

DIGNITY⁹²

Monitoring prisons

A manual on prison monitoring to prevent torture and other ill-treatment



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Monitoring prisons: A manual on prison monitoring to prevent torture and other ill-treatment

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DIGNITY Manual

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Foreword

The legal prohibition on torture, cruel, inhuman or degrading treatment or punishment is as firmly established in international law as it is possible to be. It is couched in the language of ‘protection from’ torture and other ill-treatment, providing that ‘No-one shall be subject to’ such wrongful acts. Whilst much has been done to ensure that those responsible for torture and other ill-treatment are held to account, this in itself does little to ‘protect’ those at risk. Moreover, Article 2 of the UN Convention against Torture says that ‘Each State Party shall take effective legislative, administrative, judicial or other measures to *prevent* acts of torture in any territory under its jurisdiction’ (emphasis added). To prevent is to protect: and it is through prevention that the prohibition of torture and other ill-treatment becomes the protection that it is meant to be. It is, then, no surprise that the pivot towards prevention in contemporary approaches to tackling torture and other ill-treatment drew on the work of the International Committee of the Red Cross whose work in visiting places of detention in times of war and armed conflict was a tool of prevention as well as of protection.

Inspired by this, both the Council of Europe (with the European Convention for the Prevention of Torture) and then the United Nations (with the Optional Protocol to the UN Convention against Torture) established regional and international mechanisms, and through the OPCAT required the establishment of national mechanisms, which seek to prevent torture and other ill-treatment based on systems of preventive visiting to places where persons are deprived of their liberty. Over time, the work of these bodies has helped shape and define an entirely new technique of prevention based on visits. Visiting mechanisms are not the only tool of prevention, of course, but they have become an essential one.

The purpose of this manual is to explain the principles and practice of preventive monitoring of prisons, setting out why this helps prevent the torture and other ill-treatment of persons in prison and how such monitoring is to be conducted. That exploration of practice includes the preparation, conduct and follow-up to such visits. It sets out in detail the methodologies to be employed, the approaches to be adopted, the standards to be drawn on and – above all – the practical implications of seeking to work preventively. In a series of carefully crafted chapters, it looks at a series of core issues through a preventive lens: from admissions in facilities, to condition of detention; regime activities within the facilities to contact with the outside world; health care provision, security, disciplinary sanctions and much else besides. Inspired by the experiences of the various international and national mechanisms now at work, the manual synthesises the theory and practice of preventive monitoring to produce a clear operational guide that will be of inestimable value to those undertaking such work and – above all else – to those persons in prison who will be the beneficiaries of the protections that such prevention provides.

Sir Malcolm David Evans

Preface

Human dignity does not stop at the prison gate, and imprisonment does not strip a person of their inherent dignity, fundamental rights or basic needs. On the contrary, imprisonment places a particular responsibility on the State to safeguard the dignity, rights, and well-being of those in its custody and to protect them from torture and other forms of ill-treatment. The closed nature of prisons, the power imbalances within them, and the vulnerability arising from profound dependency make careful and independent scrutiny of what happens inside prisons all the more necessary.

It is precisely in closed settings such as prisons that preventive monitoring by independent bodies is essential. The strength of the preventive monitoring approach lies in making the invisible visible and adopting a proactive, forward-looking and constructive approach to reducing the risk of torture and other ill-treatment.

Effective preventive monitoring is not simply about entering a prison and checking whether human rights standards are met and rules are followed. It requires curiosity, professional discipline, and a willingness to understand the prison as a system. This means looking beyond individual incidents and examining the structures, practices, relationships, and institutional cultures that shape daily prison life and may create or reinforce risks of torture or other ill-treatment.

This manual combines the foundations of preventive monitoring with practical guidance. It seeks to support monitors throughout the monitoring process: from defining objectives and preparing a visit, to gathering and analysing information, interviewing persons in prison, observing conditions and practices, identifying patterns and risk factors, and developing recommendations and follow-up strategies. Particular attention is given to triangulating different sources of information and combining monitoring methods in order to develop as accurate and reliable an understanding as possible of conditions and treatment within prisons.

The guidance presented in this manual is grounded in international human rights standards and informed by experience accumulated through preventive monitoring at national, regional, and international levels. It also draws on DIGNITY's longstanding engagement in torture prevention and prison monitoring. For more than a decade, DIGNITY has participated in Denmark's National Preventive Mechanism (NPM) alongside the Danish Parliamentary Ombudsman and the Danish Institute for Human Rights. Individual DIGNITY staff members have also served on international monitoring bodies, including the United Nations Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT). These experiences, together with insights from DIGNITY's partner organisations and monitoring practitioners from different regions of the world, have informed the development of this manual.

A substantial body of contemporary research was reviewed in preparing the manual, with the aim of bringing together international standards, empirical evidence, and practical monitoring experience. This evidence base is intended

to help monitors assess not only whether standards are being met, but also why violations or harmful practices may occur and which institutional, environmental, or systemic factors contribute to them. Such analysis is essential to preventive monitoring, which seeks to identify underlying causes and systemic risks rather than focusing solely on individual incidents.

Prison systems and practices, as well as methods of preventive monitoring, continue to evolve. New challenges emerge, knowledge advances, and monitoring bodies continually refine their work in response to research, experience, and lessons learned. This manual should therefore be understood as part of an ongoing process of learning. We hope it will encourage monitors not only to apply the methodologies presented here, but also to reflect critically on their own practice, exchange experiences with colleagues and other monitoring bodies, and continue adapting their methods to the realities encountered in prisons.

Monitors must be prepared to ask difficult questions, challenge explanations where necessary, and insist on access, confidentiality and protection against reprisals. At the same time, they must listen carefully, remain open to complexity and avoid simplistic assumptions and premature conclusions. Persons in prison are not a homogeneous group; they have diverse and intersecting identities, circumstances and needs, which may shape both their experiences of imprisonment and the risks they face. Prison staff may work under considerable pressure, in unsafe conditions, with inadequate resources, and within dysfunctional systems. Recognising these realities is essential to analysing the factors that shape prison conditions and practices and to formulating recommendations that are credible, practical and capable of contributing to sustainable improvements. It is also fundamental to constructive dialogue with prison authorities.

We hope this manual will support monitors in carrying out this demanding work with rigour, curiosity, and independence and in turning careful observation into recommendations that can contribute to lasting change. We also hope that it will foster continued exchange and learning among monitoring bodies and practitioners. We welcome reflections, experiences, and suggestions from those who use the manual in practice, including ideas on how its content and methodologies can be further strengthened.

Ultimately, preventive monitoring is not only about standards, procedures, or prison conditions. It is about ensuring that people deprived of their liberty are treated as people: with dignity, humanity and respect. If this manual helps monitoring bodies strengthen that protection in practice, it will have achieved its purpose.

Rasmus Grue Christensen
CEO, DIGNITY

Reader guidance

This manual aims to give an overview of key elements relating to preventive monitoring of prisons. It is written for all those conducting monitoring of prisons with the aim of preventing torture and other ill-treatment. This includes new as well as experienced monitors, working for National Preventive Mechanisms (NPMs), National Human Rights Institutions (NHRIs) and Civil Society Organisations (CSOs), in developed as well as developing contexts.

Recognising and appreciating the guidance on preventive monitoring that has already been published by other organisations during the last years¹, this manual aims to build further on this by adding new perspectives and presenting a practical monitoring methodology. In doing so, we have relied on the accumulated experiences of NPMs around the world, as well as more recent research on various themes related to preventive monitoring, such as systems thinking and systemic change, behavioural theories and prison ethnography. Such work is referenced throughout the manual and provides new approaches to what a ‘preventive’ approach may look like, how change happens, as well as the existing challenges.

The authors of this manual have extensive backgrounds and experience in preventive monitoring in prisons, as part of NPMs, the UN Subcommittee on Prevention of Torture (SPT), and the European Committee for the Prevention of Torture (CPT), and come from different professional disciplines (medical, public health, legal). The manual takes its point of departure in the Optional Protocol to the UN Convention against Torture (OPCAT) and the powers vested in NPMs. Nevertheless, the manual is also relevant to other types of monitoring mechanisms, that enjoy access to prisons for conducting visits. The manual draws on widely accepted standards and guidance related to preventive monitoring and human rights.

Acknowledging that preventive monitoring can be undertaken to different kinds of places of detention, this manual focuses solely on preventive monitoring of **prisons for adults** – throughout the manual simply referred to as **prisons**. This means that preventive monitoring of police stations, pre-trial detention centres, psychiatric hospitals, asylum centres, migrant detention centres, unofficial places of detention, juvenile detention centres and other places where persons may be deprived of liberty is not covered. Recognising the realities within prisons globally, juveniles (in this manual referring to those under 18 years old), young adults (in this manual referring to those aged 18–25), and persons on remand who are detained in adult prisons, are however included in the scope of this manual.

The manual consistently refers to persons detained in prisons as ‘**persons in prison**’, to favour person-first language and avoid stigmatising language such as inmates, prisoners or detainees.

A similar approach is being taken when referring to persons with a specific racial, ethnic and/or religious background, persons with a substance use disorder, persons with a mental health problem, persons with disabilities, and persons belonging to the LGBTIQ+ community, where LGBTIQ+ refers to

Lesbian, Gay, Bisexual, Trans, Intersex, Queer, Asexual, and persons with diverse sexual orientation, gender identity, gender expression and sex characteristics (i.e., SOGIESC, constituting the '+' in LGBTIQ+).

As a rule, all persons in prison are considered vulnerable due to the inherent power imbalances within prisons, the enclosed nature of imprisonment, and stigmatisation. This manual refers to 'groups in situations of vulnerability' as an umbrella term for groups of persons with similar risk factors that place them at increased risk of being harmed while in prison and therefore, are in need of specific attention and protection. Such risk factors may be personal (gender, nationality, age, health status etc.) as well as situational due to being in prison (stigma, discrimination, lack of appropriate services or reasonable adjustments etc.).

Staff working in prisons are consistently referred to as 1. Prison officers (prison guards responsible for the care and control of persons in prison making sure prison rules are followed), 2. Prison management (those who are part of the management of the prison) 3. Health staff in prison (health professionals working in prison responsible for the provision of health care to persons in prison), and 4. Other civilian staff (those working in prison in a civilian capacity to provide support or services to persons in prison, such as teachers, social workers, priests, imams, and rabbis). When the term 'prison staff' is used, this is done to refer to all of the above staff working in prisons.

The manual is divided into four parts.

Part 1 (Chapters 1–4) explains the background to preventive monitoring and elaborates on its importance. Chapter 1 addresses why monitoring prisons is an essential part of torture prevention efforts and how monitoring bodies can apply a preventive approach in their monitoring work. It also introduces the six steps of the preventive monitoring cycle. Chapter 2 offers a critical overview of the purpose of imprisonment and presents different conceptual frameworks to analyse and approach the prison, persons in prison and prison officers. Chapter 3 outlines the international human rights framework of relevance to monitoring prisons and addresses why and how the international standards can be used in monitoring prisons. Chapter 4 provides insights into the concepts of torture and other ill-treatment from a legal and practical perspective.

Part 2 (Chapters 5–9) addresses the preventive monitoring methodology in more depth. Chapter 5 deals with ethical considerations when monitoring prisons as well as issues related to the security of monitors, persons in prison, and prison staff in relation to monitoring visits. Chapter 6 outlines the most important aspects of planning and preparing monitoring visits, including the development of a strategic plan, the composition of a visiting team, etc. Chapter 7 goes into depth about the visit methodology. It covers the collection of findings during a monitoring visit, the validation of findings by the monitoring team including the concept of triangulation, and the analysis of the findings, in order to form the basis for drafting reports with well-founded findings and recommendations. It should be noted that the word 'findings' does not in any way refer to findings in legal terms (such as the findings of a judicial body), but merely refers to the observations and facts found during the visit. The chapter also briefly addresses monitoring without having physical access to the prison. Chapter 8 focuses on interviewing for monitoring purposes, both the

interviewing of persons in prison and the interviewing of staff members. The final chapter in this part of the manual, Chapter 9, deals with documenting torture in the context of preventive monitoring.

Part 3 (Chapters 10–19) includes ten chapters, each of which addresses a key thematic area to monitor. The following themes are being discussed: admission (Chapter 10), material conditions (Chapter 11), daily regime (Chapter 12), contact with the outside world (Chapter 13), health care services (Chapter 14), security (Chapter 15), disciplinary sanctions (Chapter 16), complaint systems and inspections (Chapter 17), preparations for release from prison (Chapter 18), and issues in relation to prison staff (Chapter 19). For each area, a brief overview of what it entails and its relevance to the prevention of torture and other ill-treatment is discussed. Each chapter includes some examples that are fictional but based on conditions and treatment observed by preventive monitoring bodies across the world. Each chapter ends with a practical section on how to monitor the respective area, including special considerations on groups in situations of increased vulnerability.

Part 4 (Chapters 20–21) includes two chapters, i.e., Chapter 20 on reporting and recommendations and Chapter 21 on strategic follow-up. Chapter 20 addresses the purposes of reporting, the different types of reports that can be drafted by a monitoring body, how to ensure good-quality reports, and how to draft and communicate well-formulated recommendations. Chapter 21 deals with the strategic follow-up by the monitoring body, which is the final step in the preventive monitoring cycle.

Monitors are advised to read the full manual, as this will add to their broad understanding of preventive monitoring of prisons. It is, however, possible to read individual chapters as stand-alone chapters if monitors would like to increase their knowledge and skills in a particular area.

List of abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
AfCHPR	African Court on Human and Peoples' Rights
APT	Association for the Prevention of Torture
CAT	United Nations Committee against Torture
CCTV	Closed Circuit Television
CNDH	Conseil National des Droits de l'Homme
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CPTA	Committee for the Prevention of Torture in Africa
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organisation
ECPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPR	European Prison Rules
GA	United Nations General Assembly
GANHRI	Global Alliance of National Human Rights Institutions
HIV	Human Immunodeficiency Virus
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IPJJ	Interagency Panel on Juvenile Justice
ITHACA	Institutional Treatment, Human Rights and Care Assessment

LGBTIQA+	Lesbian, Gay, Bisexual, Trans, Intersex, Queer, Asexual, and persons with diverse sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC, constituting the '+' in LGBTIQA+)
MoU	Memorandum of Understanding
MQPL	Measuring the Quality of Prison Life
MWC	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
NCD	Noncommunicable Disease
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
OAS	Organization of American States
ODIHR/OSCE	Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PRI	Penal Reform International
PTSD	Post-Traumatic Stress Disorder
SMART	Specific, Measurable, Assignable, Realistic, Time-bound
SMR	United Nations Standard Minimum Rules for the Treatment of Prisoners
SOGIESC	(Persons with diverse) sexual orientation, gender identity, gender expression and sex characteristics
SPT	United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SRT	United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
TB	Tuberculosis
UN	United Nations
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNODC	United Nations Office on Drugs and Crime
UPR	Universal Periodic Review
WHO	World Health Organization
WMA	World Medical Association

Part 1

Background to preventive monitoring



CHAPTER 1:

Introduction to the preventive monitoring approach

CHAPTER 2:

Understanding prisons

CHAPTER 3:

The international human rights framework related to preventive monitoring

CHAPTER 4:

Torture and other ill-treatment

CHAPTER 1

Introduction to the preventive monitoring approach

This chapter addresses why monitoring prisons is an essential part of torture prevention efforts and how monitoring bodies can apply a preventive approach in their work. It introduces preventive monitoring as a system of regular, independent visits aimed at identifying risks of torture and other ill-treatment in prisons.

The chapter traces the historical development of prison monitoring and explains how preventive monitoring differs from inspections, complaints-handling, and investigations. It also presents the main bodies involved in monitoring at national, regional, and international levels. Finally, it outlines the key characteristics and powers of effective monitoring bodies and introduces the six steps of the preventive monitoring cycle.

CHAPTER 1

Introduction to the preventive monitoring approach

1.1 Introduction

Preventive monitoring refers to a system of regular visits by one or more independent bodies to places where people are deprived of their liberty with the aim of assessing prison conditions and treatment and submitting recommendations aimed at reducing the risk of torture and other ill-treatment. More specifically, this is done through examining the lived experiences of those in prison and identifying the factors that increase the risk of torture and other ill-treatment. This, in turn, informs the submission of recommendations on which measures can best reduce such risk, and these recommendations form the basis for entering a constructive dialogue with the responsible authorities on their implementation.

Preventive monitoring differs from other types of oversight, in the sense that it encompasses elements from different techniques as well as additional, unique elements.² Firstly, preventive monitoring is different from complaints-handling or investigations, as the aim of the visits is not to resolve a specific complaint or investigate a particular allegation of torture and other ill-treatment. Nevertheless, preventive monitoring applies 'investigatory' methods, such as conducting interviews and reviewing documents. Secondly, preventive monitoring is different from inspections. Inspection bodies focus on checking compliance with standards and make recommendations to address failings. Preventive monitoring goes beyond that, as it aims to address situations that may not constitute a breach of standards but nevertheless need to be improved to strengthen the protection against torture and other ill-treatment. Furthermore, monitoring bodies can often make suggestions for improving legal standards through new or amended legislation, thus going beyond merely using the existing standards to check compliance during visits.

Preventive monitoring is a proactive, forward-looking, continuous process of scrutinising the system of detention and all its aspects that may enable practices that create a risk of or constitute torture or ill-treatment. The ultimate aim is to bring about positive changes to reduce the risk of torture and other ill-treatment.

A system of regular prison visits is often an integral part of preventive monitoring. During visits, monitoring bodies will be assessing both the *conditions* and the *treatment* in order to identify the gaps in the protection against torture and other ill-treatment and provide recommendations for relevant action. Visits and interactions with the prison management, staff and persons in prison during visits, provide valuable insights into the conditions, treatment and lived experiences in prisons. Although legal standards are a key reference source for monitoring bodies during their work, monitoring bodies are not primarily preoccupied with making an assessment of whether there is a violation of human rights standards.

Following from visits, monitoring bodies are well placed to identify the gaps in the protection of those in prison from torture and other ill-treatment. Such gaps may often constitute human rights violations or may manifest in a range of situations that will not constitute a violation but nevertheless increase the risk of torture and other ill-treatment (situational analysis). Subsequently, monitoring bodies can analyse the underlying factors that facilitate or sustain such situations observed during visits (causal analysis) and map how these can be addressed through preventive action to decrease the risk of torture and other ill-treatment. Based on this situational and causal analysis, monitoring bodies can submit their reports and recommendations to the competent authorities, as a basis for ongoing dialogue about possible implementation measures.



[BOX 1.1] Definition of conditions and treatment

Conditions comprise objective and rather *static* factors in a prison. They include general living conditions like light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space.

Treatment of persons in prison comprises *dynamic* human interactions during detention. This includes practices like use of force, use of disciplinary measures, style of communication, provision of health care, security procedures as well as practices for joining or segregating different categories of persons in prison.

This chapter will address why monitoring prisons is an essential part of torture prevention efforts and how monitoring bodies can apply a preventive approach during their monitoring work. In doing so, the following questions will be addressed:

1. What is the history of monitoring prisons?
2. How can monitoring bodies adopt a preventive approach towards monitoring?
3. What are the basic features of preventive monitoring?
4. Which bodies undertake monitoring (national, regional, international)?
5. What are the main characteristics and powers of an effective monitoring body?
6. Which elements form the preventive monitoring cycle?

1.2 History of monitoring prisons

At the international level, the International Committee of the Red Cross (ICRC), founded in 1864, was the first to develop the notion of visits to prisons and other places of detention by a neutral party, especially during the First World War in an armed conflict setting. At the time, such visits covered places where ‘prisoners of war’ were detained and not prisons as such. Their purpose was to ensure that ‘prisoners of war’ were treated humanely and once adopted, these visits were

conducted in accordance with the Geneva Conventions I–IV and their Additional Protocols.³ Later, ICRC also started visiting persons detained on security grounds and those held in prison under criminal law, making it a part of its core activities.

In 1976, a Swiss lawyer and banker named Jean-Jacques Gautier, inspired by Amnesty International's anti-torture campaign and the work of the ICRC, published an article called '*A new weapon against torture*'. In the article, he proposed to open the doors of any place of detention for outside monitoring in order to prevent torture from happening in the first place. He suggested an international convention to establish a system of unannounced visits to places of detention and in 1977 he founded the Swiss Committee against Torture (which later became the Association for the Prevention of Torture (APT)).⁴ The APT has played a key role in advocating for the realisation of Gautier's vision for an international system of visits which was achieved through the adoption of the Optional Protocol to the Convention against Torture (OPCAT) by the UN General Assembly in 2002.

In 1987, the Council of Europe adopted the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and through the Convention established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The origin of this initiative can be traced back to Gautier's proposal. CPT is charged with the mandate to examine, by means of visits, the treatment of persons deprived of their liberty and the conditions of detention with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.⁵ CPT may visit any place within the jurisdiction of the States Parties, where persons are deprived of their liberty by a public authority.

Also in 1987, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) entered into force, reviving previous initiatives to establish a UN-based visiting mechanism. In 1991, such a proposal was presented by Costa Rica as an Optional Protocol to the UNCAT (OPCAT). The international negotiations and the drafting process were long and complicated. The final Optional Protocol, which was adopted in 2002, establishes an international visiting mechanism (the Subcommittee on Prevention of Torture (SPT)) and also obliges States Parties to maintain, designate or establish one or several independent National Preventive Mechanisms (NPMs) at the domestic level.⁶

1.3 The preventive approach towards monitoring

As stated in the introduction to this chapter, preventive monitoring refers to a system of regular visits by one or more independent bodies to places where people are deprived of their liberty with the aim of assessing the prison conditions and treatment and submitting recommendations aimed at reducing the risk of torture and other ill-treatment. In order to apply a preventive approach, such an assessment needs to go beyond checking compliance with legal standards and address any situations that may increase the risk of torture and other ill-treatment, even if they are in compliance with legal standards. Whether or not a breach of standards is found in a certain situation, monitoring bodies need to analyse it in depth and attempt to address the various underlying factors so as to inform the recommendations to be submitted.

