allow them to earn a living on release, and not be restricted as a matter of course to activities such as sewing and handi-crafts.

4

The most important conditions are:

- The work should not have a punitive character;
- It should be remunerated (in some countries prisoners receive an equivalent reduction in sentence for every day worked);
- Working hours should not exceed those normal in outside life;
- National standards of health and safety in the workplace must be applied.

Reference points

- What are the opportunities for work inside the place of detention and how do they compare with the work available in the outside world?
- Are there opportunities to work outside the place of detention (particularly for young people, and for those who are close to their release date)?

- If there is not enough work for all detainees, how is the selection made of those who work? Is the process for allocating all work fair, transparent and non-discriminatory?
 - What kind of vocational training is offered?
 - Is the work voluntary?
 - What are the conditions of work and how do they compare with working conditions in the outside world?
 - Are the rights of those working outside the place of detention protected?
 - Are earnings shared between the person deprived of liberty, the detaining authorities, and the State? If so, how are they shared and are the criteria transparent?
 - What opportunities does the prisoner have to spend and save the earning.
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Further reading

Andrew Coyle, *A Human Rights Approach to Prison Management*, 2003. (Chapter 7 constructive activities and social reintegration; Chapter 8: Contacts with the Outside World, pp.83-104)

PRI, *Making standards work*, London 2001. (Section V- Prisoners contacts with the outside world, pp.101-115; Section VI – Programmes for prisoners, pp. 7-149)

UN HCHR, *Human Rights and Prisons*, Geneva 2003. (Section 6: Making the best use of prisons; Section 7: Prisoner's contact with the outside world, pp.76-102)

Peter Sutton, (ed.) *Basic Education in Prisons: Final Report*, United Nation/ UNESCO Institute for Education (UIE) joint publication.

MEDICAL SERVICE

The physical and mental health of detainees is particularly important, as imprisonment deprives them of the possibility to care for their health themselves, and can itself have a negative effect on detainees' physical and mental health. The detaining authorities take on responsibility for ensuring that prisoners have access to satisfactory health, healthy living and working conditions, and appropriate medical care. The care provided in prison should be equivalent to that available outside the place of detention.

Consent and confidentiality are issues that should be of particular concern to the visiting mechanism. A relationship based on trust is essential between patient and medical practitioner. The international rules furthermore specify that a detained person cannot be the subject of medical experiments that could affect his or her physical or mental integrity.

Visiting mechanisms should be aware of the key health problems facing prisoners in their country or region. These may well include Tuberculosis, HIV/AIDS and substance abuse. Special programmes should be available to sufferers, as well as onward referral upon release.

Medical services

- Access to medical care
 - Specific health care for women (and babies)
 - Specific health care for mentally ill prisoners
 - Medical staff
-

ACCESS TO MEDICAL CARE

Standards

“The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.” *SMR, Rule 24* (similar wording in *EPR, Rule 29*)

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“A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.” *BPP, Principle 24*

“When entering prison, all prisoners should without delay be seen by a member of the establishment’s health care service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.

It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.” *CPT, GR3, § 33*

2. Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

3. The services of a qualified dental officer shall be available to every prisoner.” *SMR, Rule 22*

1. The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed. *SMR, Rule 25* (similar wording in *EPR, Rule 30*)

“Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.” *Code of conduct for law enforcement officials, article 6.*

“While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime (as regards more particularly access to a doctor for prisoners held in solitary confinement, see paragraph 56 of the CPT’s 2nd General Report: CPT/Inf (92) 3). The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay.

Prisoners should be able to approach the health care service on a confidential basis, for example, by means of a message in a sealed envelope. Further, prison officers should not seek to screen requests to consult a doctor.” *CPT, GR3, § 34*

See also *ACPR, A-4 and IDRCPLD, art. 25.*

Comments

The visiting mechanism should have the information necessary to allow them to compare prison and 'civilian' healthcare. The quality of care provided to persons deprived of their liberty must be equal to that available outside the penal system (principle of equivalence).

A newly arrived prisoner should be seen by a doctor or a qualified nurse upon admission. This screening allows the medical staff to detect pre-existing illnesses as well as injuries that might have been inflicted upon a detainee during detention in a previous location. The process of screening is also important in view of protecting detainees and staff against transmittable diseases.

5 Access to a doctor must be granted for all detainees without unnecessary delays (if it is not an emergency, within a day). The conditions under which the detainees are examined have to respect their dignity. The medical consultation has therefore to take place in private or as a minimum out of hearing of prison staff and other detainees. The staff of the place of detention have to grant the access to the doctor without the detainee giving the reason for which he seeks consultation.

Detainees requiring specialised treatment should have access to this treatment, be it through a consultation by a specialist within the place of detention or through transfer to such a specialist. Each place of detention needs special provisions for emergency evacuations to hospital.

Denial of access to medical treatment can amount to ill-treatment.

Detainees should not have to pay for health care services.

If the visiting team does not include a qualified medical practitioner, the team members must take care to request general information on the state of health of the persons deprived of their liberty: the most frequent illnesses, detection of transmissible and contagious diseases, deaths. They should also examine the system for gaining access to medical care.

Reference points

- What are the most prevalent medical conditions?
- Does the prison have a strategy for addressing them?
- Is the prison included in nationwide strategies for addressing TB, HIV/AIDS and other prevalent conditions?
- Where do consultations take place and in what conditions?
- How easily can the persons deprived of their freedom gain access to medical services (how long do they wait for an appointment with the doctor, with an outside specialist)?
 - at their own request: what is the procedure?
 - through the medical staff: how often do they visit the premises?
 - through surveillance personnel: what are the procedures?
- Are medical personnel on duty day and night?
- Is there a set procedure for emergency medical evacuations during the day/night?
- How is access to the psychologist organised?
- Are there any complaints of discriminatory practices in granting access to medical practitioners or administering treatment?

Medication

- How appropriate is the storage (i.e. cold) of medication?
 - How are drugs ordered?
 - How is control exercised over stocks?
-

MEDICAL STAFF

Standards

“1. The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

2. The medical officer shall report to the director whenever he considers that a prisoner’s physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.” *SMR, Rule 25* (similar wording in *EPR, Rule 30*)

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“1. At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

2. Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.” *SMR, Rule 22* (similar wording in *EPR, Rule 26*)

“A prison’s health-care service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there might often be a hospital-type unit with beds). The services of a qualified dentist should be available to every prisoner. Further, prison doctors should be able to call upon services of specialists.

As regards emergency treatment, a doctor should always be on call. Further, someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification.

Out-patient treatment should be supervised, as appropriate, by health-care staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.” *CPT, GR3, § 35*

“It is a contravention of medical ethics for health care personnel, particular physicians:

(b) To certify, or to participate in the certification of the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.” *UN Principles of Medical Ethics relevant to the role of Health Personnel, particularly Physicians, in the protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 4.*

“The health-care staff in any prison is potentially a staff at risk. Their duty to care for their patients (sick prisoners) may often enter into conflict with considerations of prison management and security. This can give rise to difficult ethical questions and choices. In order to guarantee their independence in health-care matters, the CPT considers it important that such personnel should be aligned as closely as possible with the main-stream of health-care provision in the community at large.” *CPT, GR3, § 71*

See also *SMR, Rules 23-25* and *IDRCPLD, art. 29.*

Comments

In examining healthcare provision in places of detention, visiting mechanisms will need to pay particular attention to the role of medical staff and their autonomy in making medical decisions. They usually have the following tasks:

- to ensure that the general detention conditions are conducive to healthy environment by reporting to the relevant authorities on the possible impact on health of treatment and conditions of detention;
- to detect transmissible diseases and suggest measures for avoiding further transmission;
- to ensure access for prisoners to individual consultation and treatment;
- to refer relevant individual cases to specialists.