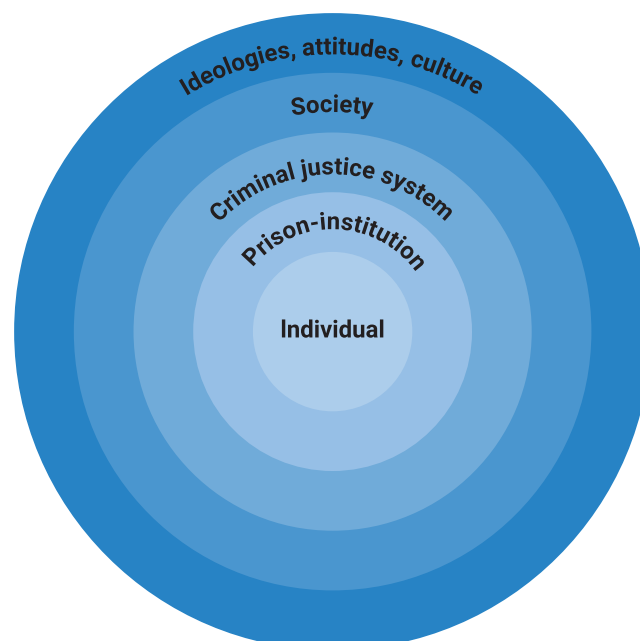
The preventive approach includes adopting a capacious understanding of which underlying factors may facilitate and sustain torture and other ill-treatment in a given context, how these factors interrelate, and which measures could be effective in addressing them. That is because the prevalence of torture and other ill-treatment is influenced by a broad range of factors, including the general level of enjoyment of human rights in society and the rule of law, as well as levels of poverty, social exclusion, corruption, discrimination, etc. In their work, monitoring bodies engage with the broader regulatory and policy frameworks relevant to the treatment of persons in prison and with those responsible for them, as well as with how these frameworks are translated in practice. More specifically, monitoring bodies engage with issues related to the legal framework that regulates imprisonment within criminal justice processes, but should also engage with broader policy debates around relevant issues, for example crime prevention and crime reduction policies, penal policies, and social policies that may affect the placement of people in prison and prison practices (for example drug policies, social welfare, gender equality, etc.).

Since torture and other ill-treatment are enabled and sustained by a variety of underlying factors (systemic/situational, structural, political, etc.), monitoring bodies need to conduct a thorough situational and causal analysis based on findings from their visits and their information gathering more broadly, in order to effectively help prevent torture.

Professor Danielle Celermajer suggests that such underlying conditions are to be found in different spheres of the social and political world and she places the individual (for example, a prison officer) within a broader system comprising of the family, the peer group, the institution, the culture, the legal system, the political system, and the ideological context.⁷ Such underlying conditions are to be found within all these spheres and are interrelated. Inspired by Celermajer's approach, we present the different spheres that may be at play when looking at prisons in Figure 1.1.



[FIGURE 1.1] Spheres as inspired by Celermajer's approach



If monitoring bodies adopt such a multi-level approach, their analysis of the underlying conditions becomes much broader, looking into factors that are at play in different dimensions and mapping how these dimensions interrelate. As the SPT has suggested, the prevention of torture and other ill-treatment embraces – or should embrace – as many of those things as possible which, in a given situation, can contribute towards the lessening of the likelihood or risk of torture or other ill-treatment occurring.⁸ Such an approach requires not only that there be compliance with relevant international obligations and standards in both form and substance, but that attention also be paid to the whole range of other factors relevant to the treatment of persons deprived of their liberty and which by their very nature will be context-specific.⁹

Preventive monitoring aims at identifying and addressing these factors in a particular context/institution, starting from the findings during visits. For example, the monitoring body will need to look into whether the situation is caused by a human/individual omission or whether there are patterns, procedures, and practices that sustain and facilitate torture and other ill-treatment. At the same time, monitoring bodies will examine whether there are patterns, procedures, and practices that render the prevention of torture and other ill-treatment ineffective in protecting those in prison. Thus, analysing what lies underneath and proposing recommendations to address it may contribute to improving the protection against torture and other ill-treatment.

The prospect of preventive monitoring having an impact will be enhanced by embracing an understanding of torture and other ill-treatment that allows for correctly diagnosing what *needs to be addressed* as an underlying factor of torture and other ill-treatment and *how to address it* in a contextually appropriate and multi-level manner. This entails paying close attention to the lived experiences of those in prison, to the dynamics of a specific situation and to how multiple factors operate on different dimensions (ideological, social, cultural, political, legal, organisational), as well as how these factors shape each other and the beliefs, values, judgements, and actions of individuals.¹⁰

In conclusion, preventive monitoring is assumed to contribute to the prevention of torture and other ill-treatment in three different ways:

Deterrent function

The fact that independent outside experts (may) come on a regular basis and review conditions and treatment will discourage staff from overstepping lines and ensure transparency and accountability among management and staff with regard to ensuring respect for human rights.

Protection and documentation function

The situation in detention is scrutinised and documented through the reports of monitoring bodies, enhancing transparency. Moreover, individual cases or patterns of torture and other ill-treatment are identified, analysed and brought forward, and the failure of existing protection mechanisms is pointed out. Recommendations for addressing the gaps in the protection mechanisms are made at the appropriate level of responsibility (institution management, central administration, ministry, parliament), so that protection is improved and future cases are prevented. Although this requires a certain level of investigation and documentation of instances of torture and other ill-treatment, this is not done for pursuing justice

or other accountability avenues but for the purpose of informing the submission of recommendations to ensure non-repetition in the future. Therefore, the level of documentation and the investigatory methods used will be more basic than that required for justice processes.

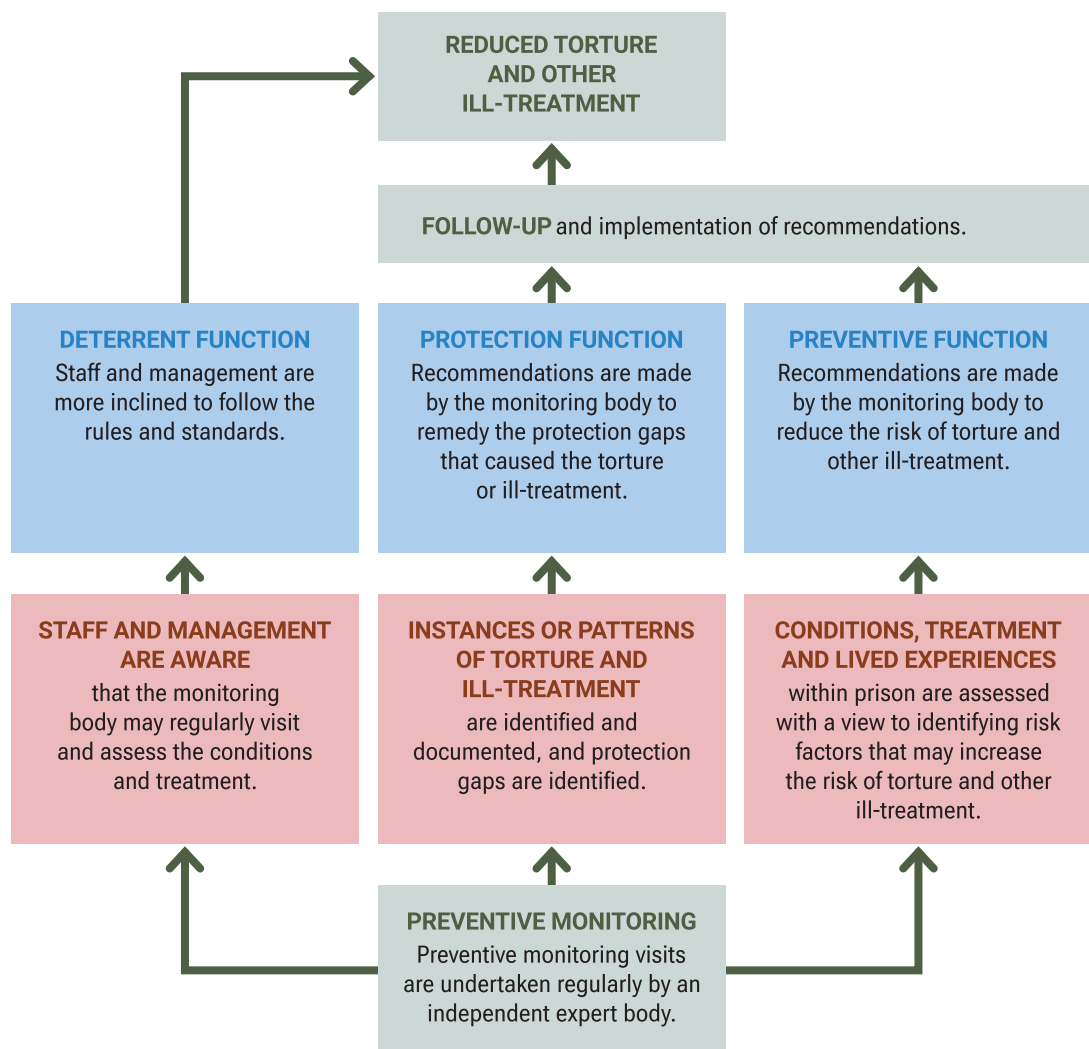
Prevention function – focus on potential breaches

Conditions, treatment and lived experiences within prisons are assessed with a view to identifying risk factors that may increase the risk of torture and other ill-treatment and to recommending relevant preventive measures to be taken at the appropriate level (institution, central administration, ministry, parliament), thereby reducing the risk of torture and other ill-treatment.

These three mechanisms are illustrated in the Theory of Change in Figure 1.2.



[FIGURE 1.2] Theory of Change for preventive monitoring



As illustrated, preventive monitoring can play a key role in torture prevention. A research study conducted in 2015 examined which torture prevention methods were the most effective during the period 1984–2014 in fourteen countries. One

of the key findings of this study was that the work of monitoring bodies has a direct effect on reducing torture, while the power to conduct unannounced visits and confidential interviews are key elements.¹¹

At the same time, it may seem like a daunting task for many monitoring bodies. Therefore, we need to be reminded that the prevention of torture and other ill-treatment is a shared responsibility among many different actors in society; it cannot be achieved through a single measure or the work of a single body. This has been confirmed by the research study mentioned above, calling for a holistic approach to create a conducive environment in which torture is less likely to occur. The responsibility lies predominantly with the State to put in place preventive measures. Unavoidably, the effect of preventive monitoring will be impacted positively or negatively by the overall context in which monitoring bodies operate and by the work of other actors, State as well as non-State.

1.4 The basic features of preventive monitoring

Mitigation of the risk of harm

Preventive monitoring involves interacting with persons in prison, that is, persons who in many ways are in a precarious and vulnerable situation. The monitoring team will leave the institution after the interaction, while the persons in prison are left to deal with the possible negative consequences of the interaction. Therefore, it is crucial that monitoring teams are conscious of the fact that, despite good intentions, monitoring visits may put certain persons at risk or, at the very least, disrupt their everyday routines in prison. Such harm may include that negative repercussions (reprisals) are imposed on those who come into contact with the monitoring body. Therefore, monitoring teams need to carefully assess the risk of reprisals and take steps in order to protect those whom they interact with from any harm due to such interaction (this is further elaborated in Chapter 5). In some situations, the monitors may need to consider not interacting with – or exposing – particular persons in prison or not making a particular recommendation, if it risks harming them. It is crucial to keep in mind that those working in prisons may also be at risk of harm due to their interaction with the monitoring team.

Confidentiality

Person-attributable information collected by the monitoring team, including personal data on persons in prison or prison staff, should be kept confidential. This implies that interviews need to take place out of sight and hearing of prison staff and other persons. In the case of group interviews, persons in prison should be informed of the risks associated with sharing information in the presence of other persons in prison, and sensitive topics are preferably discussed during individual interviews. In all cases, person-attributable information is not to be shared with the authorities, unless informed consent has been obtained from the person concerned. This also implies that the information provided to the monitoring team by different interlocutors (persons in prison, those working in prison) should be sufficiently anonymised to ensure that the source of this information cannot be identified. This is a key measure in reducing the risk of harm.

Regularity of visits

Based on the systematic and cyclical nature of preventive monitoring, regularity of visits is important. This implies that each prison is visited regularly, while some prisons may need to be visited more frequently. The monitoring body needs to determine how often visits to each prison should take place, taking into consideration the main problems in the prisons, visits by other actors, the resources of the monitoring body, and other factors. The considerations related to the frequency of visits and operational planning are further elaborated in Chapter 6.

Announced and unannounced visits

Many visits to prisons may take place with prior notice to the prison management. However, there are many examples of such notification prompting the institution to 'clean up' and conceal unlawful practices before the visit. For this reason, at least a certain proportion of the visits should take place without prior notification (so-called 'unannounced/surprise visits'), if the mandate of the monitoring body allows for such visits.

Systematic collection and triangulation of data

It is an important objective for monitoring bodies that, once a visit to a prison has been completed, the monitoring team has gathered enough information to identify the major issues within the prison (situational analysis). This requires a careful and systematic approach, where the observations, the interviews, and the review of records ensure a representative coverage of the conditions and treatment in the institution. Furthermore, the information gathered from these different sources needs to be cross-checked to assess their reliability and accuracy in order to formulate well-grounded findings. The process of cross-checking information from different sources (observations, interviews, records) is called 'triangulation' and will be further elaborated in Chapter 7.

Constructive dialogue

The monitoring team must decide how it wants to proceed after findings and recommendations have been presented to the responsible authorities. One option is to make the findings and recommendations public by publishing their report, possibly after the authorities have had the chance to correct factual mistakes. An alternative approach is to maintain a confidential dialogue ('quiet diplomacy') with the authorities. This latter approach does not exclude that the findings and recommendations are made public later, in case the confidential dialogue leads nowhere. If the monitoring body is an NPM, the authorities are required, under the OPCAT, to examine the recommendations and enter into a dialogue on possible implementation measures.

1.5 Bodies conducting monitoring – national, regional and international

Independent monitoring of places of detention, including prisons, is carried out by several bodies at the national, regional, and international levels. The mandates and scope of these bodies vary considerably and while some are more general in nature, others are specifically tailored to prevent torture and other ill-treatment by way of visiting places of detention and maintaining a dialogue with the national authorities on how to strengthen the protection against torture and other ill-treatment.

International monitoring bodies

1. The Optional Protocol to the UN Convention against Torture (OPCAT) is an international treaty, which States Parties to the UN Convention against Torture (UNCAT) may opt to sign and ratify.¹² It is the core international treaty setting up a system of regular and independent visits to all places of detention with the aim of preventing torture and other ill-treatment. The OPCAT establishes an international monitoring body, the Subcommittee on Prevention of Torture (SPT), and obliges States Parties to maintain, designate or establish one or several monitoring bodies at the national level, the National Preventive Mechanisms (NPMs). The OPCAT was adopted by the UN General Assembly in 2002 and entered into force in 2006. As of August 2026, 96 States have signed and ratified the OPCAT (out of 175 States Parties to the UNCAT).

2. The Subcommittee on Prevention of Torture (SPT) is composed of 25 independent experts, elected by the States Parties, and has the mandate to:

a. In relation to the States Parties:

- Visit any place of deprivation of liberty and make recommendations to States Parties on the protection against torture and other forms of ill-treatment. After each visit, the SPT submits a confidential report to the State Party (art. 11(a)), which the SPT shall publish together with any comments of the State Party concerned, whenever requested to do so by the State Party (art. 16.2);
- Advise and assist States in the establishment of the NPMs (art. 11(b)(i));
- Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the NPMs in the prevention of torture and other cruel, inhuman or degrading treatment or punishment (art. 11(b)(iv));

b. In relation to the National Preventive Mechanisms:

- Maintain direct, and if necessary confidential, contact with the NPMs and offer them training and technical assistance (art. 11(b)(ii));
- Assist and advise them in their functioning. (art. 11(b)(iii)).

3. The UN Committee against Torture (CAT) is an international treaty body established under the Convention against Torture.¹³ The core mandate of the Committee is to monitor States Parties' compliance with the Convention through periodic reviews of State reports (art. 19). The Committee does not visit places of

detention, except in the context of a confidential inquiry if there are well-founded indications that torture is practised systematically. Such visits require the authorisation of the State and are only undertaken rarely (Art. 20). However, the Committee collaborates closely with the Subcommittee on Prevention of Torture, inter alia, on monitoring States Parties' compliance with the OPCAT and implementation of recommendations made by the NPM.

4. The UN Special Rapporteur on Torture (SRT) is a special procedure established under the UN Commission on Human Rights.¹⁴ One of the three pillars of the mandate of the Special Rapporteur is to undertake fact-finding country visits. Such visits require prior invitation and may include visits to places of detention. Following a country visit, the Special Rapporteur submits a mission report to the State with conclusions and recommendations, which are intended to assist the State in identifying factors that may contribute to torture and provide practical solutions to implement international standards.

5. The UN Human Rights Council also appoints a considerable number of other human rights special rapporteurs and working groups, of which some have a mandate relevant to preventive monitoring (such as the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the Rights of Persons with Disabilities).¹⁵

Regional monitoring bodies

At the regional level, monitoring bodies have been established in the Americas, Africa and Europe.

1. The Rapporteur on the Rights of Persons Deprived of Liberty of the Inter-American Commission on Human Rights is a regional monitoring body under the Organization of American States (OAS). The independent expert appointed as rapporteur carries out visits to the OAS member states. Here, the rapporteur visits prisons, police holding cells and other places of detention. On the basis of the findings, which are presented to the State concerned in writing, the rapporteur undertakes dialogue with the authorities in charge of penitentiary policy and the administration of prisons. The rapporteur undertakes visits to approximately two countries a year.¹⁶

2. The Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa is a regional monitoring body under the African Commission on Human and Peoples' Rights (ACHPR), the human rights body of the African Union. The Special Rapporteur is empowered to examine the situation of persons deprived of their liberty within the territories of the States Parties to the African Charter on Human and Peoples' Rights. During visits, the Special Rapporteur visits places of detention and makes a general assessment of the conditions and the treatment of persons in prison. Visit reports are published with the response of the State. Since its establishment in 1996, the Special Rapporteur has undertaken over 20 missions.¹⁷

3. The European Committee for the Prevention of Torture (CPT) is a regional monitoring body established under the Council of Europe. The CPT is composed of 47 independent experts, who conduct regular country visits to all States Parties, including visits to places of detention, in order to assess the conditions and treatment of persons deprived of their liberty. These places include prisons, juvenile detention centres, police stations, immigration detention centres,

psychiatric hospitals, and social care homes. The CPT has a mandate and powers similar to those of the SPT, which was modelled on the CPT. After each visit, the CPT sends a detailed report to the State Party with its conclusions and recommendations. The Committee shall publish its report, together with any comments of the party concerned, whenever requested to do so by that party. These reports and the State's reply form part of the ongoing dialogue with the State. Regular visits are undertaken to each State every four years, and – in between – ad hoc visits are undertaken in situations of particular concern or as a follow-up measure.¹⁸

National monitoring bodies

At the national level, there are several types of bodies with a mandate to monitor places of detention with the aim of preventing torture and other ill-treatment. Some are independent of the State, while others form part of the state apparatus.

At the national level, there are chiefly three types of *independent* monitoring mechanisms:

1. National Preventive Mechanisms (NPMs) are domestic monitoring bodies established by the States Parties to the Optional Protocol to the Convention against Torture (OPCAT). States may either designate existing bodies, such as National Human Rights Institutions, Ombudsman institutions or laymen visiting boards, as NPMs, or establish one or more new bodies to fulfil the NPM mandate. Whatever the solution, these bodies shall be independent of the State. The mandate and powers of the NPMs are defined in the OPCAT and therefore, national legislation should empower NPMs to:

- Conduct visits to any place where persons are deprived of liberty at any time (art. 19(a));
- Make recommendations to the authorities to improve the treatment and conditions of persons deprived of liberty and the functioning of places of detention (art. 19(b));
- Review and comment on laws, policies and practices relating to deprivation of liberty (art. 19(c));
- Maintain direct, and if necessary confidential, contact with the SPT (art. 20(f)).

2. National Human Rights Institutions (NHRIs) and Ombudsman Institutions form a second category of domestic monitoring bodies. Unlike the NPMs, whose mandate flows from international law, the mandates of NHRIs and Ombudsman Institutions derive from the Constitution or national law. The elements that tie these institutions together and give them a distinct place within the structure of State institutions, are:

- Their status as independent State institutions, often with an obligation to report to Parliament;
- A mandate for human rights promotion and protection, notably by considering complaints from individuals and undertaking proactive human rights work; and
- The non-judicial nature of their findings, in contrast to the courts.

As part of their broader mandates to promote and protect human rights, and to oversee that the government and the public administration act in accordance with the Rule of Law, NHRIs and Ombudsman Institutions may have a mandate to monitor places of detention, including prisons. In doing so, they may assess the conditions of persons in prison and the treatment to which they are subjected. The main criteria that the NHRIs are required to meet are set out in the Paris Principles.¹⁹

3. Non-Governmental Organisations (NGOs) form a third category of independent monitoring bodies at the national level. Such bodies are mostly human rights organisations. The area of the rights of persons in prison and the conditions of detention has been at the forefront of the work of NGOs and other civil society groups. Visiting prisons and other places of detention by NGOs as a special type of action has greatly expanded since the 1990s. Mandates and working methods of NGOs vary greatly. Some NGOs carry out systematic visits to closed institutions and have developed professional methods of empirical research. Results of NGO work are typically public reports with recommendations.

It is important to emphasise – as also stated by the SPT – that the different categories of independent monitoring bodies should be perceived as parts of a system of independent scrutiny and the establishment of an NPM should complement rather than replace existing systems of oversight.²⁰ Therefore, NPMs co-exist with and complement other monitoring mechanisms, such as NHRIs, Ombudsman Institutions and NGOs.²¹

In addition to these independent bodies, most States have mandated internal bodies within the state apparatus to undertake different forms of oversight of prisons in order to have the conditions and treatment regularly assessed and/or to ensure public trust in the prison system. Knowing these actors in a specific country context is important: They may not be fully independent of the system, but they are certainly relevant stakeholders in a monitoring process as outlined above.

Internal inspection bodies exist in most countries. They are typically placed within Ministries of Interior or Justice. They form part of the executive branch of the State, often with an explicit legal basis. Internal inspection mechanisms may also take the form of specialised inspectorates (e.g., Labour Inspection, Social Services Inspectorate) that inspect certain aspects of prisons related to their field of competence.

Parliamentary Committees may also have a mandate to oversee prisons. In any democratic society, the legislative body (Parliament) has powers to exercise democratic control over the Executive. This is often done by parliamentary committees that inspect specific places, such as prisons. Their findings and conclusions have the advantage of being able to influence the legislative process in the form of law proposals. As such, parliamentary committees may be effective in promoting appropriate legislative reform.

Finally, **the judiciary** in democratic States based on the rule of law often has powers to oversee the Executive. In many countries, judges and prosecutors are entrusted by law to proactively oversee whether laws governing imprisonment and the human rights of persons in prison are complied with in places closed to the rest of society. This function is fulfilled inter alia by carrying out visits to prisons. The legal basis of judicial inspection is usually the law on the execution of sentences for supervisory judges or the Criminal Procedure Code for inspection

of pre-trial institutions. The mandate of members of the judiciary is to safeguard the rights of persons in prison and the conditions of detention. Supervisory judges also decide on matters related to the execution of sentences. Judges can take complaints and proactively look at the conditions of detention. In controlling executive action, judges can issue binding decisions.

1.6 Characteristics and powers of an effective monitoring body

In order for a preventive monitoring body to be effective, certain characteristics and powers need to be in place, as set out below.

The characteristics of an effective monitoring body

Independence

The preventive monitoring body has to be independent in order to freely and impartially decide the way it will fulfil its mandate, make recommendations and even publicly scrutinise local and central authorities. Independence has multiple elements, especially when a body is established pursuant to the standards envisaged in the Optional Protocol to the Convention against Torture (OPCAT)²².

Firstly, **institutional independence** requires that the monitoring body is established preferably by law as an independent institution without a hierarchical relationship or control by a government agency exercising executive powers (for example, Ministries, cabinet, executive council, president or prime minister). This is to ensure that the monitoring body enjoys **operational autonomy** to decide independently how to prioritise, plan, and implement its mandate. In many countries, national preventive mechanisms under the OPCAT have been established within NHRIs or Ombudsmen. This could create challenges in terms of institutional independence. The SPT has stressed that to guarantee the operational autonomy of the NPM and a 'flat' relationship between the NHRI/Ombudsman and the NPM, the mechanism should be placed as a parallel structure at the level of the head of the institution and abstain from situations in which the mechanism is placed under several departments, which diminishes its visibility.²³

Secondly, independence entails **financial autonomy**, which includes that States allocate sufficient financial resources in the case of NPMs under the OPCAT.²⁴ In case the monitoring body is part of an existing institution, for instance an NHRI or Ombudsman, its budget should be separate from the overall budget of the institution. This, in some cases, may be difficult since NHRI/Ombudsman institutions have one budget line within the State budget. Even in such cases, a specific budget allocation should be (at least internally) earmarked for the mandate of the monitoring body to ensure the allocation of stable and adequate funding to the functions of the monitoring body. In any case, the monitoring body needs to have enough human and financial resources to allow it an appropriate activity level. This inter alia implies that the institutions covered by the mandate of the monitoring body can be visited regularly. This requirement is however difficult to translate into a specific level of resources required.

Thirdly, procedures of appointment and immunities for staff should ensure transparency and should ensure that there is **no real or perceived conflict of interest**. It is important that members of NPMs and other monitoring bodies refrain from holding or taking up a position which could give rise to conflicts of interest.²⁵ It is also important that staff of monitoring bodies enjoy immunities for actions conducted in the execution of their duties, so as to ensure that staff are not under threat of reprisals and are able to fulfil their mandate independently and impartially.

All these elements ensure that preventive monitoring bodies are independent and that they are also *perceived* as independent by persons in prison, by those working in prison, by the State institutions with which they engage and other relevant stakeholders. Public and transparent procedures for the appointment of members and staff of the monitoring body contribute to being perceived as independent.

Capabilities and professional knowledge

The monitoring body needs to possess sufficient human resources in terms of professional expertise and diversity so as to ensure gender balance and pluralism, including adequate representation of ethnic and minority groups. The most obvious professionals to be represented in the monitoring teams are lawyers, doctors and psychologists, but also other professions may play an important role for a more complete understanding of the reality in prisons, the underlying causes and finding effective solutions to tackle them. Professionals who have previously worked in prisons or undertaken prison research may also be valuable members of monitoring teams. Persons who have experienced imprisonment will also have valuable insights from a 'users' perspective and would be a good addition to monitoring teams.

The powers of a monitoring body

Ideally, a body aiming to conduct preventive monitoring should be granted the following powers, as provided by the OPCAT:

- to regularly examine the treatment of persons deprived of their liberty with a view to strengthening their protection against torture and other ill-treatment;
- to make recommendations to relevant authorities on how to improve treatment and conditions of people deprived of their liberty and to prevent torture and other ill-treatment; and
- to submit proposals on existing and draft legislation.²⁶

To fully exercise its mandate, the monitoring body should be empowered to have:²⁷

- access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location;
- access to all information referring to the treatment of those persons as well as their conditions of detention;
- access to all places of detention and their installations and facilities;
- 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 NPM believes may supply relevant information;

- the liberty to choose the places they want to visit and the persons they want to interview; and
- the right to have contacts with the UN Subcommittee on Prevention of Torture (SPT), to send it information and to meet with it.

Mandates for bodies established as NPMs according to the OPCAT benefit from the support of the wording in the Protocol regarding the characteristics and powers of NPMs. Such mandates also benefit from the support of the SPT, with which the NPM can communicate and from which it can receive advice. For this reason, the mandates of NPMs are often in better compliance with the requirements above than the mandates for other monitoring bodies, like civil society organisations (CSOs). In some cases, though, CSOs and NPMs are faced with similar challenges. They are often not provided with the powers and resources in line with the OPCAT (for example, they are not granted unrestricted access to places, information and persons or not allocated adequate and sustainable resources). In such conditions, they are hampered in conducting regular visits or find it extremely difficult to conduct a thorough situational and causal analysis. Nevertheless, many elements of the preventive approach may still be relevant for bodies that are able to visit prisons, even with restricted mandates. Even if visits are not performed as regularly as desired or even if there is restricted access, there is still potential for prison visits having a deterrent and preventive effect if the monitoring body is able to apply some of the basic principles and features of preventive monitoring, as explained below.

1.7 The preventive monitoring cycle

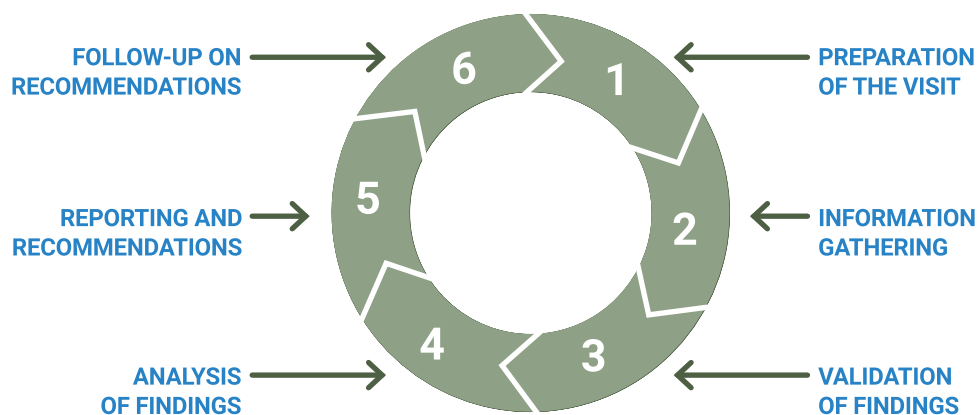
Preventive monitoring of prisons is a regular system of visits in order to conduct systematic information gathering on conditions of detention and treatment of persons in prison. It further involves the validation of the findings and their evaluation in light of national and international standards, analysis of the root causes and underlying factors related to the findings, making recommendations in order to promote improvement and prevent future cases of torture and other ill-treatment, as well as following up on the implementation of these recommendations.

In summary, the elements of the monitoring cycle are the following:

1. Preparation of the visit
2. Information gathering
3. Validation of findings including triangulation
4. Analysis of findings
5. Reporting and recommendations
6. Follow-up on recommendations



[FIGURE 1.3] The six steps of preventive monitoring



The preventive monitoring cycle and its elements are presented in detail in this manual. Here follows a brief overview of the key elements:

1. Preparation of the visit

Most preparations before a visit include obtaining information about the institution in advance. The sources for such information are multiple and require a systematic collection and analysis of the gathered information in order to feed into the preparations for an upcoming visit. Preparations also include deciding on the composition of the team, assigning roles and responsibilities, and preparing the necessary tools to be used (for example, interview guides or questionnaires).

2. Information gathering

Visits are the main tool for gathering information about prison conditions and the treatment of those detained. Visits may include interviews with management, staff and persons in prison, observation of facilities, and review of records.

3. Validation of findings

In order to develop credible and substantiated recommendations on as strong a foundation as possible, it is important to validate the findings. For instance, interviews may – intentionally or unintentionally – yield imprecise, wrong or even misleading information. Similarly, records may not reflect the situation accurately and comprehensively. The main approach to validation of findings is triangulation, which implies that the initial finding is sought to be verified or falsified through cross-checking with other sources of information.

4. Analysis of the findings

The findings are subsequently assessed and analysed, with a view to identifying risk factors that may have led to, or may increase, the risk of torture and other ill-treatment. In doing so, the monitoring body is guided by national and international standards. Some of these standards may be of a legally binding nature ('hard law') whereas others may be recommended, internationally agreed standards ('soft law'), and other guiding documents. The reference to

standards is likely to strengthen the recommendations made by the monitoring team. However, recommendations can still be made even without necessarily basing them on a specific standard if the monitoring body believes that its recommendation will strengthen the protection against torture and other ill-treatment.

The analysis also aims to identify the underlying factors of the findings and how intervening in this causal chain may contribute to prevention. This implies identifying where and why the mechanisms for the prevention of torture and other ill-treatment failed and resulted in the situation observed. A main result of this analysis is identifying whether the mechanisms of prevention failed at the level of the institution or at a more systemic level, so as to define the level for addressing the recommendations.

5. Reporting and recommendations

Recommendations, whether directed towards local or central authorities, will often focus on improving preventive and protective measures, encouraging compliance with existing laws, rules, and regulations. Such recommendations will usually form part of a report submitted to relevant authorities and will form the basis for an ongoing dialogue.

6. Follow-up on recommendations

The work of a monitoring body is not finished once a report with relevant recommendations has been submitted to the authorities. In order to foster change within the prison system, strategic efforts need to be invested in following up on the implementation of submitted recommendations. Furthermore, follow-up may be needed to check on the well-being of interviewees at risk of reprisals, and it may be a way of *triangulating* findings from the original visit.

Beyond the steps of the monitoring cycle

In addition to the steps within the monitoring cycle, preventive efforts may be complemented with other activities. These include e.g., awareness raising about the conditions and treatment of persons in prison, engaging with NGOs working on the prevention of torture, advocating at the national, regional, and international level, promoting rehabilitation of persons in prison.

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CHAPTER 2

Understanding prisons

This chapter offers a critical overview of the purpose of imprisonment and presents different conceptual frameworks to analyse and approach the prison, persons in prison, and prison officers. It explains why understanding prisons as closed institutions is essential for effective preventive monitoring and torture prevention. The chapter examines how deprivation of liberty shapes identities, relationships, coping strategies, and institutional dynamics. It also analyses the main features of prison populations, with attention to marginalisation, vulnerability, health, disability, age, gender, and intersecting forms of discrimination. Finally, it considers the role, working conditions, and perspectives of prison staff as central to understanding prison life and identifying risks of torture and other ill-treatment.

CHAPTER 2

Understanding prisons

2.1 Introduction

Preventive monitoring is a systematic attempt to understand and assess the reality in prisons through regular visits, including an analysis of underlying factors shaping the current situation and the potential risks of torture and other ill-treatment. It is necessary, therefore, to gain a broader understanding of prisons as closed institutions, the relations and dynamics developed within them, the lived experience of persons in prison, and the penal history and trends in the society.

Deprivation of liberty within a prison setting has a profound impact on the lives of persons deprived of their liberty. It transforms their understanding of themselves requiring elaborate strategies for coping with this situation. In addition, prison affects prison staff, who also develop their own coping mechanisms and shape their professional attitudes towards the system of imprisonment and persons in prison.

A holistic approach to understanding prisons and the conditions within them is informed by the respect (or lack of respect) for individuals' rights, as defined by the international human rights system and by the provision (or lack) of minimum standards of treatment for persons in prison. In addition, it is important to adopt a 'lived experience' approach aimed at understanding the 'conditions' from an internal, value-oriented perspective, taking into consideration the quality of prison life in combination with the notion of *what matters most* to those in prison.²⁸ Scientific research, including by DIGNITY²⁹, on understanding the importance of *prison climate as a whole* calls for bringing into consideration the realities of daily practice and societal dynamics with the aim to promote effective improvements of prison life.³⁰ Such understanding could promote effective prevention of torture and other ill-treatment.

A holistic understanding of prisons will strengthen the capacity to understand and assess universal values and often abstract human rights standards – like dignity and protection – with due consideration to local needs and broader social dynamics. Embracing these insights will bring about a stronger focus on what matters most in prisons during monitoring visits. Moreover, it will facilitate a broader understanding of the situation at hand and the identification of systemic issues to be addressed through a preventive approach. This, in turn, will lead to better informed recommendations that reflect the issues faced (since it is not possible to improve something if one does not really understand it) and a more grounded approach to developing strategies for effective follow-up action, which considers the realities of everyday prison life and prison management.

The current chapter offers a critical overview of the purpose of imprisonment and attempts to offer different conceptual frameworks to analyse and approach the prison, persons in prison and prison staff. In doing so, the chapter aims to address the following questions:

1. What is the purpose of imprisonment and are prisons fit for this purpose?
2. Which are the main conceptual frameworks for understanding prisons?
3. What are the main features of the prison population?
4. What is the impact of being imprisoned?
5. What do we know about those working in prison?

2.2 The purpose of imprisonment

Imprisonment is used as a form of punishment in every country in the world and, except for capital punishment, it represents the most severe punishment that can be imposed by courts vis-à-vis persons guilty of crime. Deprivation of liberty, including imprisonment, should always be lawful, meaning that it should be imposed on such grounds and procedures as provided by the law.

The main underlying theoretical justifications of imprisonment within relevant legal standards have changed over time: from reflective solitude and redemptive suffering as a means of reform and ‘saving the souls’ of those in prison (either through prison labour in silence – ‘the Auburn system’ – or through total separation from others – ‘the Pennsylvania system’) to modern cognitive approaches and educational and vocational opportunities to rehabilitate and effect change in the behaviour of those in prison (mainly post-release).

Traditionally, there are five main justifications of punishment identified within relevant legal standards and trends: *retribution*, *incapacitation*, *deterrence*, *rehabilitation*, and *reparation*. Most of them apply to imprisonment as a form of punishment.

Retribution

Retribution is perhaps the oldest justification for punishment. Here, punishment is justified on the basis that all persons convicted of a crime deserve to be punished and proposes that the most appropriate response is a punishment that is proportional to the harm caused. The argument in this case is that some crimes are so serious that the only appropriate disposal is to punish the offender by taking away their liberty.³¹ The power to punish is a core feature of a State’s sovereign power and its legitimate authority. It is assumed that when victims or society discover that the offender has been adequately punished for a crime, they achieve a certain satisfaction that the criminal procedure is working effectively, which enhances faith in law enforcement and justice. Although imprisonment serves as punishment, it should never be imposed *for* punishment. The prison administration is not tasked to punish offenders. It is the sentence by the court (deprivation of liberty in a prison), not the treatment by the prison, that constitutes the punishment.³²

Incapacitation

Placing a person in prison removes the offender from society and restricts their immediate capacity to commit new offences during their period of imprisonment. This theory assumes that the State has a duty to protect the public from future offences and harms, and that such protection can be afforded through some form of incarceration or incapacitation.³³

Deterrence

It is considered that in order to prevent crime, it is necessary to provide for negative consequences (i.e., imprisonment) by law. The assumption is that the risk of imprisonment will deter a person from committing crime (specific deterrence). Likewise, the assumption is that it will deter others in society from committing crime by witnessing the punishment inflicted on the offender (general deterrence).

Rehabilitation

In order to achieve the purpose of public protection and reduction of recidivism, imprisonment is to be used as an opportunity to rehabilitate offenders by helping them address issues that led to the criminal behaviour and providing them with life skills, which will facilitate their reintegration into society as law-abiding citizens upon release. This is to be pursued mainly through offering intervention programmes such as, for example, education, vocational training, work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social, and health- and sports-based nature.

Reparation

Punishment can be used to require offenders to repair the harms suffered by their victims or by society as a whole. This may involve paying fines, performing community service, or engaging in other forms of reparative justice.

Critical reflections on imprisonment as a form of punishment

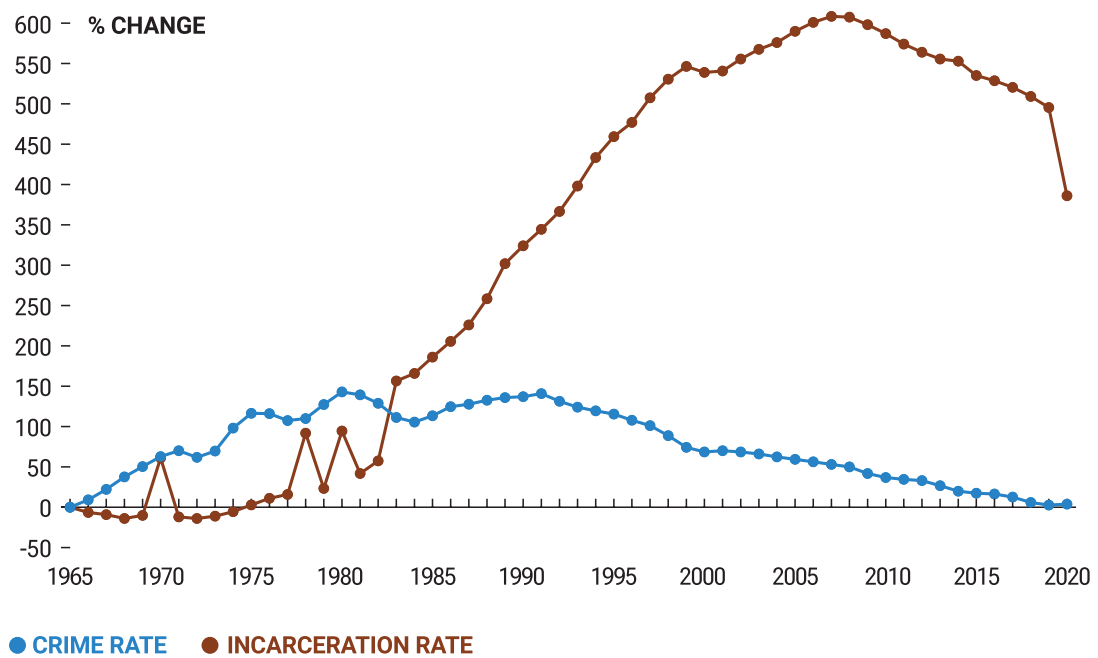
The world prison population is at its highest in history with around 11.5 million persons imprisoned globally, which is a 24% increase since the start of the millennium.³⁴ Punitive justice systems, 'tough on crime' policies, and the excessive use of pre-trial detention have all contributed to the rising prison population. Although imprisonment is mainly understood as a sanction for having committed a criminal offence, the reality is that a significant part of the prison population globally (around 30%) is being placed in prison while awaiting trial (pre-trial detention) without having been found guilty by a court.³⁵

Although prisons and imprisonment are generally taken for granted as absolutely necessary (based on the theoretical justifications presented in the previous section), there are significant critiques that question whether prisons and imprisonment are fit for purpose and whether they are the best response to crime. The basic question is: is imprisonment part of the solution or rather part of the problem?

It is often assumed that increased imprisonment rates are directly related to increased crime rates (more crimes = more imprisonment). This is, however, not necessarily the case. For instance, recent research from the USA demonstrates that even when crime rates are decreasing, imprisonment rates can be increasing.³⁶ This is illustrated in Figure 2.1.



[FIGURE 2.1] Crime rates vs. incarceration rates in the US, 1965–2020³⁷



By contrast, high imprisonment rates can more often be related to the fact that societies are increasingly relying on criminalisation and imprisonment as the response to social problems, such as poverty, homelessness, and the use of drugs. In fact, an increasing number of acts are criminalised although they may not pose a risk to society or individuals, for example petty offences such as loitering or vagrancy.³⁸ Additionally, many offences carry increasingly heavier sentences, for example, possession of small quantities of cannabis may lead to long prison sentences. In some contexts, prisons are used as places for keeping victims of domestic violence safe, in light of the absence of appropriate facilities (shelters, 'safe houses') and the inability to prosecute and detain the perpetrators. This means that there is a growing trend of justifying imprisonment in situations where, in reality, it is not the most appropriate response.

Such assumptions and policies contribute to chronic prison overcrowding in many countries. In conditions of overcrowding and resource shortage, prisons are often not able to fulfil their stated purposes. On the contrary, they may contribute to further marginalising persons belonging to vulnerable groups and to reoffending.