These multiple tasks mean that the medical doctor in a detention context is both a personal doctor for the detainee and an advisor to the management of the place of detention. This could lead to a conflicting of interest. The role of advisor to the prison management should be restricted to advice on how to improve general and individual health conditions. Under no circumstances should a medical doctor or nurse be asked to participate in administration of punishment. This is contradictory to medical ethics and the contemporary interpretation of the SMR.¹⁹

In making medical decisions, the medical staff must enjoy maximum independence vis-à-vis the detaining authorities. This can be best achieved if they are integrated into the general healthcare system of the country rather than depending from the authority in charge of the place of detention.

Medical staff are bound by the normal code of confidentiality.

The competence of medical staff, their independence and professional ethics, and the quality of the care provided can only be

19 See on this issue for example PRI, Making Standards Work, p.80, § 39ff.

evaluated by health specialists. It is therefore advisable for visiting bodies to include or have access to qualified medical practitioners.

Reference points

- How is the medical team composed (number of doctors, nurses, psychologists, psychiatrists, other)?
 - Do they have appropriate professional qualifications?
 - How far are they integrated into the public health service, including with regard to access to goods, services, information and training?
 - Are their working hours appropriate to the needs of the prison?
 - What are their tasks?
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SPECIFIC HEALTH CARE FOR WOMEN AND BABIES

Standards

“(...) Insofar as women deprived of their liberty are concerned, ensuring that the principle of equivalence of care is respected will require that health care is provided by medical practitioners and nurses who have specific training in women’s health issues, including in gynaecology. Moreover, to the extent that preventive health care measures of particular relevance to women, such as screening for breast and cervical cancer, are available in the outside community, they should also be offered to women deprived of liberty.” *CPT, GR 10, §32*

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“1. In Women’s’ institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in his birth certificate.

2. Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in care of their mothers.” *SMR, Rule 23*

“It is axiomatic that babies should not be born in prison, and the usual practice in Council of Europe member States seems to be, at an appropriate moment to transfer pregnant women prisoners to outside hospital. Nevertheless, from time to time, the CPT encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found.” *CPT, GR 10, §27.*

See also *ACPR, B-2b), c), d) and e)* and *IDRCPDL, art. 20.*

Comments

Visiting mechanisms should be aware that prisons are often ill-adapted to the special needs of women and that this situation affects both their physical and mental health. In addition, the women may have been abused, including sexually, before imprisonment. In many countries they remain vulnerable even after imprisonment.

Gynaecological care should be guaranteed. The needs of pregnancy and motherhood should be specially addressed.

Points of reference

- Is there a gynaecologist on the medical staff and what are the gynaecologist's working hours ?
 - What are the conditions for access to the gynaecologist?
 - Are the special needs of pregnant women addressed?
 - Are the special needs of mothers with babies addressed?
 - Where do women give birth?
 - Where young children are living with detained women, is there access to paediatric practitioners?
 - Do women receive the same standard of healthcare as men?
-

SPECIFIC HEALTH CARE FOR MENTALLY ILL PRISONERS

Standards

“1. Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

2. Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management;

3. During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer;

4. The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment” *SMR, Rule 82* (similar wording in *EPR, Rule 100*)

“Prisoners suffering from serious mental disturbance should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. The decision to admit an inmate to a public hospital should be made by a psychiatrist, subject to authorisation by the competent authorities.” *R(98)7, para. 55*.

“It is often advanced that, from an ethical standpoint, it is appropriate for mentally ill prisoners to be hospitalised outside the prison system, in institutions for which the public health service is responsible. On the other hand, it can be argued that the provision of psychiatric facilities within the prison system enables care to be administered in optimum conditions of security, and the activities of medical and social services intensified within that system.” *CPT GR3, § 43*.

See also *ACPR, B-5-b), c) and d)* and *IDRCPDL, art. 17*.

Comments

The percentage of detainees suffering mental disorder is usually higher than in the general population, so visiting mechanisms will need to be able to monitor the extent to which detainees suffering from mental illnesses receive adequate treatment and care. This should only be prescribed and supervised by psychiatric specialists.

Where necessary, care should be provided within an adequate facility. Most international standards are based on the belief that psychiatric hospitals are best placed to provide such specialised treatment, and therefore recommend the transfer of detainees with serious mental illnesses to psychiatric hospitals.

On the other hand, as argued by the CPT in its 3rd General Report, there can also be an advantage in establishing specialised psychiatric facilities within the prison system. The CPT hopes that this could increase the level of professionalism in dealing with mentally ill and disturbed prisoners.

In order to be able to judge if the psychiatric services in a place of detention are sufficient, the visiting team will need to include, perhaps on an occasional basis, a highly qualified psychiatrist. If such a specialist is not available, the visiting body can still establish what mental health care policy exists, and whether the policy has been well thought through and co-ordinated with the appropriate health care services outside the prison.

A related but nevertheless different subject is the one of persons detained in psychiatric hospitals under compulsory orders. Some visiting mechanisms like the CPT, or the mechanisms under the OPCAT, may include in their mandate monitoring conditions under which such persons are detained. The subject is not covered in this manual, but references to appropriate literature are given.

Reference points:

- Have detainees admitted to the establishment in the last 12 months have been diagnosed as suffering from mental illness or disorder?
 - In case of such a diagnosis, what happens to the detainee (i.e. transfer to an outside psychiatric hospital, assignment to a special section within the establishment, no special arrangement)?
 - Who is in charge of the treatment of those detainees (psychiatrist, general practitioner)?
 - How many psychiatrists work in the institution, and how often are they present?
 - What treatment do mentally ill detainees receive (medical, rehabilitation activities, etc.)?
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Further reading

PRI, *Making standards work*, London 2001. (Section IV Prisoners' mental and physical health, pp.69 to 98.

Andrew Coyle, *A Human Rights Approach to Prison Management*, 2003. (Prisoners and Health care, pp.49-58)

PRI, *Making standards work*, London 2001. (Section V-Prisoners contacts with the outside world, pp. 101-115; Section VI – Programmes for prisoners, pp.17-149)

UN HCHR, *Human Rights and Prisons*, Geneva 2003. (Section 4: Health Care of prisoners, pp.46-63).

Specific standards

CPT 3rd General report on activities, *Health care services in prisons*, CPT/Inf(93)12§ 30-77.

CPT 10th General report on activities, *Women deprived of their liberty*, CPT/Inf(2000)13, §26-33)

CPT 8th General report on activities, *Involuntary Placement in psychiatric establishments*, CPT/Inf (98)12,§25-58)

International Council of Prison Medical services, *Oath of Athens for prison physicians*, 1979. www.icpms.inter-free.it/atheus

UN Principles for the protection of persons with mental illness, 1991.

PERSONNEL

The staff in charge of detainees must not be overlooked by visiting mechanisms in the process of monitoring conditions of detention, since they to a large extent determine how detainees will be treated. The key to a humane place of detention lies in the quality of the relationship between the staff and the prisoners.

The following factors play a role in determining the quality of staff:

- Organisation (the size of the workforce, the number of women in the workforce, the proportion of staff in direct contact with prisoners, working times and conditions)
- Recruitment and basic training
- Professional skill and attitude
- Conditions of service and status
- Specialisation
- Use of force
- Attitude to gender and multiculturalism
- Director

The staff may be grouped into the following categories (although some areas of responsibility can usefully be combined):

- management
- internal surveillance
- external surveillance/security (not always under the direct authority of the prison governor)
- medical staff

- social staff (those with responsibility for the day-to-day life of a particular set of prisoners)
- transport staff
- training staff (education, activities, work)
- supplies staff

The extent to which visiting bodies are mandated to monitor staff concerns will vary. However, it is important for members to talk to staff. The detention conditions of the detainees are also the staff working conditions, and their views on the functioning of the establishment, and the improvements they consider necessary, are very relevant.

Personnel

- General issues
 - Training of prison staff.
-

GENERAL ISSUES

Standards

“1. The prison administration shall provide for the careful selection of all grades of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

2. The prison administration shall constantly seek to awaken and maintain in the minds of both the public and the personnel 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.

3. To secure the foregoing ends, personnel should be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries should be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.” *SMR, Rule 46* (see also *Rule 54*.)

“In view of the fundamental importance of the prison staff to the proper management of the institutions and the pursuit of their organisational and treatment objectives, prison administrations shall give high priority to the fulfilment of the rules concerning personnel.” *EPR, Rule 51*

“(…) Mixed gender staffing is an important safeguard against ill-treatment in places of detention. The presence of male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention.” *CPT, GR10, § 23*

“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 own work more as a vocation than as a mere job. Building positive relations with prisoners should be recognised as a key feature of that vocation.

Regrettably, the CPT often finds that relations between staff and prisoners are of a formal and distant nature, with staff adopting a regimented attitude towards prisoners and regarding verbal communication with them as a marginal aspect of their work. The following practices frequently witnessed by the CPT are symptomatic of such an approach: obliging prisoners to stand facing a wall whilst waiting for prison staff to attend to them or for visitors to pass by; require prisoners to bow their heads and keep their hands clasped behind their back when moving within the establishment; custodial staff carrying their truncheons in a visible and even provocative manner. Such practices are unnecessary from a security standpoint and will do nothing to promote positive relations between staff and prisoners.

6

The real professionalism of prison staff requires that they should be able to deal with prisoners in a decent and humane manner while paying attention to matters of security and good order. In this regard prison management should encourage staff to have a reasonable sense of trust and expectation that prisoners are willing to behave themselves properly. The development of constructive and positive relations between staff and prisoners will not only reduce the risk of ill-treatment but also enhance control and security. In turn, it will render the work of prison staff more rewarding.

Ensuring positive staff-inmate relations will also depend greatly on having an adequate number of staff present at any given time in any detention areas and in facilities used by prisoners for activities. CPT delegations often find that this is not the case. An overall low staff complement and/or specific staff attendance systems which diminish the possibilities of direct contact with prisoners, will certainly impede the development of positive relations; more generally, they will generate an insecure environment for both staff and prisoners.

It should also be noted that, where staff complements are inadequate, significant amounts of overtime can prove necessary to maintain a basic level of security and regime delivery in the establishment. This state of affairs can easily result in high levels of stress in staff and their premature burnout, a situation which is likely to exacerbate the tension inherent in any prison environment.” *CPT, GR 11, § 26*

See also *IDRCPLD, art. 7 para 1.*

Juveniles

“Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis.(...)” *RPJDL, Rule 81.1*

“The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.” *RPJDL, Rule 82.3*

Comments

Visiting mechanisms will need to pay particular attention to the behaviour of staff, as the role they play is central to the general climate in the place of detention. This is why it is particularly important that the staff be recruited according to clear criteria for their skills and personal attributes. The workforce must be sufficient in number so as to be able to respond to the need for physical security, but also for human contact between staff and detainees. The balance of men and women staff should ideally reflect that in society at large.

The conditions of service and status of the staff directly influence their attitude towards the detainees. Pay, working hours, career and opportunities to change duties and be promoted are important areas for attention.

For the protection of prisoners, prison staff should be disciplined, with a clear reporting structure. However, there is no operational reason for a prison service to be a military structure, with military ranks.

The behaviour of the staff with regard to detainees depends on the formal and informal instructions they receive. Staff are influenced by the approach and behaviour of their own hierarchy, by statements made by politicians and by their fellow citizens' attitude to detainees. The influence of the director is of particular significance in any place of detention

The visiting team should closely observe the quality of the relationship between staff and prisoners, as expressed in choice of language, tone of voice, body language, as well as their response in particular situations.

Reference points

The visiting team should have the following information:

- number of staff, and ratio, in direct contact with detainees;
 - recruitment criteria – level of education and personal profile;
 - basic training and on-going training;
 - average salary;
 - number of women staff and level of authority;
 - how do staff address detainees, and detainees staff;
 - contact between the staff and detainees;
 - attitude of the staff to detainees, to their superiors and to their work;
 - accessibility of the director to detainees;
 - frequency with which the director visits all parts of the place of detention.
-

TRAINING OF PERSONNEL

Standards

“1. The personnel shall possess an adequate standard of education and intelligence.

Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organised at regular intervals.” *SMR, Rule 47*

“Enforcement personnel, medical personnel, police officers and any other persons in-volved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training”. *GC 20, para. 10*

“Finally, the CPT wishes to emphasize the great importance it attaches to the training of law-enforcement personnel (which should include education on human rights matters – cf also Article 10 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). There is arguably no better guarantee against the ill-treatment of a person deprived of his liberty than a properly trained police or prison officer. Skilled officers will be able to carry out successfully their duties without having recourse to ill-treatment and to cope with the presence of fundamental safeguards for detainees and prisoners.” *CPT, GR 2, § 59*

“In this connection, the CPT believes that aptitude for interpersonal communication should be a major factor in the process of recruiting law-enforcement personnel and that, during training, considerable emphasis should be put on developing interpersonal communication skills, based on respect for human dignity. The possession of such skills will often enable a police or prison officer to defuse a situation

which could other-wise turn into violence, and, more generally, will lead to a lowering of tension and raising of the quality of life, in police and prison establishments, to the benefit of all concerned.”
CPT, GR 2, § 60

See also *IDRCPLD. art. 7 para 2.*

Juveniles

“The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.” *RPJDL, Rule 85*

6

Comments

Visiting mechanisms should be aware that qualified staff with a good level of training form the basis of a humane penal system, and inform themselves of the training provided and its suitability. The training should emphasise the basic ethical values required to work with other human beings in a humane manner, and only then focus on the necessary technical skills (such as security and use of force). The training should include areas such as interpersonal communication, prevention of disorder, non-violent conflict management, and stress management.

Opportunities for continuing training should be provided for all staff, regardless of sex, age and rank, without any discrimination.

Staff should have access to psychological supervision, support, and debriefing, especially after violent incidents.

Reference points

What are the current recruitment criteria?

- What basic training do new recruits receive (type, length, subject areas, weighting)? What are the opportunities for ongoing training? Are they used?
 - Have staff working with special categories, for example juveniles, been given specific training?
 - Does staff training cover complaints, inspection and monitoring (including external monitoring by visiting mechanisms)?
-

Further reading

PRI, *Making standards work*, London 2001. (Section VII- Prison staff pp.151 – 166)

Andrew Coyle, *A Human Rights Approach to Prison Management*, 2003. (Prison staff and the administration of prisons, pp.13- 30)

UN HCHR, *Human Rights and Prisons*, Geneva 2003. (Section12, The administration of prisons and prison staff, pp.162-171)

DETENTION BY POLICE

Some visiting mechanisms will be mandated to cover all places of detention, or only police detention. Even those whose mandate covers monitoring only of other types of custody may receive allegations that torture and ill-treatment occurred in the preceding period of police custody. This may be the first time detainees have made their allegations, as they often fear making complaints until they have left police detention. Such allegations should of course be reflected in the activities and reports of all visiting mechanisms, regardless of their specific mandate. Where there is a separate body responsible for monitoring police detention or police activities in general, visiting mechanisms should consider liaising with that body.