In terms of **deterrence**, research suggests that there does not seem to be a significant causal correlation between crime rates and incarceration rates. This means that the threat of imprisonment does not necessarily deter people from committing crime (since crime is a result of many other factors) and that imprisonment may not prevent persons from committing new crimes after their release. Compared with non-custodial measures such as bail, community service and reporting obligations, imprisonment appears to have no deterrent impact or even a mildly contributing effect towards future criminal behaviour.³⁹ For example, compared to probation, imprisonment has no effect on recidivism or even slightly increases it.⁴⁰ Another study also suggests that imprisonment is an ineffective long-term intervention for violence prevention in the community, as it has, on balance, no rehabilitative or deterrent effects after release.⁴¹ Research also

suggests that longer sentences do not necessarily lead to lower recidivism, on the contrary, such sentences may lead to higher recidivism rates.⁴² These indications from research studies call for more research into the correlation between imprisonment and crime, while casting doubt on the claims that prison has a strong deterrent effect. In fact, many countries face high recidivism rates despite longer sentences and high imprisonment rates.⁴³

In terms of **rehabilitation**, some argue that prison increases crime by eroding community bonds and intensifying structural inequalities. Research has also found that the current emphasis on punishment and prisons cannot be separated from the growing social and economic inequalities, both of which are most deeply felt by persons belonging to racial or ethnic minorities, as well as the poor, immigrant, and labour-class populations.⁴⁴

Such critical reflections on imprisonment and prisons are essential to the monitoring work as they allow monitors to deploy research-based arguments against the trend of overcriminalisation and mass incarceration and promote non-custodial responses to societal problems. If such recommendations are taken up by States, then fewer people will be placed in prisons and, in turn, fewer people will be at risk of torture and other ill-treatment. At the same time, reducing prison populations will allow States to invest more in developing the necessary interventions for preventing crime through better social policies, and support better non-custodial and rehabilitative alternatives, applying imprisonment only to those crimes that cause a serious risk to society. Promoting and advocating for such systemic measures, which have a collective impact on the use of imprisonment and how we think about the role of prisons in our societies lie at the core of *preventive* monitoring, as they greatly reduce the risk of torture and other ill-treatment and promote human rights-based approaches to crime policies more generally.

2.3 Understanding prisons

Although many think of prisons as institutions that share the same practices and procedures, this is not true. Prisons are complex institutions and thus, generalisations cannot truly capture their diversity between and within countries. For monitors, though, it is important to keep in mind this diversity so as to identify and address preconceptions and assumptions about how prisons are or should be. Prisons are very different from one part of the world to the other from region to region, from one country to another and within the same country. They are diverse in their position within the society, the aims they serve, the way they are regulated and used, their operational regimes and governance models. Despite the fact that imprisonment is a global phenomenon, and prisons are found in all countries, there is still, unfortunately, limited research on prisons in low- and middle-income countries and therefore, a lot of what we know about prisons has been produced by studying a small proportion of countries.

Furthermore, in many countries, prisons are divided into several security levels, for instance: low, medium, high, and super-max security. Prisons are classified in different security levels based on the nature of the crime committed and the risk assessment of the persons held in the prison. The security level of the prison usually determines the level of autonomy and interactions that are allowed to the

persons in prison. For example, in low security prisons, there may be opportunities to move around more freely within the prison, to participate in a wide range of activities, to cook and to manage time more autonomously. In other words, a life within a relaxed regime which includes routines and activities somewhat similar to a normal life outside the prison. On the contrary, in high security prisons, persons often spend more time locked up in their cells, have less opportunity to interact with others or to participate in activities, undergo more frequent security checks and have fewer contacts with the outside world.

The security level of the prison will have a great impact on how the prison is experienced by those living and working in them. Therefore, it is important for monitors to understand that not all prisons are the same, different prisons will be experienced differently by persons in prison as well as staff, and their impact will differ.

In this section, four key conceptual frameworks are introduced to support a deeper understanding of prisons: a. 'the pains of imprisonment',⁴⁵ b. 'total institutions',⁴⁶ c. 'the moral performance of prisons/quality of life',⁴⁷ and d. 'prison climate'.⁴⁸

A. 'The pains of imprisonment'

As early as the 1950s, a field-based study by Gresham Sykes of a maximum-security prison led to the identification of five deprivations constituting 'the pains of imprisonment':⁴⁹

- The first is the deprivation of liberty, in two distinct ways: loss of physical liberty and loss of status as members of free society.
- The second deprivation is the limitation of access to goods and services. When in prison, persons lose the material possessions and services they are used to.
- The third deprivation is the limitation of intimate relations and has negative implications for self-confidence, gender-identity, and a general sense of well-being and normality.
- The fourth deprivation is the limitation of autonomy. In prison, to a large degree, persons lose their ability to make decisions for themselves. They must obey rules and instructions. This loss of control hampers the development of skills needed to live life after prison.
- The fifth and final deprivation is the limitations of safety. Prisons feature a constant sense of insecurity and risk. They are, for many persons, low trust and high-risk environments.

With his study, Sykes aimed at showing that, although the once intended physical pains of imprisonment (through bodily harm) no longer existed, the psychological pains of imprisonment were still present and as damaging as the physical suffering. He argued that attacks on the ego and sense of self-worth of those in prison were 'the acceptable or unavoidable implications of imprisonment'.⁵⁰

In some sense, the pains of imprisonment described by Sykes still exist in our contemporary prisons. Although the power in some prisons is exercised more softly, in a way that is less authoritarian, in other ways the prison experience has become 'deeper' and more burdensome – movements are more restricted, security has been tightened.⁵¹ In many contexts, inter-prisoner violence is more rampant in contemporary prisons, which also exacerbates 'the pains of imprisonment'.

B. 'Total institutions'

In 1961, Erving Goffman, a highly influential sociologist, published his book on Asylums⁵² and used the term *total institutions* to refer to institutions, like prisons, that exert almost total control over the lives of their inhabitants. He also proposed the term '*mortification*' to talk about the way persons have their identities stripped from them as they go through the rituals of prison entry and processing. A person becomes someone else in prison.

According to Goffman, *total institutions* are 'places of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life'.⁵³ Totalitarian features include the way all aspects of life (sleep, play, and work) are conducted in one place, which is isolated from society; all activities are carried out with others, who are required to do the same; all activities are tightly scheduled, imposed by formal rules and supervised by a small number of officials; all activities are enforced to fulfil the official aims of the institution.

Unlike the features of total institutions, the contemporary approach to the treatment of persons in prison and prison management is to view prisons as more 'porous' than Goffman's view. Prisons can be in contact with the outside world more than we may imagine through visitors, service providers and prison staff going in and out of their walls every day. Furthermore, if prisons are to serve their rehabilitative aim, it is necessary to ensure that prison life resembles as much as possible life at liberty. This approach is based on the principle of normalisation provided in international standards⁵⁴ and it is assumed to facilitate rehabilitation and reintegration of persons in prison back into society.



[BOX 2.1] Principle of normalisation

Mandela Rules, Rule 5:

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

Basically, 'normalisation' could be explained as adopting specific practices within prison to ensure that prison life resembles life at liberty as much as possible. The assumption behind this principle is that if prison life resembles life in the community, then there are greater chances of rehabilitation and smoother reintegration after release as there will be less adjustment challenges for those released.

C. 'The moral performance of prisons/quality of life'⁵⁵

The concept of 'moral performance' was introduced by two contemporary prison scholars, Alison Liebling and Helen Arnold. It relates to the way people are treated and to the values and sensibilities that dominate in a prison. The concept of 'moral performance' is closely related to the idea of the 'quality of life' in a prison. It is a concept that draws attention to the way prison is experienced. The concept grew out of a series of in-depth ethnographic studies of prisons in England and Wales,

which resulted in the development of a survey that is able to assess what 'really matters' for persons in prison and for staff, known as the 'Measurement of Quality of Prison Life' questionnaire.⁵⁶

One of the most important conclusions of these ethnographic studies was that values and relationships matter more in prisons than material conditions. Thinking of the prison as a fundamentally relational institution may offer new insights for monitors and an additional lens during the monitoring visits. Interpersonal relationships, for example between staff and persons in prison, between persons in prison and their families, and between persons in prison themselves, make prison life more or less survivable. In combination with how authority is used, these make a great difference as to whether the treatment is perceived as fair and whether the prison feels safe. As Liebling suggests, the well-being of persons in prison is largely a consequence of their perceived treatment.⁵⁷

We know that prisons have serious effects on those who inhabit them. For example, absence of respect and fairness is perceived as psychologically painful and can generate negative emotions such as anger, tension, indignation, and rage.⁵⁸ This may easily lead to conflict. Levels of distress, anxiety, and depression are extremely high among persons in prison. The presence of negatively laden values (disrespect, unfairness, arbitrary treatment, etc.) exacerbates such pains and is detrimental to good order and security. The combination of routine, control, and unpredictability is psychologically very demanding and potentially damaging, and prisons weaken social and relational bonds with people outside. This has major effects on the prospects for reintegration in society.⁵⁹

D. 'Prison climate'

The concept of 'prison climate' is, in some ways, related to the concept of 'moral performance', as it refers to the unique atmosphere of any prison highlighting the importance of specific factors that matter most for those in prison. The notion of 'prison climate' is a useful way of rethinking variations and similarities across prisons. The prison climate is a composite category, encompassing material conditions, values, relationships, and the political and moral economies – including the (ir)rationalities – that sustain them.⁶⁰ The prison climate depends on the prison's structures and infra-structures, the feel of the buildings, the dominant values, the quality of relationships between people. The prison climate is also based on situating prison within the history of the specific society and prisons within this context, as well as its relationship with the local community and society more generally. Using a different metaphor, we might say that thinking about the climate of the prison is a way of sensing its flavour. Different prisons have different climates or flavours. Some prisons are better to work in or inhabit than others. Climate is something that can be sensed, observed and assessed, hence an important supplement to 'standards-based' approaches of monitoring.

The concept of 'prison climate' encompasses elements of the concept of 'prison culture'. 'Culture' refers to the shared assumptions and values of staff and those in prison, which guide behaviour within the specific institution.⁶¹ Nevertheless, prison climate is more than something just institutional and more than something linked only to values and dispositions. It is a holistic approach to the prison 'as is', while embracing broader understandings of a prison's history and its situatedness

in society. This is in distinction to classic ways of understanding prisons as institutions that are cut off from the world, and those in prison as isolated from the rest of society.

The themes of *survival*, *governance* and *transition* are central to this concept.⁶² More specifically, DIGNITY's ethnographic research points towards three core general lessons pertaining to prison climate.⁶³ First, both those detained in prison and those working in prison develop coping mechanisms for *survival* within the prison environment. Second, *governance* of prisons frequently features a combination of national legal standards (often outdated or under revision) and of everyday practices rooted in mundane violence and a diffused distribution of authority (between staff and persons in prison). And third, *transition* efforts include multiple local stakeholders and external actors who are struggling to keep pace with reform agendas which, in the long term, may produce few benefits for the most marginalised among those in prison.

These findings imply a few related issues that monitors may consider during their work:

- Although at first glance those in prison and prison staff may seem as if they share nothing in common, this is usually not true. Those detained and those working in prison co-create and share the prison environment. The living conditions for those in prison are the working conditions for those working in prison. Therefore, monitors may consider the common aspects that prison staff and those in prison share and address recommendations towards improving these issues to benefit everyone.
- Although monitors may initially consider that authority lies exclusively in the hands of prison officers and prison managers, this may not be true in practice. Monitors may consider looking closely at how authority is exercised within a prison and who is (really) in charge. It may be the case that certain groups of persons in prison have acquired authority over others, often with the consent of prison officers. It is important to assess who exercises authority and how, in order to address the risks that may be produced by such authority structures.
- As mentioned, both those detained and those working in prisons develop coping strategies. It is important for monitors to learn more about such coping strategies from both sides so as to assess the risks and protection gaps within the prison.
- As prisons are often targeted for reforms (in legislation and in practice), it is useful for monitoring to consider and assess what is actually changing within prisons as a result of such reform efforts and who benefits from these changes. Through such an assessment, the monitoring body will be well placed to contribute to such reforms and to ensure that those in prison truly benefit from them.

2.4 Main features of the prison population

The prison population is usually absent in discussions around prisons. Persons in prison remain a group that is hidden from view, and they are rarely vocal about their experiences in prison after they have been released. Nevertheless, more than 11.5 million people are held in prisons throughout the world.⁶⁴

In most countries, the prison population mostly represents the poorest and most marginalised strata of society. The UN Special Rapporteur on Extreme Poverty and Human Rights reported in 2011 that ‘Because law enforcement officials often use ‘poverty’, ‘homelessness’, or ‘disadvantage’ as an indicator of criminality, persons living in poverty come into contact with the criminal justice system with a disproportionately high frequency. They also encounter considerable obstacles manoeuvring within or exiting the system. As a result, disproportionately high numbers of the poorest and most excluded are arrested, detained and imprisoned’.⁶⁵

People belonging to marginalised groups on several (intersecting) grounds, such as race, ethnic origin, gender, and sexual orientation, are overrepresented in prisons globally. Therefore, imprisonment partially derives from and reinforces social stigma and marginalisation. It is also becoming increasingly clear that a large percentage of persons in prison has various health conditions, including those related to mental health or intellectual disabilities. Overall, the health of persons in prison is poorer than that of the general population, both in terms of physical and mental health.^{66, 67} The possible explanations for this include (i) Selection, where people admitted to prison have more health problems than others, (ii) Prison living conditions, which may be harmful to health, and (iii) Health service in prisons, which may be less effective than outside the prison.⁶⁸ Rates of poor mental health conditions and mental health disorders remain disproportionately high among prison populations and are rising in some cases.⁶⁹

Although persons in prison should not be viewed as a homogenous group, there are some main features that are worth exploring further as they relate to certain groups being overrepresented within the prison population. Although these features are addressed separately in this chapter and may relate to specific groups in situations of vulnerability, monitors should be alert to the various ways that these features create multiple layers of vulnerability and potential discrimination and stigmatisation when they intersect (*intersectionality*). *Intersectionality* recognises that people’s lives are shaped by their identities, relationships, and social factors. These combine to create intersecting forms of privilege and oppression depending on a person’s context as well as existing power structures such as patriarchy, ableism, colonialism, imperialism, heteronormativity, and racism.⁷⁰ Intersectionality is also relevant to how persons will experience imprisonment, and the criminal justice process more generally, in different ways depending on how all these features intersect and create multiple discrimination grounds and harms. For example, an indigenous, poor, young woman with a mental health condition charged with prostitution will probably experience imprisonment differently than a rich woman from the majority population charged with a ‘white collar’ offence. Intersectionality also means that specific groups in a situation of vulnerability (for example women, LGBTIQ+,⁷¹ youth, foreign nationals) should not be viewed as a homogenous group. Instead, monitors should pay particular attention to identifying the intersecting factors that render some individuals – even within a certain group – particularly vulnerable to human rights violations.

Gender identity and sexual orientation

Although men continue to constitute the overwhelming majority in prisons, the number of women in prisons has increased at a much faster rate than men, on average 60% since 2000 compared to 22% for men.⁷² The prevalence of women

within the total prison population is lowest in African countries and highest in Asia, especially South-Eastern and Eastern Asia. Nevertheless, women remain a minority of global and national prison populations of approximately 2-9% on average.⁷³

Structural inequalities, trajectories of childhood abuse and intimate partner violence, stigmatisation and gendered roles have been identified as central factors in the trajectories of women in prisons.⁷⁴ Most women in prison globally are charged with or convicted of non-violent offences (many for drug-related offences), and their imprisonment is often also related to poverty and the inability to pay fines or to afford bail. Moreover, the imprisonment of women for 'status offences'⁷⁵, which only or disproportionately apply to women, have led to fresh calls for reform from international human rights bodies, including the UN Working Group on Arbitrary Detention, which specifically recommended urgent reform of laws which criminalise acts such as abortion, adultery and prostitution.⁷⁶

Persons belonging to the LGBTIQA+ community⁷⁷ are also often overrepresented in prisons compared to the general community. Therefore, it is important for monitors to consider the gendered aspects of imprisonment and to address 'gender stereotypes' as a cause of crimes committed by both men and women. In at least 76 countries, discriminatory laws criminalise private, consensual same-sex relationships, exposing many individuals to the risk of arrest, prosecution, and imprisonment.⁷⁸ Criminalisation also fuels discrimination and prosecution against people who dress or behave in a way that challenges traditional gender norms. Due to widespread homophobia and transphobia, LGBTIQA+ persons are extremely vulnerable to abuse, intimidation, and violence while in prison, by staff members and by other persons in prison. In one study of incarcerated men, gay or bisexual men had 8.3 times higher risk of being assaulted than straight men.⁷⁹

While women and persons belonging to the LGBTIQA+ community are a small and marginalised minority, too many prison policies and prison staff training courses are still gender-neutral (or even gender-blind). This means that the discrimination, risks and needs of women and LGBTIQA+ persons are not identified and thus, not addressed. These needs include foremost the need for protection as well as often increased health care needs. Some studies have shown that non-heterosexual and transgender persons are at increased risk of sexual assault and coercion in prison. For instance, a literature review on transgender and incarceration in the USA in 2013 showed that the risk of being targeted for assault is substantially higher for transgender persons.⁸⁰

Age

This manual focuses on adult prisons. At the same time, it is recognised that juveniles⁸¹ and young adults⁸² are in many countries detained in prisons built for adults. The minimum age of criminal responsibility ranges from 7 to 16 years globally, with the most common age (in 49 countries) being 14 years.⁸³ Moreover, the magnitude of juveniles deprived of liberty is alarming, as the vast majority of those detained have been deprived of liberty in violation of international law and specifically of the UN Convention on the Rights of the Child (CRC). It is estimated that worldwide 160,000–250,000 juveniles are detained in remand centres and prisons on any given day. This is a rather conservative estimate, and it does not count the around 1 million estimated to be held in police custody.⁸⁴

Overall, due to the absence of consistency of definitions across jurisdictions of young adults as a separate population group, global data on the number of young adults in prison is not available. Where it is, it shows that the proportion of young adults among the prison population can be significant.⁸⁵

Juveniles and young adults are often imprisoned for minor offences.⁸⁶ Some will have transitioned into adult prisons directly from detention centres for juveniles when they reach 18 years of age. The reoffending rate seems to be high among young adults after release. For example, in Ireland 84% of those under 21 years old released in 2016 reoffended within 3 years after release, compared to 31% of those over 50 years old.⁸⁷

Studies have found that children and young adults in detention often come from backgrounds involving violence, abuse, and exploitation. For instance, 45% of the children and young adults in a youth justice centre in New Zealand had been in child protection and came from backgrounds of trauma and neglect.⁸⁸ The experience of young women coming into contact with the criminal justice system in England and Wales is also frequently underpinned by experiences of violence, abuse and exploitation, poor mental health, addiction, exclusion from education, poverty and having no safe place to call home.⁸⁹

Imprisonment has a significant impact on the mental health of juveniles and young adults. Especially, for juveniles, imprisonment could be considered depriving them of their childhood as it may mean that they are deprived of rights, agency, visibility, opportunities, and love at a time in their lives when they need these the most.⁹⁰ International research suggests that young adults in prison are often characterised by poor physical health, psychiatric disorders and substance use disorders, with higher prevalence rates than for young people in the general population.⁹¹ Similar to the situation among adults in prison, violence and gang-cultures are also prevalent among juveniles and young adults in prison, likely connected to complex mental health and social needs. There has been a lack of attention and recognition of the scale and seriousness of violence, including sexual and gender-based violence against men and young adults in prison.

A third category is older persons. Importantly, there is a growing ageing prison population. In fact, in some countries, older persons are the fastest growing segment of the prison population.⁹² This trend is partly attributed to the fact that longer sentences are being imposed, meaning that persons are in prison until they reach an older age. As the Independent Expert on the enjoyment of all human rights by older persons has noted, structural inequities related to socioeconomic factors influence the prospects of older persons being deprived of liberty in multiple ways, and there is a correlation between older persons and the likelihood of committing an offence.⁹³ This may be, among others, due to the effects of ageing on mental capacity, such as those relating to domestic violence and disinhibited behaviour.⁹⁴ The Independent Expert also found that deprivation of liberty has a pervasive impact on older persons. Prisons, in many cases, are not designed to accommodate older persons and are struggling to respond to their needs. Penal systems often lack the capacity to address the complicated medical needs and costs, costs for specific facilities, assistance, palliative care, mental health care, and other age-specific treatment.⁹⁵ Thus, the Independent Expert concluded that older persons deprived of liberty are vulnerable to human rights violations.⁹⁶

Race, ethnicity and religion

A person with a specific racial, ethnic, and/or religious background may also be placed at greater risk for torture and other ill-treatment. In many countries, indigenous peoples and persons belonging to racial, ethnic, or religious minorities are overrepresented in prisons and are often subjected to stricter security measures and ill-treatment.⁹⁷ Such persons may often experience discrimination, stigmatisation, violence, exploitation, and even torture by staff and/or other persons in prison. They often experience this in society in general as well. However, it is exacerbated during their stay in prison. They may also have decreased access to the services and programmes available within the prison. It is important to keep in mind that these characteristics often intersect with others (age, language, gender, etc.) leading to multiple discrimination.

Substance use

WHO defines substance use as ‘the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs’.⁹⁸ Persons in prison are substantially more likely to have used drugs, to use drugs regularly and to experience drug-related problems than their peers in the community. It is estimated that nearly 30% of men and 51% of women who are incarcerated around the world are living with a drug use disorder.⁹⁹ This includes disorders related to different types of illicit drugs and/or alcohol, where ‘disorder’ means that the substance use is harmful to the person and/or that the person has developed a substance dependency.

Persons who use drugs and/or alcohol face particular challenges during imprisonment. Prison systems exacerbate the physical and mental health issues and are often not able to provide the necessary health care, support, and harm reduction programmes to persons who use drugs and/or alcohol. In prisons, substance use is rarely treated as a disease. More often the condition is in fact being punished. During imprisonment, persons using drugs and/or alcohol are exposed to the risk of discrimination, violence, victimisation, and ill-treatment by their peers and by prison staff.

It is important to note that there is a correlation between substance use and mental health problems and several studies have indicated that persons with a mental health problem are more likely to have a substance use disorder and vice versa.¹⁰⁰

Physical disability¹⁰¹

Persons with a physical and/or sensory impairment often require special equipment such as hearing aids, crutches, and wheelchairs. They may also require personal assistance to cater for their daily needs as well as specialist services such as sign language interpretation, physiotherapy, and regular health checks. Finally, depending on the physical surroundings, accessibility may be an issue.