Visits conducted in police stations are different from visits to prisons. Contact with the outside world is usually particularly restricted; detainees can therefore feel more vulnerable in speaking to the delegation. Other differences include material conditions of detention, which are not designed for the long-term and are therefore more basic. Safeguards, for prisoners, including procedural safeguards, take on a particular importance, and visiting mechanisms must ensure that they are well briefed on the procedures which should be followed.

The visiting body needs to be well informed on local law governing the length of police detention and the role of the judge in authorising continued detention. Deprivation of liberty by the police should be of short duration. After a specified short period (usually between 24 and 72 hours), the person detained by the police must usually either be released or brought before a judge (in person) for a decision on further detention or release.

In some cases, however, these limits are not respected, and/or judges may give their decision without seeing the prisoner. It is most often in these hours immediately after arrest that the risk of

ill-treatment is greatest. Accordingly, the section: TREATMENT/ Torture and ill-treatment is particularly relevant to this type of detention.

FUNDAMENTAL SAFEGUARDS

Standards

“The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members”.
GC 20, para 11 in fine

“The CPT attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police authorities). They are, in the CPT’s opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc).” *CPT, GR2, § 36*

“The CPT has repeatedly stressed that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs. The CPT recognises that in order to protect the legitimate interests of the police investigation, it may exceptionally be necessary to delay for a certain period a detained person’s access to a lawyer of his choice. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer should be arranged.

The right of access to a lawyer must include the right to talk to him in private. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police. Naturally, this should not prevent the police from questioning a detained person on urgent matters, even in the absence of a lawyer (who may not be immediately available), nor rule out the replacement of a lawyer who impedes the proper conduct of an interrogation.

The CPT has also emphasised that the right of access to a lawyer should be enjoyed not only by criminal suspects but also by anyone who is under a legal obligation to attend – and stay at – a police establishment, e.g. as a “witness”.

Further, for the right of access to a lawyer to be fully effective in practice, appropriate provision should be made for persons who are not in a position to pay for a lawyer.” *CPT GR 12, § 41*

7 “Persons in police custody should have a formally recognised right of access to a doctor. In other words, a doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests. Further, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).

All medical examinations of persons in police custody must be conducted out of the hearing of law enforcement officials and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials.

It is also important that persons who are released from police custody without being brought before a judge have the right to directly request a medical examination/certificate from a recognised forensic doctor.” *CPT GR 12, §42*

“A detained person’s right to have the fact of his/her detention notified to a third party should in principle be guaranteed from the

very outset of police custody. Of course, the CPT recognises that the exercise of this right might have to be made subject to certain exceptions, in order to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefore, and to require the approval of a senior police officer unconnected with the case or a prosecutor).” *CPT GR12, § 43*

“Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party of their choice, to have access to legal assistance and to have a medical examination by a doctor, whenever possible of their own choice” *European Code of police ethics, 2001, art. 57*

See also *ACPR, A-17-b) and B-1 h) and g)*, and *IDRCPDL, art. 36 para. 1.*

Juveniles

See *IDRCPDL, art. 36 para. 4.*

Comments

It is during the hours immediately following arrest that detainees are most vulnerable and that the risk of abuse of power by those responsible for their care and custody is the greatest. It is therefore important that the power of the police to detain persons temporarily be accompanied by appropriate safeguards. The CPT has identified the following safeguards as of particular importance, from the outset of the deprivation of liberty:

- informing a third person;
- access to a lawyer;
- access to a medical doctor.

Visiting mechanisms need to ask the following questions:

Reference points

- Has the detainee been able to inform his/her family or a third person?
 - Has he/she had contact with a lawyer?
 - Has he/she been seen by a doctor?
 - Has the maximum legal length of custody been respected?
 - Has the detainee been brought before a judge (in person)?
 - Has the detainee made any formal allegation of torture and what response has there been?
 - Is there separation of men and women? Minors and adults?
 - Is there protection against other persons deprived of liberty who may pose a threat to the detainee?
 - Are identified officers responsible for working with juveniles and women?
-

REGISTERS

Standards

“The CPT considers that the fundamental safeguards granted to persons in police custody would be reinforced (and the work of police officers quite possibly facilitated) if a single and comprehensive custody record were to exist for each person detained, on which would be recorded all aspects of his custody and action taken regarding them (when deprived of liberty and reasons for that measure; when told of rights; signs of injury, mental illness, etc; when next of kin/consulate and lawyer contacted and when visited by them; when offered food; when interrogated; when transferred or released, etc.). For various matters (for example, items in the person’s possession, the fact of being told of one’s rights and of invoking or waiving them), the signature of the detainee should be obtained and, if necessary, the absence of a signature explained. Further, the detainee’s lawyer should have access to such a custody record.” CPT, GR 2, § 40

Comments

Registration constitutes an important safeguard as it leaves a written trace of all important information regarding the treatment of the person and the procedure followed. There are different types of information to be registered and these pieces of information are usually found in different registers. Visiting mechanisms need to be familiar with the registers, and capable of identifying where documents have been inadequately completed. Key information includes the name of the detainee, the reason for arrest; the time of arrest; interrogation; transfer; and passing information to third persons. It is important to investigate whether the person has had the possibility of appealing against detention while in custody, and whether/in what way this information was registered.

Reference points

- Is the following information registered: when arrested, when interrogated, when transferred or released; when a third person was informed; when and how the person was informed of his/her rights; when visited by a doctor; a lawyer, another third person; provision of food; what food was provided and when?
 - Is the information recorded in a systematic and rigorous fashion?
 - Do records show that the maximum length of detention has been respected?
 - Has any physical injury, or allegation of torture or ill-treatment been registered?
-

INTERROGATIONS

Standards

“1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.” *BPP, Principle 23*

“Turning to the interrogation process, the CPT considers that clear rules or guidelines should exist on the way in which police interviews are to be conducted. They should address inter alia the following matters: the informing of the detainee of the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which interviews may take place; whether the detainee may be required to stand while being questioned; the interviewing of persons who are under the influence of drugs, alcohol, etc. It should also be required that a record be systematically kept of the time at which interviews start and end, of any request made by a detainee during an interview, and of the persons present during each interview.

The CPT would add that the electronic recording of police interviews is another useful safeguard against the ill-treatment of detainees (as well as having significant advantages for the police).” *CPT, GR2, §39*

“The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT is pleased to note that the introduction of such systems is under consideration in an increasing

number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.” *CPT, GR12, § 36*

7

“The questioning of criminal suspects is a specialist task which calls for specific training if it is to be performed in a satisfactory manner. First and foremost, the precise aim of such questioning must be made crystal clear: that aim should be to obtain accurate and reliable information in order to discover the truth about matters under investigation, not to obtain a confession from someone already presumed, in the eyes of the interviewing officers, to be guilty. In addition to the provision of appropriate training, ensuring adherence of law enforcement officials to the above-mentioned aim will be greatly facilitated by the drawing up of a code of conduct for the questioning of criminal suspects.” *CPT, GR12, §34*

“It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment.” *GC 20, para. 11*

“To guarantee the effective protection of detained persons (...) the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings.” *GC 20 para.11.*

“Guidelines for the proper conduct and integrity of police interviews shall be established (...). They shall in particular, provide for a fair interview during which those interviewed are made aware of the reasons for the interview as well as other relevant information. Systematic records of police interviews shall be kept” *European Code of Police ethics*, § 50

Comments

Interrogation constitutes a particularly critical moment when the detainee is especially vulnerable to ill-treatment or torture. In criminal investigation systems where the emphasis is put on confession rather than painstaking gathering of evidence, the risk that police officers will resort to ill-treatment or torture is very high. This risk is increased where promotion of police officers is based on the number of detainees convicted.

When meeting detainees who have undergone or are still undergoing interrogation, the visiting team needs to be aware that it is operating in a very abnormal situation. Members need to be sensitive to the emotional state of the detainee and to his security. It is particularly important to strike a balance between the team’s desire to gather information and the detainee’s own needs and fears.

Where a police detainee wishes to make allegations of physical or verbal abuse to the visiting mechanism (in full knowledge of the risks he or she may be running) visitors should not forget also to gather ‘neutral’ information on the interrogation that may be of help in substantiating (or disproving) any allegations, such as the time, length and location of the interrogation and the names or appearance of those present.

Reference points

- Is the person alleging physical violence?
 - During arrest? During interrogation?
 - Has the person suffered or is he/she suffering psychological violence: abuse, threats?
 - What were the circumstances of the interrogation?
 - Does the register mention the name of the person conducting the interrogation, the length of the interrogation, pauses?
(see also: CHAPTER IV, Treatment/Torture and ill-treatment)
-

INFORMATION

Standards

“Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.” *BPP, Principle 10*

“Any person shall, at the moment of his arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and explanation of his rights and how to avail himself of such rights.” *BPP, Principle 13*

“Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. Consequently, it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language which they understand. In order to ensure that this is done, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.” *CPT, GR12, § 44*

“The police shall to the extent possible according to domestic law, inform promptly persons deprived of their liberty of the reasons for the deprivation of their liberty and of any charge against them, and shall also without delay inform persons deprived of their liberty of the procedure applicable to their case.” *European Code of Police ethics, § 55*

Comments

Visiting mechanisms should know what information each arrested person is entitled to receive and monitor whether they are receiving it. Detainees must be informed of the reasons for their arrest. They are also entitled to be informed of their rights (for example to contact a third person, lawyer etc). This information must be conveyed in a comprehensible language. This can be done in writing using a form, or if the person is illiterate, orally.

Reference points

- Has the person been informed promptly of the reasons for his/her arrest?
 - Has the person been informed of his/her rights? Orally?
In writing?
 - In a language he/she understands? with interpretation?
 - How are vulnerable prisoners dealt with?
-

MATERIAL CONDITIONS

Standards

“All police cells should be clean and of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) ; preferably cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets. Persons in police custody should have access to a proper toilet facility under decent conditions, and be offered adequate means to wash themselves. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held in police custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day.” *CPT, GR12, § 47*

“The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2,5 metres between floor and ceiling.” *CPT, GR 2, §43*

“The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest”. *European Code of Police ethics, article 56*

Comments

Detention in police custody is supposed to be of short duration, hence material conditions will be more basic. However, police cells must have natural light and ventilation, and a temperature appropriate to the climate and season. If someone has to spend a night in the cell, it must be equipped with a mattress and blankets. Access to toilets should not involve delay. However, the visiting mechanism should be aware that these facilities are sometimes used for longer periods, for which they're often inadequate.

The smaller the cell, the less time may be spent there. The CPT uses the following criteria to assess individual police cells used to keep people for more than a few hours: around 7 square metres surface area (with 2 metres or more between walls and 2.5 metres between floor and ceiling).

Reference points

- What is the area of the cell, its official capacity and the actual number of persons in the cell? Is it overcrowded?
 - Do the cells have access to natural light?
 - Is the temperature adequate to the season?
 - Do the cells have chairs/benches and mattresses?
 - Has the person been given any food? A hot meal?
 - Does the person have access to drinking water?
 - What are the conditions for access to toilets?
-

Further readings

AI, *Combating torture*, London 2003. (Chapter 4 Safeguards in custody, pp. 89-109)

Specific standard

CPT 2nd General report on activities, *Police custody*, CPT/Inf 92) 3, § 36-41

Annexes

- 1** CHECKLIST
- 2** EXAMPLE OF INTERNAL VISIT NOTE
- 3** OPTIONAL PROTOCOL TO THE UN CONVENTION AGAINST TORTURE
- 4** LIST OF RELEVANT STANDARDS
- 5** ADDITIONAL READINGS
- 6** USEFUL ADDRESSES

Annexe 1

Checklist

TREATMENT

- Allegations of torture and ill-treatment
- Use of force or other means of restraint
- Use of solitary confinement

PROTECTION MEASURES

Informing detainees

- Information upon arrival
- Possibility to inform a third person
- Accessibility of the internal rules and procedures

Disciplinary procedure and sanctions

- Brief description of the procedure
- Composition of the disciplinary authority
- Possibilities for appeal, including with representation
- Types of sanction and frequency (proportionality)
- Examination by a doctor upon arrest
- Statistics of sanctions by type and reasons
- Disciplinary cells

Complaint and inspection procedures

- Existence of complaints and inspection procedures
- Independence of the procedures
- Accessibility of the procedures (easy and effective access?)

Separation of categories of detainee

Registers

MATERIAL CONDITIONS

Capacity and occupancy of the establishment (at the time of the visit)

- Number of detainees by category
- % of foreign nationals
- Breakdown by sex and age

Cells (by geographical sections)

- Size and occupancy levels / effective average number per cell
- Material conditions: lighting, ventilation, furniture, sanitary facilities
- Hygiene conditions

Food

- Meals (quality, quantity, variety, frequency)
- Special dietary regimes (for medical, cultural, or religious reasons)

Personal hygiene

- showers (number, cleanliness, state of repair, frequency for working detainees, for others)
- sanitary facilities (inside cells, outside, access, cleanliness)
- bedding (quality, cleanliness, frequency of change)
- possibility of laundry

REGIME AND ACTIVITIES

Administration of time

- Time spent in the cell daily
- Time spent for daily exercise
- Time spent daily working
- Time spent daily outside the cell
- Time used for sports per week
- Time used for other activities

Activities offered

- Work: access to work; type of work; % of detainees working; obligation to work; remuneration; social coverage; description of the working premises
- Education: access to studies, types of studies offered (literacy and numeracy, high school, vocational, university studies), frequency of courses, organisers of courses, teaching staff, % of detainees studying, description of the school rooms
- Leisure: types of leisure activity, access, description of leisure rooms and sport facilities; library

- Religious activities: religious representatives (religions represented, conditions of access; frequency and duration of visits); religious services (access, premises); opportunity to follow religious practices such as washing and diet.