The difficulties that persons with physical and sensory impairments face in society are typically magnified in places of detention, given the nature of the environment that can often not cater adequately to their needs. This may not only exacerbate the person’s disability and reduce their level of functioning but may also increase their dependence on others for personal assistance. In prisons, such personal

assistance is often delivered by fellow persons in prison which may in turn give rise to other challenges and put the persons with disabilities in a particularly vulnerable position.

Psychosocial disabilities

Psychosocial impairments influence how persons interact with others. They may arise from issues related to mental health, including psychiatric diseases, but may also be a consequence of neurodevelopmental disorders. If not compensated for, through treatment and support, psychosocial impairments may lead to disability.

The prevalence of mental health problems among persons in prison has been found to be considerably higher than in the community.¹⁰² Mental health problems refer to a broad range of disorders that affect a person's mood, thinking and behaviour. They include depression, bipolar disorder, anxiety disorders including Post-Traumatic Stress Disorder (PTSD), psychotic disorders including schizophrenia, and a range of personality disorders. PTSD is an anxiety disorder which may develop after exposure to a life-threatening event with intense fear and helplessness, including torture and other ill-treatment. High prevalence rates of PTSD among persons in prison have been shown, for instance in a study conducted by Baranyi et al. in 2017.¹⁰³

Mental health problems and how they are expressed vary widely, also in terms of severity. In the interaction with others, they may manifest as voluntary social withdrawal and isolation, anxiety, shyness, passivity, aggressiveness, conflict seeking, and destructive or self-destructive behaviour, including self-harming and suicide. The rates of self-harm and suicide are higher among persons in prison than found in the outside community and suicide is often the single most common cause of death in prisons, accounting for about half of all deaths.¹⁰⁴

Some persons with a mental health problem also have several other vulnerabilities which challenge their daily life in prison, including poor social skills, learning difficulties, as well as poor physical health.¹⁰⁵ This is often further exacerbated by conditions of overcrowding, various forms of violence, isolation, lack of privacy and of meaningful activities, and by inadequate health services, especially services for mental health and substance use disorders.

Although more research is needed related to persons with neurodivergent conditions (including autism, ADHD, ADD, dyslexia, dyscalculia and dyspraxia), they have been documented in high numbers in prisons.¹⁰⁶ In England and Wales, for example, it is estimated that half of the people entering prison are neurodivergent.¹⁰⁷ The prison environment may be startling for persons with such conditions, and they may have various behavioural responses to this unfamiliar environment, which are often misconstrued as aggression or indifference, leading to unfair treatment.¹⁰⁸

Intellectual disabilities

Intellectual impairment is related to a person's intellectual skills and behaviour and may include difficulties with reasoning, problem solving, abstract thinking, and learning. Intellectual impairment may be lifelong, e.g., in the case of genetic or inborn disorders, or it may be acquired, e.g., following brain damage. Like people with sensory, physical, and psychosocial impairments, people with intellectual impairment require support to minimise disability.

Data about persons with intellectual disabilities in prisons are very limited and therefore, their specific needs are often neglected, and their behavioural patterns often misinterpreted. Being imprisoned is particularly difficult for persons with an intellectual disability that impairs their thinking, way of understanding the environment in which they are living (including other people's actions), emotional responses, and coping skills. Thus, in a prison context they may be considered particularly vulnerable, and it has been shown that they are at increased risk of being abused, discriminated against and victimised by staff members and other persons in prison.¹⁰⁹

Crime

Certain crimes are associated with increased stigmatisation within prisons. These include for instance sex offences (especially in relation to children), terrorism, and violent crimes. They often lead to higher levels of perceived and anticipated stigma from other persons in prison as well as staff. This stigma is often a response to deeply negative societal stereotypes that are internalised and reinforced within the prison environment, often affecting these persons' social interactions and well-being within the prison and their overall vulnerability.

2.5 Being imprisoned

Entering a prison and staying there is a tremendous change for a person. Upon entry into a prison, a person is stripped of most, if not all, the roles they had before.

«The first day is the most horrible, the most humiliating.»¹¹⁰

«I felt like I lost all my feelings. I was totally naked; they were shouting at me. I was made to feel like a common criminal.»¹¹¹

Within the prison, it is often forgotten that the person is still a member of a family, a professional in a workplace, and a person with social relationships. In other words, the previous social identity is taken away and replaced by an identity of the 'prisoner'. Thus, the term 'prisoner' could be considered stigmatising. Therefore, monitors should opt for person-first language, for example, using the term 'persons in prison', as used throughout this manual. Overall, preconceived ideas about who those in prison may be and what they may have done should be avoided. Instead, even when knowing about the types of crimes committed by those in prison, monitors should approach persons in prison with impartiality, openness and respect.

Family ties and contacts with the outside world become weaker, as they are regulated and restricted by prison rules and formalised procedures. Contacts are typically restricted in terms of frequency, duration and the conditions under which they can be enjoyed. For instance, persons in prison may only be allowed 'closed' visits taking place in a booth behind a glass partition and may not be entitled to intimate visits. A person in prison who has children can no longer fulfil their role as a parent in the same manner. Access to goods and services is strictly limited and often a matter of corrupted 'negotiations'. During imprisonment, (the right to)

privacy is often violated and personal autonomy and self-determination are limited, since life in prison is strictly regulated by the rules and decisions of the prison administration.

As a result, the prison environment can be inherently damaging to mental health and well-being. This is often due to the disconnection from family, society, and social support, loss of autonomy, diminished meaning and purpose of life, fear of victimisation, increased boredom, the unpredictability of surroundings, overcrowding and punitiveness, experiencing and witnessing violence, negative interaction between staff and persons in prison, and other aversive experiences.¹¹²

Levels of distress, anxiety, and depression are often high among persons in prison, particularly during the admission phase and the first days in prison, right after sentencing or after having been transferred from another prison or regime level. Anxiety is also high during the period prior to release as it revolves around important changes and the effort to reintegrate into the community. For instance, the first weeks of imprisonment and the period following release are associated with a higher risk of suicide.¹¹³ Imprisonment causes psychologically damaging effects, and imprisonment has also been found to lead to so-called 'post-incarceration syndrome', which means that even after serving the prison sentence, many individuals continue to suffer its mental effects.¹¹⁴

The way prisons are usually managed frequently leads to prison officers viewing those in prison as people who need to be constantly assessed in terms of risks and needs. Such assessments are usually part of prison officers' duties. Prison officers have the responsibility, in many contexts, to observe and assess whether persons are complying with prison order and discipline, whether they show respect to the staff, whether they are showing good behaviour and whether they pose a risk to themselves or others.

Public discourse on crime often also demands that convicted persons be punished beyond the deprivation of liberty. By entering a prison, they should experience a 'civil death', at least to some extent, where their rights and their human value are subjected to limitations. Although some of the rights are restricted in prisons due to the nature of imprisonment, the tone and content of public debates around imprisonment, in many countries, point towards an increasingly punitive approach towards handling crime in societies. According to this approach, imprisonment and the treatment received in prison should serve as punishment through longer sentences, substandard conditions in prison and more restrictions to the rights of those in prison. In many contexts, especially those convicted for offences that carry a special 'stigma', such as rape or sexual abuse of children, will be seen as 'less worthy' of humane treatment and thus, parts of the public may be prone to supporting harsh prison regimes.

As for how monitoring bodies are perceived, we know very little about what persons in prison think about monitoring bodies and how they are willing to engage with them. Limited research has shown that persons in prison may not even be aware of monitoring bodies or may approach them with scepticism about their credibility or authenticity.¹¹⁵ This scepticism and lack of awareness are important factors affecting the work and potential effectiveness of a monitoring body and therefore, monitoring bodies will need to devise specific strategies to address this. On the positive side, research carried out by DIGNITY and its partner

organisations in Albania and Honduras has shown that a large proportion (66–77%) of persons in prison in these two countries found monitoring visits important or very important.¹¹⁶

Much of our understanding of how prison monitoring operates in practice remains at the level of State responsiveness to monitoring bodies (for example, how recommendations are being implemented or not), while limited attention is given to what effective monitoring might look like from the perspectives of those in prison and prison staff.¹¹⁷

2.6 Working in prison

Prisons are demanding places to work in. The roles and responsibilities of the prison management and staff differ considerably from those of the police, the prosecution authority and the judiciary. The perceptions of the role of prison officers have changed over the past decades as the legal standards and approaches towards prison management have evolved towards more professionalisation and more focus on rehabilitation. This may explain why, in some cases, there is still a sense of uncertainty among prison officers about the ‘modern’ way of being a prison officer.¹¹⁸ In general, prison officers may face dilemmas or conflicting demands in the exercise of their duties, which require that they strike the right balance between human rights and security, between punishment and rehabilitation, between care and control.

Prison officers are of critical importance to the effective functioning of the prison, and their backgrounds, training and working conditions shape the way in which they carry out their functions. Yet, only in recent years has research started to shed light on aspects that influence their work: who they are (gender, age, ethnic origin, background) and what their working conditions are (pay, hours, length of shifts). Also, little is known about the nature of their duties beyond safeguarding those in prison. An important aspect of prison work is the maintenance of order and security, which is pursued by building constructive relationships between prison officers and persons in prison (dynamic security), but it may also entail taking strict security and disciplinary measures to restore order and security. The everyday role of prison officers in balancing these needs and demands within a prison is often overlooked.

Another issue that is often overlooked is the impact of prison work on staff. Working in prisons entails a level of work-related stress and varying degrees of risks of violence, threats etc. Prison officers have higher rates of mental health problems than what is seen in many other occupations.¹¹⁹ Research has shown that prison officers experience higher levels of job stress¹²⁰ and burnout¹²¹ than persons in other occupations. A recent study in the UK identified four major themes related to post-traumatic stress disorder (PTSD) in former prison officers:¹²²

- **Little support was available** from prison managers in identifying and managing PTSD among officers, which led to barriers in diagnosing PTSD and accessing appropriate treatment.

- **Diagnosis was delayed** since many officers struggled to recognise that they were experiencing PTSD, attributing their symptoms to the usual effects of their job on them ('how the job changed them').
- **Prison culture** influences the way prison officers and managers perceive PTSD. For many, 'getting on' with things without discussing how they feel is part of the job and officers rarely discuss their struggles with PTSD. In addition, nearly all participants in the study reported excessive alcohol consumption as a way of managing the emotions the PTSD and their jobs caused.
- **PTSD has had a major and long-lasting impact** on the lives of prison officers who participated in the study. The impact was felt on relationships with family and friends and on experiencing suicidal thoughts.

In the interests of brevity, the analysis of common features of prison officers' culture is presented in a simplified manner and thus, does not fully cover the nuances that exist within specific contexts and specific prisons.

Overall, prison work is often characterised by strong pressure to conform, to 'fit in'. Therefore, in the prison setting it is not only those in prison who form cliques to meet the need for social approval; prison officers may also form exclusive social groupings with shared interests, values, and beliefs.¹²³ Machismo and solidarity are also two distinct features of prison officers' culture. Prison work is usually thought to require the traditional male qualities of dominance, authoritativeness, and aggressiveness.¹²⁴ The outcome of this is that prison officers not only often learn not to *show* empathy towards persons in prison (except in specific circumstances), but many also learn not to *feel* it.¹²⁵

Being a prison officer is often undervalued or even frowned upon by certain groups in specific societies. As a result, prison officers often view themselves as part of an unvalued, unappreciated occupational group.¹²⁶ Indeed, the public is generally unfamiliar with the work of prison officers, and consequently often does not fully appreciate it, mostly imagining it as just 'guarding' those in prison. In some contexts, prison officers may indeed only serve 'custodial' duties, which include making sure that persons do not flee and that there is order and obedience within the prison. Although some prison officers may, at times, violate the human rights of persons in prison (intentionally or by negligence), this should not be a premise of prejudice against them; especially not by monitors conducting preventive monitoring. On the contrary, prison monitors should always be impartial in the exercise of their mandate.

«And what of the staff who work within these prison systems? In many respects they are a forgotten group of public servants, largely unrecognised in the criminal justice sector. Police have a profile which ensures that the public is aware of their existence and often they are still regarded as custodians of the peace. Prosecutors are powerful figures in many countries, able to take what may well be life and death decisions about

which crimes should be taken to court and which should be dealt with in some other manner. Generally speaking, judges are persons of importance in their communities. The story is quite different in respect of prison officers. They carry out their duties away from the public view. In common with prisoners, they are hidden behind high prison walls.»¹²⁷

Prison staff may be perceived by monitoring bodies as part of a problematic system. But in reality, prison staff are often struggling to perform their duties in the best possible way within a system that does not offer adequate resources or support. Therefore, monitoring bodies may find that prison staff can be equally critical towards the prison system and become 'allies' in advocating for positive change. In many contexts, their working and living conditions (when prison staff live within the prison perimeter) are substandard and need to be addressed by monitoring bodies. In any case, the perspectives and expertise of prison staff can offer valuable insights for monitoring bodies.

Prison officers are often perceived by persons in prison as part of a repressive regime and of unjust authority. Of course, this depends on the way prison officers and prison authorities more generally carry out their authority and how they build their relations with those in prison. Where these relations are built based on mutual respect and fairness, prison officers can serve as a source of support and care for those in prison. Relationships and the way prison officers use their authority contribute to a person's evaluation of fairness of treatment. Building positive relationships between staff and persons in prison shall be part of appropriate training of staff on interpersonal communication skills, based on mutual respect and fair procedures as opposed to harsh discipline and an austere regime.

Little attention has been paid to how prison officers and prison managers perceive monitoring bodies. Some research suggests that there is scepticism and feelings of monitoring being a 'burden' amongst prison managers.¹²⁸ The perspectives of prison staff towards monitoring bodies are an important factor affecting the effectiveness and the potential impact of monitoring. Therefore, it should be examined and taken seriously by the monitoring bodies and be factored into their approaches for fostering impact. In addition, the interactions between monitors and prison managers during visits can be a knowledge-generating activity and not just a means to an end, in the sense that such a process reveals interesting insights into how monitors are perceived and how willing prison managers are to reveal or conceal their practices within the prison.¹²⁹

Chapter 19 of this manual focuses in more detail on monitoring issues in relation to prison staff.

2.7 Further reading

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CHAPTER 3

The international human rights framework related to preventive monitoring

This chapter outlines the international human rights framework of relevance to monitoring prisons and addresses why and how international standards can be used in prison monitoring. It shows how these standards provide both the legal basis for monitoring bodies and the normative benchmarks for assessing prison conditions and treatment.

The chapter introduces key human rights principles, including treatment with respect for dignity, non-discrimination, and attention to vulnerability, and legality, necessity, and proportionality. It also presents the main sources of law available to monitors, from binding treaties and national legislation to soft law, jurisprudence, and professional standards.

Finally, it examines how national, regional, and international monitoring bodies can reinforce each other's work through information-sharing, dialogue and follow-up.

CHAPTER 3

The international human rights framework related to preventive monitoring

3.1 Introduction

International human rights standards are fundamental to preventive monitoring of prisons because they provide both the *standards* and the *framework* that ensure dignity, safety, and justice for people deprived of liberty. They set clear, universally recognised rules such as the prohibition of torture and the right to humane treatment that can guide monitoring bodies in their work. Human rights norms also provide leverage for reform by guiding authorities toward systemic changes grounded in law.

The current chapter addresses why and how these international standards can be used as a tool in monitoring prisons. In doing so, the following questions are addressed:

1. What is the role of international human rights norms and standards in monitoring prisons?
2. What are the main human rights principles relevant to prison monitoring?
3. What international human rights standards are relevant to the prison context?
4. Which sources of law are relevant for monitors?
5. How can national and international monitoring bodies engage with each other?

3.2 The role of international human rights norms and standards in monitoring prisons

International human rights norms and standards constitute the normative framework within which monitoring takes place. This framework is relevant at two levels:

- Firstly, international human rights law may provide an explicit legal basis for the establishment and operation of an independent monitoring body. This is the case with the Optional Protocol to the Convention against Torture (OPCAT), which provides for the establishment and designation of National Preventive Mechanisms (NPMs), and sets out what their mandate and powers are.¹³⁰
- Secondly, international human rights standards set out what rights persons in prison shall be guaranteed. In fact, there are extensive international standards covering various aspects of life in prison, and they serve as a guiding reference during the monitoring process.

More concretely, international human rights law and standards serve the following functions:

1. Orientation function

International human rights standards provide major orientation for monitors during the phase of information gathering during visits. They inform monitors about issues which they may look into when they visit prisons. For instance, when monitoring access to outdoor exercise for persons in prison, it is important to be guided by what the international standards say about the minimum time and conditions of exercise in the open air.¹³¹ Knowing this will help monitors ask the right questions and not miss out on relevant issues.

2. Analytical function

Once the monitor has carried out the information gathering, the next step is to analyse the findings. More precisely, human rights standards are used when analysing concrete situations and findings in order to inform the submission of relevant recommendations at the appropriate level. Whether a situation encountered constitutes a breach of standards or not, the legal standards can still guide the analysis of the situation by providing a benchmark as well as by applying the basic human rights principles (dignity, equality, etc.).

3. Advocacy function

International human rights standards are used in the follow-up activities of monitors: for backing up the recommendations, as advocacy arguments in communication with authorities and as guiding elements in programmes of reform. This brings up questions of their strength. In this, the following is important to keep in mind.

International human rights constitute the main universally applicable value system and they are essential elements of most domestic legal systems. Thus, international human rights carry a lot of moral and legal weight, which can be utilised to advocate for the changes that monitors want to see. The strength of these international human rights in fostering change depends on the concrete context. Several factors are relevant, including the legal and governance system of a State, the strength of democratic institutions and processes, the state of the rule of law, the place of international human rights norms in the national legal framework, public policies, and public awareness.

3.3 Main international human rights principles relevant to prison monitoring

While international human rights *standards* contain *specific* provisions about a particular right or rule, human rights *principles* are norms of *general* application. It is important for monitors to understand the human rights principles which are relevant to the prison context, as they provide overall guidance in the monitoring process in at least three ways:

- They help fill the gap, in case there are no concrete standards, by laying out the underlying spirit of the human rights standards.
- They focus attention on values and attitudes. For example, the principles of dignity and equality point towards what persons in prison 'deserve' as treatment thus focusing attention on values and attitudes rather than (only) on concrete practical measures.
- They help to convincingly argue why certain changes should be made, by providing the fundamental, legal rationale behind the desired change.

Some principles, which are particularly relevant to the context of deprivation of liberty, are:

1. Treatment with respect for dignity
2. Non-discrimination and attention to vulnerability
3. Legality, necessity, and proportionality

These human rights principles are discussed in more detail below.

States have some general obligations to ensure that these human rights principles are realised in practice, which will be addressed below as well.

1. Treatment with respect for dignity

Dignity is the right of a person to be valued and respected, and to be treated ethically. Respect for the dignity of the person is one of the most basic human rights principles underpinning human rights in general. Human rights derive from the basic concept of dignity and also serve to realise it. Respect for dignity is also of fundamental importance in the prison setting, with its specific features: loss of freedom, the resulting pains, the unequal power relations, and the ever-present vulnerability of persons in prison. This principle is expressed in Article 1 of the Universal Declaration of Human Rights, Article 10 of the International Covenant on Civil and Political Rights (ICCPR) and Rule 1 of the UN Mandela Rules.

At the heart of the concept of dignity lies the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as set out in the Universal Declaration of Human Rights (Article 5) and the ICCPR (Article 7). Rule 1 of the Mandela Rules also expresses this fundamental principle that no person in prison shall be subjected to torture or other ill-treatment under any circumstance whatsoever. As such, the obligation to respect the dignity of persons in prison is one of the few absolute principles under international human rights law. The same Rule also addresses the issue of security, clearly signalling that dignity and security are not competing aims but instead they are closely linked.

Security is the bedrock for dignified treatment, whilst feeling dignified leads to a safer prison. Criminological research has shown that persons in prison regard respect for their dignity as essential for how they feel in prison and how they assess the quality of life in prison.¹³²

2. Non-discrimination and attention to vulnerability

Equality and non-discrimination are central pillars of human rights, and these rights are highly relevant in the specific context of prisons. Patterns of discrimination that exist in society at large are often reproduced and exacerbated in prison. In other

words, the situation within prison is often a reflection of the situation in the outside world, aggravated by the prison environment. The principle of non-discrimination states that: 'There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status.'¹³³

Overall, the principle of non-discrimination is foundational to the protection and promotion of human rights, ensuring that all individuals are treated with dignity, respect, and equality under the law. This principle means that individuals who are in similar situations should receive similar treatment and not be treated less favourably based on characteristics such as race, gender, religion, ethnicity, disability, sexual orientation, or other personal attributes. For instance, if women, Roma or members of certain political parties are given poorer health care or fewer family visits, this may be considered as 'direct' discrimination. For monitoring bodies, it is worth noting that, in the prison context, what constitutes a 'similar situation' is often difficult to gauge and may vary depending on the particular form of discrimination in question.

The principle of non-discrimination also entails that some individuals may require different levels of support to allow them to enjoy particular opportunities on an equal footing with others (equity). This means that the prison administration has to take account of a person's individual needs, in particular the needs of the most vulnerable persons in the prison setting. For instance, if all persons in prison are served the same food, irrespective of whether certain persons have dietary needs due to e.g., diabetes, this may constitute 'indirect' discrimination. In other words, the prison authorities are required to take additional, positive measures to protect the rights of persons with specific needs, in this case by serving a diet tailored to persons with diabetes.

For the purpose of applying this principle in practice, the following questions are especially relevant:

- Is anyone treated differently, and particularly worse, than others in a similar situation simply because of certain characteristics (e.g., gender, sexual orientation, nationality)?
- If yes, is the differentiation based on reasonable and objective grounds? Does it pursue a legitimate aim? Is there a reasonable relationship of proportionality between the means employed and the aim sought? One should always remember that not every differentiation constitutes discrimination, but only one that is not *lawful, justifiable and proportionate*.
- Are there any persons in prison whose situation requires special measures to protect and promote their rights, because of one or more characteristics mentioned above?