Contacts with the outside world

- Visits: access, frequency, conditions for having visits, duration and regularity of visits, visits by relatives/children/spouses, description of visit rooms
- Correspondence and parcels: frequency, censorship
- Telephone conversations: frequency, conditions, foreign nationals

MEDICAL SERVICES

Access to medical care

- Medical examination upon entry
- Procedure for accessing medical care
- Infirmary: number of beds, equipment, medication
- Number of inmates receiving treatment

Medical staff

Number and availability of doctors, nurses, psychiatrists and psychologists, other personnel

PRISON STAFF

- Number of staff (by categories)
- Relationship between guards and detainees; relationship between management and the detainees
- Training of the staff (basic and on-going)

Annex 2

Example of internal visit note

GENERAL INFORMATION ABOUT THE ESTABLISHMENT

- Name of the establishment:
- Type of establishment:
- Address:

AUTHORITIES ON WHICH THE ESTABLISHMENT DEPENDS

- Name of the person in charge of the place:
- Name of the deputy or deputies:

GENERAL INFORMATION ON THE VISIT

- Date of the visit:
- Type and/or objective of visit:
- Date of the previous visit:
- Names of the members of the visiting team:

INFORMATION ON THE ESTABLISHMENT

Capacity of the establishment

- Administrative capacity:
- Average capacity:
- Number of persons deprived of their liberty at the first day of the visit (by category/sex/nationality):

- Percentage of foreign prisoners:
- Origin of foreign prisoners:
- Distribution according to sex:
- Minor detainees:
- Elderly detainees:

Structure of the establishment

- Description of the building (number of buildings, age, state, maintenance, security conditions):
- Description of the cells and common facilities:

INFORMATION ON THE VISIT

Talk at the start of the visit—Issues discussed

Aspects of detention and recommendations

- According to the persons deprived of their liberty:
- According to the director and personnel:
- According to the facts observed by the visiting team:

Talk at the end of the visit

- Issues discussed:
- Answers received:

Actions to undertake

- Short term:
- Mid term:

Contacts to take:

Frequency of visits:

Points to verify at the next visit:

Annex 3 Optional Protocol to the UN Convention against Torture

Preamble

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an Optional

Protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

PART I - GENERAL PRINCIPLES

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II - SUBCOMMITTEE ON PREVENTION

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.
4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.
5. No two members of the Subcommittee on Prevention may be nationals of the same State.
6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.
2. (a) The nominees shall have the nationality of a State Party to the present Protocol;
(b) At least one of the two candidates shall have the nationality of the nominating State Party;
(c) No more than two nationals of a State Party shall be nominated;

- (d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.
3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:
- (a) Primary consideration shall be given to the fulfillment of the requirements and criteria of article 5 of the present Protocol;
 - (b) The initial election shall be held no later than six months after the entry into force of the present Protocol;
 - (c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;
 - (d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.
2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if nominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:
 - (a) Half the members plus one shall constitute a quorum;
 - (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
 - (c) The Subcommittee on Prevention shall meet in camera.
3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III - MANDATE OF THE SUBCOMMITTEE ON PREVENTION

Article 11

The Subcommittee on Prevention shall:

- (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) In regard to the national preventive mechanisms:
 - (i) Advise and assist States Parties, when necessary, in their establishment;
 - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
 - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

- (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- (c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- (d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfill its mandate as established in article 11.
2. After consultations, the Subcommittee on Prevention shall notify

the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.
4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:
 - (a) Unrestricted 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) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
 - (c) Subject to paragraph 2 below, unrestricted 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 Subcommittee on Prevention believes may supply relevant information;

- (e) The liberty to choose the places it wants to visit and the persons it wants to interview.
2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.
2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.
4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the

Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV - NATIONAL PREVENTIVE MECHANISMS

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status

of national institutions for the promotion and protection of human rights.

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.

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.

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.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V - DECLARATION

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or

part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI - FINANCIAL PROVISIONS

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII - FINAL PROVISIONS

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.
3. Following the date on which the denunciation of the State Party

becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

Annex 4

List of relevant standards

1. UNITED NATIONS

1.1. UN Conventions and Treaty Bodies

To be found under: www.unhchr.ch fi Treaties and Treaty monitoring bodies

- International Covenant on Civil and Political Rights, 1966
Treaty Body: The Human Rights Committee

- Convention against Torture and other forms of cruel, inhuman or degrading Treatment or Punishment, 1984
Treaty Body: The Committee against Torture

- Optional Protocol to the Convention against Torture and other forms of cruel, inhuman or degrading Treatment or Punishment, 2002
Additional information to be found under: www.apt.ch fi UN & Legal fi Information on the Optional Protocol

- Convention on the Rights of the Child, 1989
Treaty Body: The Committee on the Rights of the Child

- Vienna Convention on Consular Relations, 1967
To be found under: www1.umn.edu/humanrts

1.2. UN Non-binding documents

To be found under: www.unhcr.ch fi Treaties

- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UN General Assembly resolution 43/173 of 9 December 1988
- Basic Principles for the Treatment of Prisoners, adopted by UN General Assembly resolution 45/111 of 14 December 1990
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by UN General Assembly resolution 45/113 of 14 December 1990
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), adopted by the UN General Assembly resolution 40/33 of 29 November 1985
- Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC in its resolutions 633 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by UN General Assembly resolution 37/194 on 18 December 1982

- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,
adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

- Code of conduct for law enforcement officials,
adopted by UN General Assembly resolution 34/169 on 17 December 1979

- UN Principles for the protection of persons with mental illness and the improvement of Mental Health care,
adopted by UN General Assembly resolution 46/119 on 17 December 1991

- UNHCR revised guidelines on applicable criteria and standards relating to the detention of asylum seekers, 1999
To be found under www.unhcr.ch

- Statement on body searches of prisoners,
adopted by the 45th World Medical Assembly, Budapest, Hungary, October 1993
To be found under: www.wma.net/e/policy/b5.htm

- Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules),
adopted by General Assembly resolution 45/110 of 14 December 1990

2. AFRICAN UNION

- African Charter on Human and Peoples' Rights,
adopted by the Organisation of African Unity, on 27 June 1981
To be found under: www.africa-union.org fi Official Documents fi
Treaties, Conventions & Protocols

- Draft African Charter on Prisoner's Rights
Draft adopted by the Fifth Conference of the Central, Eastern and
Southern African
Heads of Correctional Services, Windhoek Namibia, 4th to 7th
September 2001, and discussed at the Pan-African Conference on
Penal and Prison Reform in Africa, Ouagadougou from 18th to
20th of September 2002,
Additional information available at www.penalreform.org.

- Guidelines and measures for the Prohibition and Prevention of
Torture, Cruel, Inhuman or Degrading Treatment or Punishment in
Africa (The Robben Island Guidelines), 2002
To be found under: www.apt.ch fi Africa

- The Kampala Declaration on Prison Conditions in Africa,
produced by an African conference on prison conditions, 1996.
To be found under:
www.penalreform.org/english/pana_declarationkampala.htm

3. ORGANISATION OF AMERICAN STATES

To be found under: www.cidh.oas.org fi Basic Documents

- American Convention on Human Rights (Pact of San Jose),
adopted by the Inter-American Specialized Conference on Human
Rights of the Organization of American States, San José, Costa
Rica, 22 November 1969

- American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States, 2 May 1948

- Inter-American Convention to Prevent and Punish Torture, adopted by the 15th regular session of the General Assembly of the Organization of American States, Cartagena de Indias, Colombia, 9 December 1985

- Draft Inter-American Declaration Governing the Rights and Care of Persons Deprived of Liberty, sponsored by the Costa Rican government and prepared by Penal Reform International in 2001, in view of submission to the General Assembly of the Organisation of American States, available on www.penalreform.org

4. COUNCIL OF EUROPE

4.1. Council of Europe Conventions

- European Convention on Human Rights, ETS No. 005, 1950
To be found under: www.coe.int fi Human Rights

- European Convention for the Prevention of Torture and other Inhuman or Degrading Treatment or Punishment, ETS No. 126, 1987
To be found under: www.cpt.coe.int fi Documents fi Reference Documents

All CPT standards can be found on www.cpt.coe.com

4.2. Council of Europe Non binding documents

to be found under www.coe.int fi Committee of Ministers fi Advanced Search (introduce date and reference)

- Recommendation R(87)3 European Prison Rules, adopted by the CoE Committee of Ministers on 12 February 1987, reference: Rec(87)3
- Recommendation R(89)12 on Education in Prison, adopted by the CoE Committee of Ministers on 13 October 1989, reference: Rec(89)12
- Recommendation R(98)7 concerning the ethical and organisational aspects of health care in prison, adopted by the CoE Committee of Ministers on 8 April 1998, reference: Rec(98)7
- Recommendation R(80)11 concerning custody pending trial, adopted by the Committee of Ministers on 27 June 1980, reference: Rec(80)11
- Recommendation R(82) 16 on prison leave, adopted by the Committee of Ministers on 24 September 1982, reference: Rec(82)16
- Recommendation R(82)17 Concerning custody and treatment of dangerous prisoners, adopted by the Committee of Ministers on 24 September 1982, reference: Rec(82)17

- Recommendation R (84) 12 concerning foreign prisoners, adopted by the Committee of Ministers on 21 June 1984, reference: Rec(84)12

- Recommendation R(89)14 on the ethical issues of HIV infection in health care and social settings, adopted by the Committee of Ministers on 24 October 1989, reference: Rec(89)14

- Recommendation R(92)16 on the European rules on community sanctions and measures, adopted by the Committee of Ministers on 19 October 1992, reference: Rec(92)16

- Recommendation R(93)6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison, adopted by the Committee of Ministers on 18 October 1993, reference: Rec(93)6

- Recommendation R(98)7 concerning the ethical and organizational aspects of health care in prisons, adopted by the Committee of Ministers on 8 April 1998; Reference Rec(98)7

- Recommendation R(98)8 concerning the ethical and organisational aspects of health care in prison, adopted by the Committee of Ministers on 8 April 1998, reference: Rec(98)8

- Recommendation R(99)22 concerning prison overcrowding and prison population inflation,

adopted by the Committee of Ministers on 30 September 1999,
reference: Rec(99)22

- Recommendations Rec(2001)10 on The European Code of Police Ethics,
adopted by the Committee of Ministers on 19 September 2001;
reference Rec(2001)10

Annex 5

Additional readings

1. ON MONITORING PLACES OF DETENTION

APT/OSCE-ODHIR, *Monitoring places of detention: a practical guide for NGOs*, Geneva, December 2002, available on www.apr.ch in English and Russian.

Penal Reform International, *Monitoring prison conditions in Europe: Report of a European*, Seminar held in Marly-le-Roi, France, Paris, 1997.

2. ON THE OPCAT

APT, *The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: A Manual for Prevention*, Geneva, 2004, available in English, (French, Spanish and Portuguese to follow).

APT, *Implementation of the Optional Protocol to the UN Convention against Torture. The Establishment and Designation of National Preventive Mechanisms*, Geneva, April 2003, available at www.apr.ch in English, French, Spanish and Russian.

3. ON TORTURE

Camille Giffard, *The Torture Reporting Handbook, How to document and respond to allegations of torture within the international system for the protection of human rights*, Human Rights Centre, University of Essex, 2000. Available in Arabic, English, French, Spanish and Russian.

United Nations Office of the High Commissioner for Human Rights, *Istanbul Protocol, Manual on the Effective investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Professional Training Series no. 8, New York, Geneva, 2001.

Amnesty International, *Combating torture: A manual for action*, London, 2003, available on www.amnesty.org in English.

OSCE/ODIHR, *Preventing Torture – A Handbook for OSCE Field staff*, Warsaw 1999, available on www.osce.org in English and Russian.

4. ON IMPLEMENTATION OF STANDARDS IN PRISONS

Andrew Coyle, *A Human Rights Approach to Prison Management. Handbook for prison staff*. International Centre for Prison Studies, 2003, available on www.prisonstudies.org in Arabic, Brazilian Portuguese, Chinese, English, Russian, Spanish and Turkish.

Penal Reform International, *Making standards work, an international handbook on good prison practice*. London, 2001, available in English, French, Russian and Spanish, for download on www.penalreform.org in English and French.

United Nations Office of the High Commissioner for Human Rights, *Human Rights and Prisons - A manual on Human Rights Training for Prisons Officials*, Professional Training Series No.9, Geneva, 2003.

Nigel S. Rodley, *The treatment of prisoners under international law*, Second Edition, Oxford, 1999.

Vivien Stern, *A sin against the future – Imprisonment in the world*. Penguin Books, 1998

Peter Sutton, (ed.), *Basic Education in Prisons: Final Report*, United Nation/ UNESCO Institute for Education (UIE) joint publication, English version available free of charge at UIE, French and Spanish version available on the UIE Website: <http://www.unesco.org/education/uie/online/prifr/prifr.pdf>Others

5. ON MONITORING HUMAN RIGHTS IN GENERAL

Helsinki Foundation for Human Rights, *Human Rights Monitoring*, Warsaw, 2001.

United Nations Office of the High Commissioner for Human Rights, *Professional Training Series n°7, Training Manual on Human Rights Monitoring*, New York, Geneva, 2001.

6. ON BODIES VISITING PLACES OF DETENTION

APT, *Visiting places of detention: Practices and Lessons learned by selected domestic institutions, Seminar Report*, Geneva, 2004.

APT, *The Impact of External Visiting of Police Stations on Prevention of Torture and Ill-Treatment, Study*, Geneva, 1999.

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Annex 6

Useful Addresses

1. INTERNATIONAL ORGANISATIONS

International Committee of the Red Cross

19 Avenue de la Paix, 1211 Geneva, Switzerland
Telephone: +41 (0)22 734 60 01 Fax: +41 (0)22 733 20 57
E-mail: webmaster.gva@icrc.org
Website: www.icrc.org

United Nations Office of the High Commissioner for Human Rights

Palais des Nations, 8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland
Telephone: +41 (0)22 917 90 00 Fax: +41 (0)22 917 90 12
E-mail: webadmin.hchr@unog.ch
Website: www.unhchr.ch

United Nations Office on Drugs and Crime

Vienna International Centre
Wagramerstr. 5 P.O. Box 500, 1400 Vienna, Austria
Telephone: +43 1 260 60 0 Fax +43 1 260 60 58 66
E-mail: unodcnodc.org
Website: www.unvienna.org

United Nations High Commissioner for Refugees

Department of International Protection
P.O Box 2500, 1211 Geneva 2, Switzerland
Telephone: +41 (0)22 739 84 77 Fax: +41 (0)22 739 73 54
Website: www.unhcr.ch

Commonwealth Secretariat

Human Rights Unit
Marlborough House, Pall Mall, London SW1Y 5HX, United Kingdom
Telephone +44 207 747 64 08 Fax +44 207 747 64 18
Website www.thecommonwealth.org

2. REGIONAL ORGANISATIONS

EUROPE

Council of Europe

67075 Strasbourg Cedex, France

Website: www.coe.int

European Court of Human Rights

Telephone: +33 3 88 41 20 32 Fax: +33 3 88 41 27 91

Website: www.echr.coe.int

European Committee for the Prevention of Torture (CPT)

Telephone: +33 3 88 41 23 88 Fax: +33 3 88 41 27 72

E-mail: cpt.doc@coe.int

Website: www.cpt.coe.int

European Parliament

L-2929, Luxembourg

Telephone: +352 4300-1 Fax: +352 43 70 09

Website: www.europa.eu.int

Organization for Security and Cooperation in Europe

Office for Democratic Institutions and Human Rights

Aleje Ujazdowskie 19, 00557 Warsaw, Poland

Telephone: +48 22 520 06 00 Fax: +48 22 520 06 05

E-mail: office@odhir.pl

Website: www.osce.org/inst/odihr

European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI)