3. Legality, necessity and proportionality

As illustrated above, human rights do not stop at the prison gate. In general, persons in prison continue to enjoy all the fundamental rights and freedoms, except for the right to liberty. In other words, they continue to enjoy the right to respect for family life, the right to freedom of expression, the right to practise their religion, and the right to effective access to a lawyer. Any restriction on these rights

must be prescribed by law, necessary for a legitimate aim, and proportionate, and these restrictions should be limited, as far as possible, and the prison authorities should not aggravate the suffering that is inherent in the deprivation of liberty.

Legality

The principle of legality requires that any action taken by States must be based on law. Within a prison setting, this means that any use of force, disciplinary punishment or restriction of rights must have a clear legal basis in domestic law. This principle is fundamental in safeguarding against abuse of power and ensuring that actions are predictable and consistent with established legal norms. For instance, solitary confinement can only be applied if national law expressly allows it, setting maximum duration and safeguards. An unwritten rule or arbitrary order from a prison officer would fail the legality test.

Necessity

The principle of necessity requires that any restriction on human rights should only be applied when strictly necessary to achieve a legitimate aim. In a prison setting, a legitimate aim would, for instance, include ensuring prison security and good order or protecting the rights and safety of others. Limiting family visits during a public health emergency may be necessary for the safety of persons in prison, staff and visitors, but blanket bans on all family contact without a specific risk would not meet the necessity requirement.

Proportionality

The principle of proportionality is closely linked to necessity and requires that the actions taken, or restrictions imposed, must be proportionate to the legitimate aim sought. This means that the measure chosen should be the *least restrictive means* available and not excessive in relation to its purpose. Within a prison setting, the proportionality test is particularly relevant when using force or means of restraint, or when imposing other security measures or disciplinary sanctions. Factors to consider when assessing proportionality include the duration, the scope/ intrusiveness, and the impact on the person in prison. For instance, placing an agitated person in a security cell for a few hours to prevent imminent harm to other persons in prison may be proportionate; placing them there for weeks or months on end may not be proportionate. Similarly, if a person in prison commits a minor disciplinary offence, it may be proportionate to issue a warning, while it would be disproportionate to impose the sanction of fourteen days in solitary confinement.

When considering situations in which the human rights of a person in prison are restricted, for instance, for the sake of prison security and good order, the monitor should address the following questions:

- Does the situation constitute a restriction of a human right? Which right? What is the restriction?
- Can this restriction be considered as lawful, necessary, and proportionate to the aims it seeks to fulfil? Could the objective be obtained by less far-reaching restrictions?

Restrictions that are not lawful, necessary, and proportionate will constitute a violation of international (and possibly national) human rights standards.

4. States' obligation to respect, protect and fulfil human rights of persons in prison

All human rights carry corresponding obligations that must be translated into concrete action; only by undertaking such action can human rights be guaranteed in practice. Within a prison setting, it is the responsibility of the State to ensure that the human rights of all those in prison are a reality. The obligations of public authorities and officials fall into three categories:

- The obligation to **respect** the persons' rights. This means that the prison authorities shall refrain from interfering with the enjoyment of human rights. For instance, prison officers should not ill-treat, use excessive force or apply handcuffs unnecessarily.
- The obligation to **protect** the persons' rights. This requires the prison authorities to protect persons in prison against violations of their rights, committed by others. For instance, prison officers should exercise due diligence in an effort to prevent interpersonal violence and stop such acts, if they occur.
- The obligation to **fulfil** the persons' rights. This entails that the prison authorities take positive action to facilitate the enjoyment of human rights. For instance, prison authorities should provide appropriate accommodation and food, ensure adequate health care, and provide for occupational, educational and recreational activities.

Lack of resources is a problem regularly found in prisons and other places of detention. Poor prison conditions, low-quality health care and limited work or educational opportunities may often be explained with a reference to budget constraints. However, from the perspective of international human rights law, lack of resources cannot justify policies or practices that violate basic human rights standards. As pointed out by the UN Human Rights Committee, the application of the rule on respect for dignity cannot depend on the material resources available in the country.¹³⁴

3.4 International human rights standards relevant to the prison context

In the context of imprisonment, several specific international human rights are at play, and monitors may witness and/or obtain evidence of violations of these human rights. Monitors may also assess that specific situations may deteriorate into human rights violations if not addressed.

Table 3.1 contains a non-exhaustive list of the international human rights that are relevant in a prison setting, followed by examples of how these human rights may be violated.

It should be noted that certain shortcomings within a prison setting may violate more than one human right. For instance, insufficient medical care may breach both the right to health and the prohibition of inhuman or degrading treatment.

[TABLE 3.1] Examples of human rights violations in prison

HUMAN RIGHT	LEGAL BASIS	EXAMPLES OF HOW THE HUMAN RIGHT MAY BE VIOLATED
CIVIL AND POLITICAL RIGHTS		
The right to life	ICCPR Art. 6	Inadequate medical treatment or lack of vital medicine resulting in death in custody. Lack of protection against lethal interpersonal violence amongst persons in prison.
The right to freedom from torture	ICCPR Art. 7	Infliction of severe pain or suffering, either mental or physical, such as beatings.
The right to freedom from forced labour	ICCPR Art. 8	Forced/compulsory hard labour imposed by the prison authorities, such as obliging people in prison to routinely work two shifts rather than one.
The right to liberty and security	ICCPR Art. 9	Unlawful detention, such as detention without any legal basis, e.g., without a valid detention order.
The right to humane treatment	ICCPR Art. 10	Prolonged solitary confinement. Imprisonment of persons with disabilities in inappropriate facilities. Insufficient food for days on end. Severe overcrowding.
The right to private and family life	ICCPR Art. 17	Prolonged denial of family visits.
The right to vote	ICCPR Art. 25	Automatic restriction of the right to vote due to their status as a person in prison
The right to non-discrimination	ICCPR Art. 26	Particular categories of persons in prison, such as ethnic or religious minorities, do not enjoy the same rights as their fellows, e.g., with regard to food, family visits, or outdoor exercise.
SOCIAL, ECONOMIC AND CULTURAL RIGHTS		
The right to an adequate standard of living	ICESCR Art. 11	Accommodation in overcrowded, worn-down and insalubrious prison cells. Food of poor quality or quantity. Lack of access to safe and clean water.
The right to health	ICESCR Art. 12	Denial of or inadequate access to medical treatment, including the failure to provide basic medicines. Lack of protective measures to reduce transmission of communicable diseases.

3.5 Sources of law relevant for monitors

A wide range of sources of law are relevant to prison monitors. Some sources are international, while others are national. Some are legally binding, while others are merely guiding.

International hard law

International treaties come under different names, e.g., convention, covenant, (optional) protocol. They create legally binding obligations for those States which have acceded to them, and they can, in some cases, be enforced by a court. International treaties typically contain broad human rights provisions, for instance 'No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment'. Several international human rights treaties establish so-called monitoring bodies, which are mandated to oversee the States Parties' compliance with the international treaty. An example of international hard law is the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

International soft law

International soft law refers to quasi-legal instruments, such as declarations, resolutions, guidelines, and standard minimum rules. They are often more detailed than provisions found in international treaties. They do not have legally binding force. However, soft law has normative relevance; it is often used to interpret the broad provisions of hard law, and it sets standards where there is no hard law. It may have considerable moral and/or political weight. As such, they can be used for backing up arguments for improving a given situation and as sources of orientation for reform. An example of international soft law is the UN Mandela Rules.

International or national jurisprudence

Judgments issued by courts, such as the African, European or Inter-American Court of Human Rights, are legally binding on the States found responsible for the wrongful acts, imposing legal obligations on them to end the human rights violations and make reparation for their consequences. Similarly, judgments handed down by national courts are legally binding for the parties involved.

International treaty bodies

Decisions, concluding observations and reports issued by UN and regional treaty bodies, such as the Committee against Torture (CAT) or its Subcommittee, are not legally binding but they carry considerable moral weight and are important sources of information for monitors.

National legislation

The national legal framework is usually of primary relevance to prison monitoring. National legislation places legally binding obligations on prison authorities and affords specific rights to persons in prison. National legislation is therefore an important reference point for prison monitors.

National regulations

Ministerial decrees and circulars spell out how to apply national legislation. They are, in some cases, legally binding and very relevant for monitors as they set out the concrete practice of public officials implementing the law.

International and national professional standards

Professional associations and groups have produced several guidelines, which can be used in preventive monitoring. For instance, the World Medical Association (WMA) has published several declarations of great relevance to prisons and other places of detention.¹³⁵ Another example is the Institutional Treatment, Human Rights and Care Assessment (ITHACA) Toolkit for monitoring human rights and general health care in mental health and social care institutions.¹³⁶ National professional organisations have regularly issued codes of ethics.

When there are no standards

There are also areas in which there are no – or no clear – standards. In such cases, monitors may rely on basic human rights principles as outlined above.

3.6 Engagements between national and international monitoring bodies

How can national monitoring be used internationally?

The findings and conclusions that result from monitoring prisons at the national level may feed into and bolster the monitoring of States Parties as undertaken by international and regional bodies, such as the UN Committee against Torture (CAT), the UN Subcommittee on Prevention of Torture (SPT), the UN Special Rapporteur on Torture (SRT), and the European Committee for the Prevention of Torture (CPT).¹³⁷ This can be done in a number of ways:

- **Submitting country briefs and holding meetings** with the international and regional monitoring bodies, such as SPT and CPT, in advance of their country visits. This may influence the choice of institutions that the SPT or CPT visits, and it may draw these bodies' attention to recent problematic developments in law or practice.
- **Submitting alternative reports** to the CAT or other UN treaty bodies in advance of their periodic review of the State Party in question. Such reports may provide up-to-date information about areas of key concern and concrete violations, which the international bodies can explore further with the State Party.
- **Providing stakeholder information** to the UN Human Rights Council in advance of the Universal Periodic Review (UPR) of the State Party in question. This information may influence the examination of the State Party, notably the questions posed, and the eventual recommendations formulated to the state.

Well-documented information from national monitoring bodies about human rights violations, as well as information about systemic problems and their probable causes, is invaluable for international monitoring bodies. Similarly,

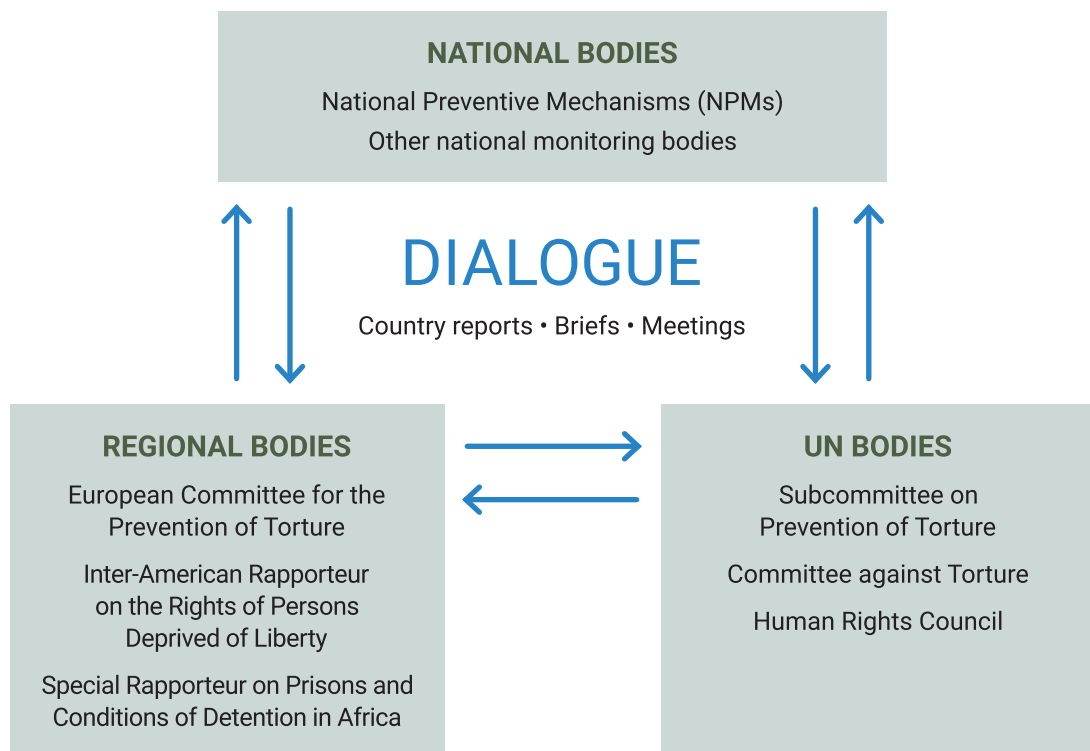
shortcomings in national law and policy that have surfaced during the national monitoring process, are important information, which – if shared with the international bodies – can help target and increase the quality of their monitoring and recommendations.

How can international and regional monitoring be used nationally?

The findings, conclusions and recommendations of the international and regional monitoring bodies can effectively be used at the national level. While the State will primarily be held accountable to the international and regional bodies for implementing their conclusions and recommendations, these may also serve as the basis for the dialogue between national monitoring bodies and the State's authorities. In fact, the conclusions and recommendations of the national monitoring bodies will have more weight, when they concur with those of the international bodies. Furthermore, the national bodies – which have a permanent presence in the country – are able to undertake a more continuous dialogue and follow-up. In this way, the national body can play an important role in promoting implementation of the international and regional recommendations. Figure 3.1 illustrates how national monitors can engage with the international human rights system and vice versa.



[FIGURE 3.1] Example of engagement between national, regional and international monitoring bodies



Before a country visit by the SPT, CPT or other regional monitoring mechanisms, the country's NPM or other domestic monitoring body may prepare a country brief to the international or regional bodies, which outlines the main concerns in law and practice and recommends specific prisons to be visited due to large-scale violations and/or systemic shortcomings.

During country visits of the SPT, CPT or other regional body, these bodies may meet with the national monitoring bodies in order to obtain up-to-date data on recent developments and areas of concern as well as to explore key concerns and illustrative individual cases further. Such meetings also provide an opportunity to elaborate on issues addressed in the written brief. The NPM may also be invited to take part in the end-of-visit meeting, where the international monitoring body presents the preliminary observations on its findings to the State. This has become a good practice in many States.

After the visit, the international monitoring bodies may request the NPM to carry out a follow-up visit to a particular prison in case of suspicion of reprisals against persons with whom the international monitoring body met.

3.7 Further reading

- *CPT standards and tools*. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).
www.coe.int/en/web/cpt/standards#prisons
- UN (2011). *A Manual on Human Rights Monitoring, Chapter III*. Office of the United Nations High Commissioner for Human Rights, 2011.
www1.umn.edu/humanrts/monitoring/chapter3.html
- *UNODC Crime Prevention and Criminal Justice Reform Resources*. United Nations Office on Drugs and Crime.
www.unodc.org/unodc/en/justice-and-prison-reform/cpcj-tools-prison-reform.html

CHAPTER 4

Torture and other ill-treatment

This chapter provides insights into the concepts of torture and other ill-treatment from a legal and practical perspective.

It explains the core elements of torture, the distinction between torture and other forms of ill-treatment, and the absolute nature of the prohibition under international human rights law.

The chapter identifies high-risk situations in prisons, including physical punishment, solitary confinement, intrusive searches, restraints, force-feeding, overcrowding, and poor living conditions.

It also shows why monitors must be alert to both overt and hidden practices of ill-treatment, including situations involving vulnerable persons or failures of protection by prison authorities.

Finally, it outlines States' obligations to prevent, combat, investigate, remedy, and ensure non-repetition of torture and other ill-treatment.

CHAPTER 4

Torture and other ill-treatment

4.1 Introduction

One of the most serious human rights violations that a person may be exposed to is torture or other ill-treatment. In fact, torture constitutes a direct and deliberate attack on the core of the human personality and dignity, and, along with slavery and enforced disappearances, torture is one of the most extreme forms of dehumanising human beings.¹³⁸

Across the globe, a large number of persons in prison are exposed to different forms of torture or other cruel, inhuman or degrading treatment or punishment (ill-treatment), and the physical and psychological effects are often detrimental, chronic, and irreversible.

The crime of torture may be perpetrated in a multiplicity of situations within the prison context, overtly or covertly, and for a wide range of purposes. Similarly, those inflicting the pain and suffering may range from public officials to gangs and fellow persons in prison.

The monitoring of prisons plays a crucial role by contributing to the prevention of torture and other ill-treatment, and by taking appropriate action to end such violations and prevent their recurrence. Meanwhile, identifying situations that may lead to torture or other ill-treatment, documenting such practices, and dealing with individual allegations of torture are amongst the most difficult parts of the monitor's work. Not only does it require that the monitor has particular professional skills and personal traits, but it is also challenging given the risk it carries for the person subjected to torture or other ill-treatment. Furthermore, the monitor may be hampered by the restricted mandate of the monitoring body, and the possible reluctance of the prison authorities to engage in an open and constructive dialogue about how to address practices of abuse and neglect, which may amount to ill-treatment.

The present chapter provides the monitor with an insight into the concepts of torture and other ill-treatment from a legal and practical perspective. In doing so, the following questions will be addressed:

1. What is torture and other ill-treatment?
2. What are high-risk situations for torture and other ill-treatment in prison?
3. What obligations do States have to prevent, combat, and remedy torture and other ill-treatment?

4.2 What is torture and other ill-treatment?

Defining torture

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) was the first international treaty to define the crime of 'torture' for the purpose of guiding States Parties in the criminalisation of torture in their national legislation. The Convention's definition in Article 1 is the generally recognised definition of torture under international human rights law.¹³⁹



[BOX 4.1] UNCAT definition of torture

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

The definition of torture contains four constituent elements, all of which must be satisfied for an act to be classified as torture:

1. Infliction of severe pain or suffering
2. Intention
3. Specific purpose
4. Involvement of a public official

1. Infliction of severe pain or suffering

The first element – *infliction of severe pain or suffering* – entails that the act (or omission) must attain a certain level of severity. When assessing the severity of an act, several factors need to be taken into consideration:

- duration
- intensity
- physical and mental effects of the (ill-)treatment
- sex, age and state of health of the victim¹⁴⁰

All the circumstances of a case will need to be assessed in order to reach a conclusion about whether the pain and suffering inflicted has reached a level of severity that amounts to torture. The assessment of that level is relative and depends on all the circumstances of the case, such as duration and methods (for instance, an act with high intensity for a short duration may be as severe as an act with low intensity for a long duration), bodily injuries and mental suffering as well as the personal characteristics of the victim, such as their gender, age, and state

of health. At the same time, some forms of ill-treatment (such as rape, electric shocks, waterboarding) will always amount to torture because of the undeniable severity of the suffering caused, irrespective of the above factors.

The effects of the act on a particular victim may be physical (e.g., bruises, lacerations, fractures) and/or psychological (e.g., anxiety, depression, post-traumatic stress disorder). However, one cannot conclude that if there do not seem to be physical or psychological consequences (for example, due to the resilience of the victim), torture did not happen. Importantly, certain persons are considered particularly vulnerable, such as children, pregnant women, elderly, and severely ill persons. Consequently, acts that may otherwise have amounted to ill-treatment, may amount to torture, if they are inflicted on persons who are considered highly vulnerable.¹⁴¹

2. Intention

The second element – *intention* – requires that the severe pain or suffering must be intentionally inflicted on the victim with the motivation to cause severe pain or suffering to the person in order to qualify as torture. The criminal ‘intent’ may be satisfied not only in case of deliberate acts or omissions, but also if the perpetrator is reckless. Purely negligent conduct can however never be considered torture.¹⁴²

The intention needs to be determined objectively under the circumstances of the case and not subjectively.¹⁴³ Therefore, intent is to be inferred from the total circumstances of a case. Some acts of torture cannot be unintentional due to their circumstances (e.g., rape, various methods of positional torture). By contrast, harsh conditions of detention, such as those resulting from overcrowding and poor sanitation, may cause severe pain or suffering, but in the absence of evidence of such intention, the conditions cannot be considered as amounting to torture, but they can amount to inhuman or degrading treatment.¹⁴⁴

3. Specific purpose

The third element – *specific purpose* – requires that severe pain or suffering is inflicted for a particular reason. A list of the most common purposes is provided in Article 1 of the UNCAT:

- Extracting a confession
- Obtaining information or evidence from the victim or a third person
- Punishment
- Intimidation and coercion
- Discrimination

The listed purposes are the most common ones. As such, the list is indicative, not exhaustive. Several of the indicated purposes may be found in the prison setting (e.g., punishment, intimidation and discrimination). Table 4.1 provides some common examples related to the different purposes.

**[TABLE 4.1] Examples**

PURPOSES	EXAMPLES OF PURPOSES
EXTRACTING A CONFESSION	Using severe physical force or threats during an interrogation so as to force someone to admit to having committed a particular crime.
OBTAINING INFORMATION OR EVIDENCE	Applying severe physical force or making threats against the person or a third person in order to yield information about a particular crime.
PUNISHMENT	Inflicting severe informal punishment, including physical violence or arbitrary restrictions on the rights of persons in prison, because the person is considered to be a troublemaker or has a specific sexual orientation.
INTIMIDATION AND COERCION	Forcing a person not to complain or to withdraw a complaint through severe force or threats of reprisals.
DISCRIMINATION	Exposing a person to discriminatory treatment, such as withholding food and/or water, because they belong to a certain group, e.g., Roma, LGBTIQA+.

4. Involvement of a public official or any other person acting in an official capacity

The fourth element – *involvement of a public official* – reflects the traditional view that States can only be held accountable for human rights violations committed by State actors. The term ‘public official’ includes:

a. Law enforcement officials, such as:

- police officials, including arresting, custodial, and investigating officers
- prison officials, including custodial staff

b. Public officials otherwise involved in the custody of individuals, such as:

- medical doctors and other health professionals
- other civilian staff, such as social workers and lawyers

c. Any other person acting in an official capacity.

The ‘involvement’ may be direct or indirect. A public official may actively inflict pain or suffering on a person, or he may instigate or incite others to do so (e.g., by giving orders to a lower-ranking officer). On the more passive end, a public official may simply consent to such acts being perpetrated by others. An example of consent or acquiescence (knowing but doing nothing to prevent or protect) is the situation in which higher-ranking prison officials close their eyes to ill-treatment inflicted by lower-ranking officers.