POB 157 Uudenmaankatu 37, 00121 Helsinki, Finland

Phone: +358 9 1606 78 80 Fax: +358 9 16 06 78 90

E-mail: heuni@om.fi

Website: www.heuni.fi

AFRICA**African Commission on Human and Peoples' Rights**

90 Kairaba Avenue, P.O. Box 673, Banjul, The Gambia

Telephone: +220 392962; Fax: +220 390764

Website: www.achpr.org

Organization of African Unity

P.O. Box 3234, Roosevelt Street, W21K19 Addis Ababa, Ethiopia

Telephone: (251-1) 51 77 00, Fax (251-1) 51 78 44

Website: www.africa-union.org

United Nations African Institute for the Prevention of Crime and the Treatment of Offenders

P.O. Box 10590, Kampala, Uganda

Telephone (256) 41 22 11 19, Fax: (256) 41 22 26 23

E-mail: unafri@unafri.or.ug

Website: www.unafri.or.ug

AMERICAS**Inter-American Commission on Human Rights****Organization of American States (OAS)**

1889 F Street, N.W., Washington D.C: 2006, USA

Telephone (1 202) 458-6002 Fax: (1 202) 458-3992

Website www.cidh.org

United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD)

Edificio Plaza de la Justicia, 3er piso, Apartado Postal 10071-1000

San José Costa Rica

Telephone +506.257.5826 Fax: +506. 233.7175

E-mail: ilanud@ilanud.or.cr

Website www.ilanud.or.cr

ASIA**United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI)**

1-26 Harumi-cho, Fuchu-shi, Tokyo 183-0057, Japan
 Telephone : +81.42.333.7021, Fax : +81.42.333.7024
 E-mail : unafei@moj.go.jp
 Website: www.unafei.or.jp

3. NON-GOVERNMENTAL ORGANISATIONS**INTERNATIONAL NGOS****Amnesty International (International Secretariat)**

1 Easton Street, London WC1X 8 DJ, United Kingdom
 Telephone: +44 171 413 55 00 Fax: +44 171 956 11 57
 E-mail: amnestyis@amnesty.org
 Website: www.amnesty.org

Association for the Prevention of Torture (APT)

10 Route de Ferney, P.O. Box 2267, 1211 Geneva 2, Switzerland
 Telephone: +41 22 919 21 70 Fax: +41 22 919 21 80
 E-mail: apt@apt.ch
 Website: www.apt.ch

Human Rights Watch (HRW)

485 Fifth Avenue, 3rd Floor, New York, NY 10017, USA
 Telephone: +1 212 290 47 00 Fax: +1 212 736 13 00
 E-mail: hrwny@hrw.org
 Website: www.hrw.org

International Centre for Prison Studies (ICPS)

King's College London School of Law 3rd Floor
 26-29 Drury Lane London WC2B 5RL United Kingdom
 Telephone: +44 (0) 207 848 1922 Fax: +44 (0) 207 848 1901
 E-mail: icps@kcl.ac.uk
 Website: www.prisonstudies.org

International Commission of Jurists (ICJ)

26 Chemin de Joinville, P.O Box 160, 1216 Geneva, Switzerland

Telephone: +41 22 979 38 00 Fax: +41 22 979 38 01

E-mail: info@icj.org

Website: www.icj.org

International Federation of the League of Human Rights (FIDH)

17 Passage de la Main d'Or, 75011 Paris, France

Telephone: +33 1 43 55 25 18 Fax: +33 1 43 55 18 80

E-mail: fidh@csi.com

Website: www.fidh.imagnet.fr

International Federation of Action by Christians for the Abolition of Torture (FIACAT)

27 Rue de Maubeuge, 75009 Paris, France

Telephone: (33) 1 42 80 01 60 Fax: (33) 1 42 80 20 89

E-mail: fi.acat@wanadoo.fr

Inter-Parliamentary Union (IPU)

Place du Petit-Saconnex, P.O. Box 438

1211 Geneva 19, Switzerland

Telephone: +41 (0)22 734 41 50 Fax: +41 (0)22 733 31 41

E-mail: postbox@mail.ipu.org

Website: www.ipu.org

International Rehabilitation Council for Torture Victims

Borgergade 13, P.O. Box 2107, 1014 Copenhagen, Denmark

Telephone: +45 33 76 06 00 Fax: +45 33 76 05 00

E-mail: irct@irct.org

Website: www.irct.org

International Service for Human Rights

1 rue de Varembe, P.O. Box 16, 1211 Geneva 20, Switzerland

Telephone: +41 (0)22 733 51 23 Fax: +41 (0)22 733 08 26

E-mail: dir@ishr-sidh.ch

Website: www.ishr.ch

World Organisation against Torture (OMCT—SOS Torture)

8, rue du Vieux-Billard, P.O. Box 21, 1211 Geneva 8, Switzerland

Telephone: +41 (0)22 809 49 39 Fax: +41 (0)22 809 49 29

E-mail : omct@omct.org

Website: www.omct.org

Penal Reform International

The Bon Marché Centre 241-251 Ferndale Road London SW9 8BJ
 Telephone: +44 207 721 76 78 Fax: +44 207 721 87 85
 E-mail: Headofsecretariat@penalreform.org
 Website: www.penalreform.org

The Redress Trust

6 Queen Square, London WC1N 3AR, United Kingdom
 Telephone: + 44 171 278 9502 Fax: +44 171 278 9410
 E-mail: redresstrust@gn.apc.org
 Website: www.redress.org

REGIONAL NGOS**African Centre for Democracy and Human Rights Studies**

P. O. Box 2728, Serrekunda, Zoe Tembo Building, Kerr Sereign, The Gambia
 Telephone: +220 462341/2 Fax: +220 462338/9
 Website: www.acdhhrs.org

Asia-Pacific Human Rights Network

B – 6/6 Safdarjung Enclave Extension, 110029 New Delhi, India
 Telephone: +91 11 619 2717/06 Fax: +91 11 619 11 20
 Website www.hrhc.net/sahrhc

Inter-American Center for Justice and International Law (CEJIL)

1630 Connecticut Ave. N.W. Suite 555, Washington D.C. 20009-1053, USA
 Telephone: +1 202 319-3000 Fax +1 202 319-3019
 Website www.cejil.org

Inter-American Institute on Human Rights (IIDH)

P.O. Box 10.081-1000, San José, Costa Rica
 Telephone: +506 234-0404 Fax: +506 234-0955
 Website: www.iidh.ed.cr

International Helsinki Federation for Human Rights

Wickenburggasse 14/7, 1080 Vienna, Austria
 Telephone: +43 1 408 88 22 Fax: +43 1 408 88 22 50
 E-mail: office@ihf-hr.org
 Website: www.ihf-hr.org

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Monitoring places of detention: a practical guide

Monitoring places of detention through regular and unannounced visits constitutes one of the most effective way to prevent torture and ill-treatment of persons deprived of their liberty. Several types of mechanisms are engaged in monitoring places of detention, such as national human rights institutions, specialised expert bodies, lay visitors, representatives of the judiciary, parliamentarians and civil society organisations.

Monitoring to prevent torture and ill-treatment has been given a significant boost with the adoption of the Optional Protocol to the UN Convention against Torture (UNCAT). This international treaty proposes a global system of preventive visits at both the international and national levels. States parties to this instrument will cooperate with an international Sub-committee as well as commit themselves to create, nominate and maintain their own independent national preventive mechanisms.

The Association for the Prevention of Torture (APT), that has been the driving force for the last 27 years behind preventive detention monitoring, has received an increasing demand for practical tools, that would help visiting bodies set up and implement monitoring programmes, as well as train their members.

This APT practical guide deals with issues such as:

- who monitors places of detention;
- the principles of monitoring;
- how to prepare a visit;
- the visit itself;
- how to follow-up on a visit;
- what aspects of detention to examine;
- the relevant standards.

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