Importantly, the UNCAT also extends to situations where the State should act with due diligence to prevent acts of torture committed by non-State actors. In prison settings, the duty of care which is owed by the prison authorities to persons in

prison includes the responsibility to protect them from other persons who might wish to cause them harm. For instance, in case of violence between persons in prison, the State may be found responsible for torture, if the public officials either knew or should have known that severe pain and suffering was being inflicted by one individual on another, and they failed to take adequate preventive measures, under the circumstances, to protect the victim. The UN Committee against Torture (CAT) has also clarified that where State authorities or others acting in an official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or other ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors in accordance with the Convention, the State bears responsibility and its officials should be considered as complicit or otherwise, responsible under the Convention for consenting to or acquiescing in such impermissible acts.¹⁴⁵

Defining cruel, inhuman or degrading treatment or punishment

The second part of the absolute prohibition, 'other cruel, inhuman or degrading treatment or punishment' (or 'ill-treatment'), is not defined by any international human rights treaty.

Drawing a line between torture and other ill-treatment may seem like an academic exercise, but the distinction is nevertheless important because different obligations are attached to combating these two phenomena under the Convention. In relation to torture, States are obliged to:

- Make torture an offence under its criminal law (Article 4)
- Establish jurisdiction over the crime of torture as defined in Article 1 (Article 5)
- Prosecute or extradite those suspected of committing acts of torture (Article 7)

Under the Convention, these obligations only apply to the crime of torture, not to acts of ill-treatment. Meanwhile, certain other obligations under the Convention apply both to the crime of torture and to 'other cruel, inhuman or degrading treatment or punishment', notably the obligations to:

- Ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel (Article 10),
- Systematically review arrangements for the custody and treatment of persons subjected to detention or imprisonment (Article 11),
- Conduct a prompt and impartial investigation, whenever there is reasonable ground to believe that an act of torture has been committed under the State's jurisdiction (Article 12), and
- Ensure in its legal system that victims of torture have the right to complain and have their case promptly and impartially examined by the competent authorities (Article 13).

While the distinction between 'torture' and 'other ill-treatment' is important for States to determine which obligations under the Convention against Torture are applicable in a particular situation, the distinction is less important to monitors because the obligation to prevent torture is identical to the obligation to prevent other ill-treatment.

Cruel and inhuman treatment or punishment

This form of ill-treatment is characterised by:

1. Infliction of severe pain or suffering
2. Intentionally, recklessly, or negligently inflicted
3. Does not require a specific purpose
4. Involvement of a public official

In other words, what distinguishes 'torture' from 'other cruel and inhuman treatment or punishment' is possibly not meeting one or more of the following three elements: the *severity of the suffering* which, although severe, may not reach the threshold to be considered torture, the *purpose* of the conduct, and the *intention* of the perpetrator.¹⁴⁶ Meanwhile, both 'torture' and 'cruel and inhuman treatment' always require the involvement of a public official in the same manner. In practice, the main difference between torture and cruel and inhuman treatment or punishment lies in the intensity of the suffering inflicted.¹⁴⁷

Degrading treatment or punishment

This form of ill-treatment is characterised by:

1. Infliction of pain and suffering, which does not need to be 'severe'
2. Intentionally, recklessly, or negligently inflicted
3. Does not require a specific purpose
4. Involvement of a public official

As with cruel and inhuman treatment or punishment, what distinguishes torture from 'degrading treatment or punishment' is the *intensity* of the pain or suffering, the *purpose* of the conduct, and the *intention* of the perpetrator. Treatment is considered to be 'degrading' when it humiliates or debases an individual, showing a lack of respect for, or diminishing, their human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance. It may suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others.¹⁴⁸ In practice, treatment has, for example, been considered 'degrading' when a victim's hair was forcefully shaved by the prison administration, without justification or legal basis¹⁴⁹ and when a victim was strip searched in an inappropriate manner, such as while officers were making humiliating remarks.¹⁵⁰

Absolute prohibition

Torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment) are absolutely prohibited at all times, without any exception. The prohibition of torture and other ill-treatment is one of the few absolute and non-derogable human rights.¹⁵¹ This means that, even under exceptional circumstances, such as armed conflict, terrorism or other public emergency threatening the life of the nation, States are not allowed to derogate from the prohibition of torture. In other words, nothing whatsoever can justify the use of torture.



[TABLE 4.2] Essential elements of the concepts of torture and other cruel, inhuman or degrading treatment or punishment

	SEVERE PAIN OR SUFFERING	INTENTIONAL	PARTICULAR PURPOSE	INVOLVEMENT OF PUBLIC OFFICIAL
TORTURE	X	X	X	X
CRUEL AND INHUMAN TREATMENT OR PUNISHMENT	X But less than torture			X
DEGRADING TREATMENT OR PUNISHMENT	X Less than cruel/inhuman treatment and of a specific nature causing humiliation			X

The universal prohibition of torture was first introduced in the Universal Declaration of Human Rights (1948): 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' The prohibition of torture has since been included in several international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) (Article 7), the European Convention on Human Rights (ECHR) (Article 3), the American Convention on Human Rights (ACHR) (Article 5), the African Charter on Human and Peoples' Rights (Article 5), and the Arab Charter on Human Rights (Article 8).

Importantly, the prohibition of torture has achieved the status of *jus cogens*, which means that it is universally binding on all States, non-derogable and cannot be overridden by treaties or agreements.

4.3 What are high-risk situations for torture and other ill-treatment in prison?

In a prison context, there are certain situations in which the monitor should be particularly vigilant, because the risk of torture and other ill-treatment is known to be greater in these situations. High-risk situations may be associated with the conditions within prisons or with the treatment of persons in prison.

As explained in Chapter 1, conditions of detention represent objective and rather constant features of prisons. For example, ill-treatment may be the result of poor conditions such as lack of hygiene and ventilation, limited outdoor exercise, or overcrowding. In other cases, ill-treatment may be the result of dynamic human

interactions within prisons (treatment), such as excessive use of force, degrading or cruel security procedures, and overuse of disciplinary measures (for example prolonged solitary confinement).



[BOX 4.2] When is the prohibition of torture and other ill-treatment relevant in a prison context?

Treatment of persons in prison

Dynamic human interaction during detention, such as:

- Use of force (batons, handcuffs)
- Security procedures (searches)
- Disciplinary measures (solitary confinement)
- Practices for regulating interpersonal relations

Conditions of detention

Objective and rather constant factors of detention, such as 'general living conditions', e.g.:

- Personal space (cell size)
- Light, temperature, ventilation
- Hygiene, sanitation
- Nutrition
- Outdoor exercise

There are also characteristics of persons that render them increasingly vulnerable in certain situations. These could be related to their age, gender, sexual orientation, political beliefs, ethnicity or other factors. A number of these factors were analysed in Chapter 2.

Torture and other ill-treatment are inflicted on persons in prison in numerous ways, and new and innovative practices are emerging. Consequently, the examples below do not attempt to cover all possible situations in which torture and other ill-treatment may occur. The examples are presented to alert the monitor to some of the typical high-risk situations.

'Welcome' treatment in prisons

Newly arrived persons in prison may in some countries be ill-treated upon arrival in order to intimidate them and subordinate them to authority or the prison hierarchy. Such ill-treatment may be carried out by officers and/or by persons in prison with the consent of the authorities. Such 'welcome treatment' may amount to torture or cruel/inhuman or degrading treatment.



[BOX 4.3] Case of Al-Jafr prison in Jordan¹⁵²

A particularly serious example of such ‘welcome violence’ was documented by the then UN Special Rapporteur on Torture in Al-Jafr prison in Jordan. Here, the persons in prison alleged being received by a ‘welcome committee’ of 20 officers who forced them to strip to their underwear in the courtyard and subjected them to heavy beatings with electric cables and batons. If they lost consciousness, they were awakened with cold water and beaten again.

Physical punishment

In many countries, persons in prison are exposed to different forms of physical punishment at the hands of the prison officers or persons in prison exercising authority, often in response to disobeying orders, breaching internal rules or simply to ‘teach them a lesson’. This informal and unlawful punishment typically takes the form of slaps, punches, kicks, and baton blows. It is not uncommon that such punishment is inflicted on top of a disciplinary sanction, such as solitary confinement, following a fight among persons in prison. Such punishment may amount to torture or inhuman or degrading punishment, depending on the particular circumstances of the individual case.



[BOX 4.4] Case of Mohammed Abderrahim El Sharkawi v. Egypt¹⁵³

“The victim was beaten with fists and sticks; suspended from the ceiling by his wrists and ankles for extended periods; electrocuted including on his genitals after water had been poured on him; forced to strip down to his underwear; deprived of sleep; handcuffed and blindfolded for prolonged periods resulting in sensory deprivation’ (para. 204)”

“[T]he Commission finds that the victim’s beatings, suspension from the ceiling, and electrocution amounted to torture (para. 219).”

Discrimination

Apart from physical punishment, persons in prison may be subjected to other forms of ill-treatment which cause psychological suffering without any assault on the body, such as threats of torture or prolonged sleep deprivation. Such ill-treatment may amount to torture or inhuman or degrading treatment, depending on the particular circumstances, but they may prove more difficult to detect and document as they leave no physical marks.


[BOX 4.5] Case of D v. Latvia¹⁵⁴

“The applicant during his nine-year-long term of imprisonment found himself obliged to accommodate the dictates of the informal hierarchy in his daily prison life. On account of his belonging to the lowest caste, he suffered from systemic discrimination, such as the inability to use the same sports facilities, furniture, toilets and showers as other prisoners. He had no choice but to follow the rules set forth by this informal hierarchy. Although he managed to avoid physical violence by steering clear of perilous situations, he still contended with discrimination over several years, resulting in enduring mental anguish’ (para. 35).”

Solitary confinement¹⁵⁵

The practice whereby a person is placed in ‘isolation’ without any meaningful human contact with other persons for 22 hours/day or more is defined as solitary confinement. This form of seclusion from other human beings is known to carry mental health risks, especially if the person is kept in solitary confinement for longer periods and if they suffer from mental health problems. Such segregation is often used as a disciplinary sanction in response to a breach of internal prison rules, and as a security measure to protect persons from self-harming or harming others.


[BOX 4.6] Case of Valencia Campos et al. v. Bolivia¹⁵⁶

“In prison, the applicants were kept for 70 days under closed regime, with no communication or sunlight which in itself constituted a form of cruel and inhuman treatment (paras. 83 and 194).”

The maximum limit for solitary confinement – as set by the UN Mandela Rules – is 15 consecutive days. Anything beyond this time limit is considered prolonged solitary confinement, and it has been found to amount to torture or ill-treatment depending on the circumstances of the case.¹⁵⁷

A monitor should always pay attention to the length of the individual period of solitary confinement, and also the practice of applying repeated periods of solitary confinement without at least a few days of interruption. What is also particularly important is whether a person’s health situation is compatible with solitary confinement. Of course, the conditions of the solitary confinement should also be a key focus area for the monitor.

Body searches

Prison authorities regularly undertake body searches of persons in prison upon their entry into the prison, after visits from family members and in case of reasonable suspicion of possession of prohibited items (e.g., drugs, weapons, mobiles). Particularly intrusive forms of body searches include strip searches

(search of the naked body) and body cavity searches (search of the vagina, anus, other body orifices). Searches are lawful if they are strictly necessary in order to maintain security in a prison, and if they are performed in a manner that respects the dignity of the person. Some practices may in themselves be humiliating and degrading, such as forcing a person to strip naked in the presence of a person of the opposite sex.



[BOX 4.7] Case of Roth v. Germany¹⁵⁸

“The applicant was subjected to eleven strip random searches, which were intrusive. Although the Court found that the manner in which the repeated searches were carried out was not unnecessarily humiliating, it concluded that the searches amounted to degrading treatment due to the absence of a legitimate purpose for these repeated and generalized searches, the feeling of arbitrariness and the feelings of inferiority and anxiety often associated with them, as well as the feeling of a serious affront to dignity indisputably prompted by the obligation to undress in front of another person and submit to inspection of the anus, resulted in a degree of humiliation exceeding the – unavoidable and hence tolerable – level that strip-searches of prisoners inevitably involve.”

Means of restraint¹⁵⁹

Resorting to means of restraint, such as fixation with handcuffs or straps, use of pepper spray or batons, is a serious measure, which must always be justified as a means of preventing imminent harm to the person, a third party or the surroundings and it must be proportionate to such aim. Strapping a person for a prolonged period of time on a fixation bed, when s/he is not showing any sign of danger to himself/herself, or his/her surroundings may amount to torture or inhuman and degrading treatment depending on the circumstances. In fact, international monitoring bodies are increasingly calling for the abolition of fixation in prison.



[BOX 4.8] Case of Manuela et al. v. El Salvador¹⁶⁰

“A female prisoner was handcuffed to the bed during treatment in a hospital. The applicant had recently given birth and was being treated for severe preeclampsia. Therefore, it was unreasonable to assume that there was a real risk of flight that could not have been mitigated by other less harmful means. It had not been argued before the Court that the applicant had behaved aggressively at any time with the medical staff or with the police, that she was a danger to herself, or that she had taken any measures to escape. Therefore, the Court considered that the use of means of restraint (handcuffs) amounted to a violation of the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment’ established in Article 5(2) of the American Convention.”

Force-feeding¹⁶¹

Force-feeding of a hunger-striking person should not be allowed, if s/he is capable of understanding the consequences of refusing food and is capable of forming a rational judgement. Handcuffing a person of sound mind to a chair and forcing them to swallow a rubber tube would always amount to inhuman and degrading treatment.



[BOX 4.9] Case of Yakovlyev v. Ukraine¹⁶²

“The European Court of Human Rights found that the manner in which forced feeding was applied to a person in prison, who was on hunger strike, amounted to a violation of Art. 3 of the Convention as a medical necessity for the force feeding was not shown to exist and there were insufficient procedural safeguards due to absence of legal regulation and ineffective judicial control.”

Living conditions and overcrowding

Situations of overcrowding, often in conjunction with poor material conditions and unhealthy sanitary conditions, may amount to inhuman or degrading treatment. Monitors should be attentive to the size of a cell and how it is furnished, access to natural and artificial light as well as heating and ventilation. Attention should also be paid to access to a toilet, running water and a hot shower, as well as provision of food and personal hygiene products.



[BOX 4.10] Case of Dial et al. v. Trinidad and Tobago¹⁶³

“The applicants were held in a cell measuring about 2.4 by 3 meters with inadequate ventilation, little natural light, and a fluorescent light that remained on 24 hours each day. The cells lacked sanitary facilities and prisoners had to tie a sheet to the bars of the cell to obtain some privacy. The prison authorities failed to provide drinking water on a regular basis.”

4.4 What obligations do States have in relation to torture and other ill-treatment?

In addition to the basic obligation of States to respect the prohibition of torture and other ill-treatment by refraining from inflicting, instigating, or consenting to such acts (negative obligation), States also have an obligation to take effective measures to prevent, combat and redress acts of torture and other ill-treatment (positive obligation). The UNCAT lays down the following obligations:

Prevention of torture and other ill-treatment:

- Take effective legislative, administrative, judicial, or other measures to *prevent* acts of torture in any territory under its jurisdiction (Article 2).
- Ensure that no one is expelled, returned (*'refouler'*) or extradited to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture (Article 3).
- Ensure *education* and information about the prohibition of torture in the training of law enforcement personnel, medical personnel, public officials, and others involved in the custody or treatment of individuals in detention or prison (Article 10).
- Keep under *systematic review* arrangements for the custody and treatment of persons subjected to any form of arrest, detention, or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture (Article 11).
- *Prevent* acts of cruel, inhuman or degrading treatment or punishment, when such acts are committed or instigated by or with the consent or acquiescence of a public official or other person acting in an official capacity (Article 16).

Combating and redressing torture and other ill-treatment:

- Ensure that all acts and attempts of torture – including complicity and participation in torture – are *offences* under domestic criminal law and are punishable by appropriate penalties, which take into account their grave nature (Article 4).
- Establish *jurisdiction* over the offence of torture (incl. attempts, complicity and participation), when the offences are committed in any territory under the State's jurisdiction; when the alleged offender is a national of that State; and when the victim is a national of that State if that State considers it appropriate (Article 5).
- Take alleged perpetrators of torture – present on the State's territory – into *custody* or take other legal measures to ensure their presence, in accordance with the law. The custody and other legal measures may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted (Article 6).
- In the cases contemplated in Article 5, *extradite* or submit the case to the State's competent authorities for the purpose of *prosecution* (Article 7),
- Ensure that the State's competent authorities proceed to a *prompt and impartial investigation*, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction (Article 12).
- Ensure that any individual who alleges to have been subjected to torture in any territory under its jurisdiction has the *right to complain* to, and to have his case promptly and impartially examined by, its competent authorities. Ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint, or any evidence given (Article 13).
- Ensure in its legal system that the victim of an act of torture obtains *redress* and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible (Article 14).

- Ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (Article 15).

4.5 Further reading

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Part 2

Preventive monitoring methodology



CHAPTER 5:

Ethics, safety and security
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CHAPTER 5

Ethics, safety and security when monitoring prisons

This chapter deals with ethical considerations when monitoring prisons as well as issues related to the security of monitors, persons in prison, and prison staff in relation to monitoring visits. It starts from the premise that entering a prison means entering a world where security reigns and it addresses the key safety and security issues in connection with monitoring.

The chapter explains how monitoring can improve prison conditions and protection, but may also expose individuals to harm, including reprisals for engaging with monitors. It introduces key ethical principles – autonomy, beneficence, non-maleficence, and justice – as guidance for managing these dilemmas. The chapter also addresses risk assessment, protection of informants, confidentiality and security of information, as well as measures to minimise reprisals before, during, and after visits. Finally, it highlights the importance of self-care and institutional support for prison monitors.

CHAPTER 5

Ethics, safety and security when monitoring prisons

5.1 Introduction

Entering into a prison means entering into a world where security reigns. Safety and security are concepts often used interchangeably, but they are distinct concepts each with their own definition as shown in Box 5.1. According to these definitions, risk and harm may emerge from *intentional* acts by other persons, i.e., threats to **security**. Risk and harm may also emerge from *unintentional* acts and factors like food, bugs, contamination, fire, or exposure to contagious diseases, which are threats to **safety**.



[BOX 5.1] Defining safety and security¹⁶⁴

Safety may be defined as freedom from risk or harm as a result of unintentional acts (accidents, natural phenomena or illness), while security may be defined as freedom from risk or harm resulting from intentional acts, such as violence.

Entering into a prison in order to monitor the conditions of detention and the treatment of persons in prison may alter the safety and security of those in prison as well as the staff. The overall rationale behind monitoring prisons is that visits by monitors will improve the safety and security in the prison. From an overall point of view, monitoring is generally believed to be beneficial for persons in prison and thus, ought to be done. On the other hand, monitoring may be harmful for individuals by reducing security and even resulting in harm being inflicted on a person talking with the monitoring team and therefore being considered a disloyal informant by staff or other persons in prison. This is essentially a classical ethical dilemma, and for this reason, ethics may be helpful in guiding monitors to do good and avoid doing harm as much as possible. Therefore, a monitor has a key responsibility in considering risks of sanctions or reprisals and in taking mitigating measures to avoid those risks as much as possible. In this manual, we use the term 'reprisals' to cover such actions or omissions by State authorities or officials, as described in the OPCAT.

The current chapter deals with ethical considerations when monitoring prisons as well as issues related to the safety and security of the monitor, the persons in prison and prison staff. In doing so, the following questions are addressed:

1. What are the basic principles of ethics of relevance for monitoring prisons?
2. What are the key safety and security issues in connection with monitoring?

3. How to attend to the security of monitors and informants?
 - Which types of reprisals may occur?
 - What are the systemic causes of these reprisals?
 - How to minimise the risks of reprisals?
4. How to ensure the security and confidentiality of information?
5. What can be done to promote self-care for monitors?

5.2 The basic principles of ethics

Health ethics deals with the ethical implications of health care and medicine, but due to some similarities between the relationship between a doctor and a patient and a monitor and a person in prison, it may be useful to borrow basic health ethical principles to guide the behaviour of prison monitors.



[BOX 5.2] Defining ethics and health ethics

Ethics is an area of study that deals with ideas about what is good and bad behaviour: a branch of philosophy dealing with what is morally right or wrong (Merriam-Webster dictionary). Ethics is the study of the values that guide our attitudes and behaviour in given contexts and what values ought to guide our attitudes and behaviour.

Health ethics is the branch of ethics that deals with ethical issues in health, health care, medicine and science. It involves discussions about treatment choices and care options that individuals, families, and health care providers must face.

There are four basic principles of health ethics:¹⁶⁵

- Respect for autonomy
- Doing good (beneficence)
- Doing no harm (non-maleficence)
- Justice

The principle of **respect for autonomy** reflects the right of individuals to make independent and informed decisions concerning their life, well-being, and best interest. The informed consent procedure emerges from this principle.

The principle of **doing good** involves acting in a way that benefits others.

The principle of **doing no harm** includes the duty to maintain and apply professional competence, and to be aware of the vulnerabilities of others in order to be able to react accordingly and protect others from harm.

The principle of **justice** entails that all persons are of equal moral worth and should be treated equally under similar conditions (corresponding to the principle of non-discrimination).

These principles integrate two sometimes conflicting directions in ethics, i.e., the attempts to maximise benefit for everybody (utilitarianism) and the duty never to use another person as a means to one's own ends (deontology). Put simply, according to these principles, monitors would have to continue monitoring to improve prison conditions and prevent torture, while at the same time ensuring that individuals do not suffer harm because of the monitoring. Monitors will have to respect the individuals' right to make informed decisions themselves, e.g., about whether to be interviewed, and monitors will have to give attention and focus to all relevant problems of persons in prison without favouritism.

Therefore, the four principles may in practice conflict and create dilemmas for monitors. One may have to make a compromise by accepting a certain risk for one person (e.g., a risk of a reprisal) in order to gain benefit for a larger group (e.g., information to improve conditions). In any case, monitoring bodies need to take measures to mitigate the risk of reprisals and other risks for all involved in the monitoring process.

5.3 Safety and security in connection with monitoring

The prison security framework often includes three key elements: physical security, procedural security and dynamic security:

- **Physical or static security** refers to the architecture of the prison buildings, including the security infrastructure, such as walls, bars, perimeter wall and fences, watchtowers, cameras, lighting, locks, metal detectors, and equipment used to restrain persons when necessary.^{166, 167}
- **Procedural security** refers to procedures that describe how and when prison officers should carry out certain functions in order to ensure consistency and fairness. Procedures often include checklists that provide extra control to ensure that work is performed properly. Procedures may for instance regulate persons' movement around the prison, the possessions they may keep, searches of persons in prison and visitors.¹⁶⁸
- **Dynamic security** refers to the development by staff of positive relationships with persons in prison based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual persons in prison.^{169, 170}

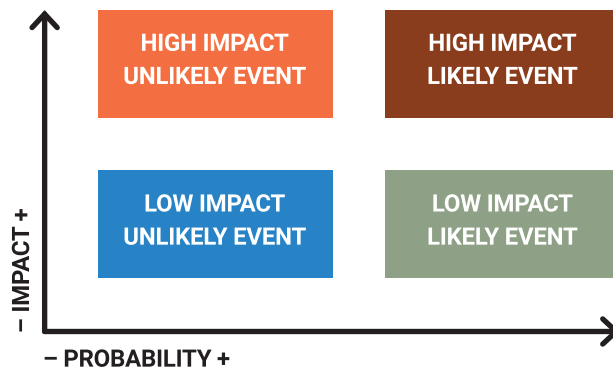
Safety and security within the prison is the responsibility of the prison authorities. This includes the safety and security of the prison management, staff and persons in prison. However, the responsibility for the safety and security of the members of the monitoring team rests with the monitoring body itself. While acknowledging that prisons often try to influence decisions about the safety and security of monitors, the monitoring mandate typically allows the monitors an ample degree of freedom of movement within the prison as well as freedom to interview any person in prison, even against warnings from the prison authorities.

This implies that the monitoring team has to make an assessment of the safety and security risks and decide how to mitigate those risks. A tool to assist in this risk assessment is the risk management matrix as shown in Figure 5.1. This matrix

compares the probability of an event happening with the impact it may have if realised. The risk management priorities emerge from the combination of these two factors, to focus on risks with a high probability and high impact and to give least attention to events with low probability and low impact.



[FIGURE 5.1] Risk management matrix



For example, the risk of a prison riot breaking out during the monitoring visit will have a high impact on the security of the monitoring team members, but the probability of a riot occurring at that time is minimal. Even though the presence of monitors may in some instances raise tensions, the odds for an actual riot occurring are still low. By contrast, the risk of a person getting slightly upset (not aggressive) during an interview may be assessed as high in certain prison contexts, but the impact on the security of the monitoring team may be considered relatively low. Both of these examples would require rather limited attention.

If, however, a single member of the monitoring team interviews a person who is in a solitary confinement cell because of his excessively aggressive behaviour earlier that day, the impact would be high (assault on the monitor) and the probability is also likely to be high. Such a situation should obviously be avoided (indicated as red in the risk matrix).

The risk matrix may be used to assess risks to safety as well as security.

5.4 Security of monitors and persons providing information to monitors

Monitoring may impose risks on persons in prison and in particular on those who agree to be interviewed and are seen as collaborating with, and possibly providing sensitive information to, the monitoring team. Prison authorities or other persons in prison may afterwards have negative reactions towards those who have provided information to the monitoring team. The OPCAT provides that: 'No authority or official shall order, apply, permit, or tolerate any sanction against any person or organisation for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organisation shall be otherwise prejudiced in any way'.¹⁷¹

There are four categories of individuals who may become targets of such sanctions, referred to as 'reprisals' in this manual:

- Persons in prison
- Relatives of persons in prison
- Members of staff/other public officials
- Members of a monitoring team

Types of reprisals

The types of reprisals can range from relatively minor ones, such as unfriendly behaviour, to very serious ones, such as threats, psychological or physical ill-treatment, torture, or even killing.

Reprisals against persons in prison may be perpetrated by staff or by other persons in prison. They may also be instigated by staff and executed by persons in prison.

The following is a non-exhaustive list of types of reprisals against persons in prison which may be imposed on them as a result of having spoken with a member of the monitoring team:¹⁷²

- Restriction of a person's rights or basic entitlements
- Transfer to another institution
- Placement in a less favourable regime
- Disciplinary measures for fabricated reasons
- Withdrawal of support for (early) release
- Humiliation and unfriendly treatment
- Threats
- Physical assault and other ill-treatment
- Verbal abuse

Some of these reprisals may be directed at others as well, including relatives of persons in prison, members of staff/other public officials, and the members of a monitoring team.

Monitors may face a specific type of reprisal, not coming from the persons in prison nor the prison management, but from other State authorities not directly involved in the monitoring visit. This may occur if these authorities disapprove of what the monitors were doing or saying. This type of reprisal may for instance include loss of their jobs, 'harassment' towards themselves or their family members by government agencies, etc.

Systemic causes of reprisals

The SPT frequently comes across the issue of reprisals during or after its visits. In its policy on reprisals, the SPT highlights the need for examining and addressing the systemic causes of reprisals.¹⁷³ Relatedly, the CPT has made the following two general observations regarding the environments, which might be conducive to the occurrence of reprisals, based on its long-standing experience:

- The more the monitoring work is perceived as effective, the more persons in prison may be at risk of intimidation and reprisals.
- There is a direct correlation between the prevalence of ill-treatment in a given place and the risk of reprisals.¹⁷⁴

The systemic causes of reprisals may best be understood in the light of the features of total institutions: a radical imbalance of power and an antagonism between staff and persons in prison, in-built mechanisms of degradation and mortification, a tight regime with strict discipline, and a pervasive system of authority. If these features are strongly present in a prison, a heightened awareness of the risk of reprisals will be necessary. Furthermore, the broader country context, including, e.g., societal patterns of discrimination against certain groups, is relevant for assessing and understanding the occurrence of reprisals.

Monitoring bodies increasingly deal with reprisals, because reprisals or fear of reprisals constitute obstacles to the effective fulfilment of monitoring bodies' mandate and aims. In the light of the systemic features of places of detention, it is understandable that fear of reprisals makes persons reluctant to speak to the monitoring team. It is likely that all monitors have come across this phenomenon.

Another reason for silence might be a certain distrust that persons in prison might have vis-à-vis the monitors whom they may see for the first time, who leave the prison again, and who do not have the necessary powers to afford them full protection afterwards. It is of utmost importance, therefore, for monitors to try to establish a relationship of trust, including being clear about what they can do and where their limits are, thus managing expectations.

Measures to minimise the risks of reprisals

The following aspects merit special attention when trying to minimise the risks of reprisals:

- The general behaviour of monitors.
- Interviewing persons in prison (the part of monitoring which carries the highest risk).
- Dealing with individual cases of violations, in particular those involving torture.
- Processing, storing and reporting data and findings, including the use of personal data.

Measures to minimise the risk of reprisals should be present throughout the whole cycle of monitoring. Their implementation requires, in particular, a specific attitude of mindfulness and awareness as well as some very specific skills in preparing, carrying out, and following up on visits.

The measures mentioned here are divided into measures to be taken prior to, during and after visits.

Measures to be taken prior to visits

Monitoring teams should develop a strategy for the prevention of reprisals, ensuring that this fundamental issue is high on the agenda. The strategy should be based on a professional risk assessment with regard to the following factors:

- The specific context in which the monitoring body works
- A conscious balancing of the risks of reprisals, on the one hand, and the potential benefits of monitoring, on the other hand
- The interviewees' own risk assessment during previous visits
- The capacity of the monitoring body to react to and follow up on reprisals

The risk management matrix, as presented earlier in this chapter, may be a helpful tool in assessing the likelihood and impact of each potential type of reprisal, in order to prioritise measures and focus.

An option to be considered for inclusion in the strategy of the monitoring body is to carry out *regular* visits to places of detention, thereby establishing a certain presence and visibility (regularity). This is considered to be a good way to contribute to reducing the risk of reprisals since it allows for easier identification and follow up of cases of reprisals.

Furthermore, monitoring bodies should:

- Include the topic of reprisals in the initial and in-service training of monitors and make it a systematic part of their practice of reflection.
- Establish a specific policy on interviewing: Whom to interview? Which type of information to ask for, in which setting?
- Establish clear guidelines for informing interviewees about the risk of reprisals and how to get in touch with the monitoring body or other relevant actors in case of reprisals.
- Establish a policy on protection of personal data and security.
- Include this aspect specifically in the preparatory work of each visit, e.g., by collecting information on previous reprisals that have taken place in the prison to be visited, as well as by gauging the characteristics of the specific place.
- Identify partners and allies at the national and the international levels who could be mobilised in case of reprisals, after having obtained the victim's informed consent.
- Establish mechanisms to gather information about any reprisals in connection with monitoring visits.

Measures during the visit

Monitoring teams need to be clear to the prison authorities about the monitoring body's special attention given to reprisals and should state clearly that reprisals are prohibited and will not be tolerated.

During the visit, the monitoring teams should:

- Be constantly alert to signs of possible (fear of) reprisals, such as reluctance in persons in prison to speak freely with the monitors.
- Carry out interviews according to best practice (see Chapter 8), including interviewing a large number of persons or selecting persons in a random way.
- Carry out the interviews in maximum privacy: as a minimum out of hearing, and, if possible, also out of sight of prison staff and other persons in prison.

- Attempt to spend a more or less equal time interviewing all persons in order to prevent others from drawing conclusions about who might have revealed sensitive information.
- Limit group interviews to topics of a general nature, excluding sensitive issues.
- Be aware of the possible presence of informants among persons in prison.
- Avoid raising suggestions to prison staff immediately after the interview, unless you act upon a clearly expressed demand by the interviewee or in situations of extreme urgency.
- Take the principles of confidentiality and informed consent very seriously when raising cases and issues with the prison management.
- Pay attention to persons in situations of increased vulnerability.

Measures after the visit

In case of indications of the existence of reprisals in a specific place, the monitoring body should consider carrying out a follow-up visit with the specific purpose of investigating whether reprisals have taken place. Moreover, the monitoring body should stay in touch with other actors inside the prison or actors who have access to the place, e.g., social workers, pastoral care workers, other visiting institutions.

The monitoring body should consider referring cases of reprisals to other departments within the monitoring institution (e.g., to the individual complaint section of an Ombudsman institution) or to the appropriate authorities, if they are independent and reliable, for follow-up action (e.g., to the Prosecutor's or Attorney General's office, to other complaints handling mechanisms).

The monitoring body should always be careful not to publicly expose persons who gave information.¹⁷⁵ As a general rule, to prevent reprisals as much as possible, reports of monitoring bodies should never mention a person's name, unless someone has explicitly given permission and there is a clear benefit to doing so. The occurrence of reprisals can be publicly denounced only if this is seen to be appropriate in the given context.

5.5 Security and confidentiality of information

An important part of the measures to ensure security, concerns the way in which information collected during the monitoring process is stored and used afterwards. Monitors usually produce and have access to different types of sensitive information:

- Notes of interviews and other observations.
- Copies of lists of persons in prison with personal details.
- Copies of files of persons in prison with detailed information, e.g., on health issues.
- Other documents, according to the specific context.

It is important that monitoring bodies pay adequate attention to, and develop procedures for, information management and security. As is the case with the strategy on reprisals, development of such procedures needs to be based on 1) a sound analysis of existing risks in the specific context, and 2) the capacities and resources of the monitoring body. Both the risks and the available resources will vary among monitoring bodies, notably those with an official mandate on the one hand, (e.g., NPMs) and NGOs on the other hand.

The following aspects should be considered in an overall procedure aimed at safeguarding the safety, security and confidentiality of information:

1. Confidentiality agreement

Members of the monitoring team need to have signed a confidentiality agreement in which their obligations with regard to data protection are clearly laid down. It must be ensured that members understand the importance of confidentiality and its practical application. The same applies to interpreters or other experts who participate in monitoring visits.

2. Guarantees regarding data collection

The way in which personal data will be used, how confidentiality is handled, as well as its fundamental importance, should be explicitly explained to the prison staff and persons in prison.

3. Storage of physical documents

Primary sources (copies of files, lists of persons in prison, notes on visits, documents containing names and other personal data, photographs, etc.) are important backups for the monitoring work. They may need to be consulted after a monitoring visit when e.g., specific questions regarding a case come up in the dialogue with the authorities. Such documents need to be stored in a safe and secure place (in case of a national monitoring body, in accordance with the legal requirements in the country).

4. Storage and transfer of electronic documents

All work done and stored digitally, including all files and communication related to the monitoring visit, is potentially at risk of being copied, manipulated, transferred, destroyed, or stolen. An information security procedure must address these issues and should ensure reasonable steps to preserve digital security and privacy. For public institutions, this includes following official data protection policies.

5.6 Self-care

A special branch of safety and security of monitors relates to the fact that working as a monitor may involve a certain degree of strain and may be upsetting or even traumatising. Interviews with persons who have experienced serious human rights violations, such as torture, or observing living conditions which are inhuman or degrading, may severely affect a monitor's well-being or even traumatise them. This mechanism is referred to as *secondary or vicarious traumatising*.

This risk means that monitors should be attentive to their mental health and identify early signs of traumatisation, compassion fatigue, or burn-out in themselves or in colleagues. Signs to look for include:

- Anxiety, particularly in connection with the monitoring work or detention issues.
- Depression or a tendency towards mood changes.
- An urge to use alcohol and/or other substances, or to otherwise compensate after stressful events.
- Emotional numbing and signs of demotivation or carelessness in otherwise responsible behaviour.
- Withdrawal from activities and contacts compared to previous behaviour.
- Sleeping problems.

Taking care of the mental health of monitors is also a responsibility of the monitoring body. This means that the monitoring body should consider introducing policies that facilitate self-care and a good work-life balance. This could for instance include flexible work hours, time off after visits, debriefing after visits (with psychological support, if necessary), making available a psychological support helpline, and setting limits to the number or frequency of visits a monitor may participate in.

In case manifest signs of secondary trauma arise, psychological treatment is likely needed. The monitoring body should ensure access to qualified trauma-psychological treatment in case the need arises.

Overall, it is important to ensure that the mental health of monitors is an issue that is openly discussed within the monitoring body without prejudice or stigma.

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CHAPTER 6

Planning and preparing monitoring visits

This chapter outlines the most important aspects of planning and preparing monitoring visits, including the development of a strategic plan and the constitution of a visiting team.

It explains why strategic and operational planning is necessary to prioritise visits, use resources effectively, and maximise preventive impact.

The chapter examines how monitoring bodies can select prisons for visits and determine the type, length, frequency, and format of those visits, including whether they should be announced or unannounced. It also sets out how teams should prepare for a specific visit by defining its purpose, focus, and scope. Finally, it addresses team coordination, division of roles, and the information that could be consulted or requested before entering the prison.

CHAPTER 6

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6.1 Introduction

Monitoring bodies often conduct many visits (and different types of visits) throughout a year. There is a need for a strategic and operational plan for conducting those visits in order to maximise the impact of the monitoring body. With regard to one specific monitoring visit, the planning and preparation of a monitoring visit is the crucial first step of the monitoring cycle. This chapter outlines the most important aspects of planning and preparing visits and it will address the following questions:

1. How can the monitoring body go about its strategic and operational planning for monitoring visits?
 - Developing a strategic plan
 - Selecting the prisons to visit
 - Selecting the type of visits
 - Determining the length of visits
 - Defining the frequency of visits
2. How can monitoring teams prepare for a monitoring visit?
 - Defining the purpose, focus and scope of the visit
 - Setting up the visiting team
 - Dividing roles and coordinating the team
 - Consulting information in advance

6.2 Strategic and operational planning

Monitoring should not be seen as an end in itself, but rather as a *means for bringing about sustainable change in the prison conditions and treatment of persons in prison*. A monitoring strategy should therefore be developed in a holistic manner to address underlying factors and aim at achieving *systemic change* (at the level of laws, policies, structures and practices), which is the most effective and sustainable way of preventing torture and other ill-treatment.

Developing a strategic plan

At an early stage of a monitoring body's existence, it will need to develop a strategic plan for its work in order to maximise impact. In contexts with many places of detention, where torture and other ill-treatment are widespread and/or the monitoring body's human and financial resources are limited, it will have to prioritise its activities, focusing on those institutions or issues where its attention

is most urgently needed and where impact is most likely. Setting clear strategic goals and objectives will enable the team to monitor change, positive as well as negative, and adjust its strategy, as required. For this reason, the strategic plan should be updated at regular intervals.



[BOX 6.1] Examples of strategic priorities

- A monitoring body may decide to focus on general visits only, including all aspects of the institutions visited, or to set aside resources for thematic visits on cross-cutting themes, for instance the treatment of certain groups with special needs (women, persons belonging to the LGBTIQ+ community, and persons with a mental health problem), the use of solitary confinement, or contact with the outside world.
- A monitoring body may decide to what degree and in which situations it will conduct unannounced visits versus announced visits.

Recognising that systemic change will often require the involvement of many different stakeholders, a monitoring strategy should preferably also take into account the involvement of other actors, e.g., those conducting visits to places of detention or otherwise active regarding prison issues. Coordination, cooperation, and sharing of information with other relevant stakeholders are ways of drafting an inclusive strategy and thus, maximising impact (particularly when resources are scarce). Here, a consultation process is extremely useful to map the key players, their respective interests and expertise, and their powers to promote or block the work of the monitoring body, and to identify possible areas for cooperation and strategic alliances. All work with stakeholders should of course respect the confidentiality that is a fundamental principle of the monitoring work.

Aside from the strategic plan, other strategic or policy documents may need to be developed in preparation for visits, such as a code of conduct and a safety and security policy, including a policy on mitigating the risk of reprisals.

The code of conduct for monitors should include considerations with regard to ethics (e.g., mitigation of the risk of harm, respect for confidentiality, etc., see Chapter 5 for more on this), preparations for the visit (e.g., know the standards, understand the context, etc.), and behaviour during the visit (e.g., be respectful, be credible, behave with integrity and professionalism).

For more on safety and security and the aspects which the monitoring team should take into consideration prior to and during a monitoring visit, see Chapter 5.

Selecting the prisons to visit

In most countries, it is unlikely that a monitoring body would be able to visit all prisons on a regular basis. It may in fact be disputed whether such a programme would be the most efficient use of resources or the best way to achieve impact. Therefore, a careful selection of places to visit is necessary, based on the strategic priorities and the time and resources available.

The monitoring body should develop its own criteria for selecting the prisons to visit. These criteria should be based on a careful analysis of information gathered from a variety of sources, including previous visits. The criteria could be determined by a number of factors, such as those listed below, but priority should always be given to strengthening the prevention of torture and other ill-treatment.

Selection methods to be used when selecting institutions to be visited may include:

Random selection

Selecting prisons at random ensures that the monitoring body has the possibility of detecting problems in institutions which are otherwise unlikely to be selected for a visit.

Selection based on risk

Institutions may be selected based on indicators of high risk or prevalence of torture and other ill-treatment. This could be statistical information about the number of deaths in custody, suicides, or the use of force, which makes a particular institution stand out and thus merit selection for a visit. A high number of complaints submitted to relevant bodies from persons in prison in a particular facility could also be a risk indicator, although no complaints may also indicate fear of reprisals and the possible prevalence of torture or ill-treatment.

Selection based on incidents

Certain incidents may prompt the selection of a particular institution for a reactive visit. This may, for instance, include cases of torture, killings, riots, or hunger strikes. The institution may be selected in order to check on the management's handling of the incidents in question or as an indicator that there are urgent problems in the institution that need to be addressed.

Selecting the type of visits

The type of visit is determined by its purpose and objectives. There are generally four types of visits:

1. General visits

General visits cover all aspects of the conditions and treatment within an institution. They are very comprehensive and useful when the monitoring body wishes to acquire a general overview of the issues within a particular institution. They usually require more time and/or larger delegations than the other types of visits. Due to the resources required, a general visit would be most appropriate when a prison is visited for the first time or when it has not been visited for a long time, but not for regular visits to the same prison.

A general visit would usually include a tour around all the prison premises, a significant number of interviews with persons in prison as well as staff members, and consultations with the institution's management on a variety of issues relating to the conditions and treatment in the prison as well as a review of a wide range of the prison's policies, records and files, e.g., on security, discipline, health care, etc.

General visits are typically broad in scope and will often not allow for more in-depth analysis of specific issues, such as health care services or disciplinary procedures. Nevertheless, they provide a solid basis for identifying key issues that may require a more in-depth assessment through thematic or ad-hoc visits in the future.

2. Thematic visits

Thematic visits focus on a selected theme that will be monitored specifically and in-depth, possibly as part of an overall thematic strategic priority to address a particular theme at national level, e.g., the use of force, body searches, discipline, or health care in prison. Thematic visits could also be focused on specific types of detention facilities, for example pre-trial detention or high-security prisons. Thematic visits have a much narrower and well-defined scope than general visits, thus allowing monitors to adjust their monitoring methodology based on the specific theme of the visit. For example, during a thematic prison visit focusing on health care, the monitoring team should look into medical records, interview medical staff and persons in prison who have received medical care, assess the procedures for access to health care services etc., without looking into other aspects of detention, which are not relevant for monitoring the health care system. As a result of their thematic focus, thematic visits may contribute to drafting targeted thematic reports and recommendations to tackle the issues identified about the specific theme across different institutions.

3. Follow-up visits

Follow-up visits may serve to (i) follow up on particularly concerning developments or recommendations made at an earlier visit, (ii) corroborate specific findings from a general or thematic visit, or (iii) follow up in situations where there is a risk of reprisals to check up on the well-being of those in prison. Thus, the focus of follow-up visits is usually limited in scope and their duration may be rather short. In case the follow-up visit serves to monitor the measures taken to implement recommendations submitted previously, then the monitoring team will only investigate issues pertaining to those specific recommendations. In case the follow-up visits are conducted to corroborate previous findings (from a general or thematic visit), the monitoring team may choose to take a tour of the premises, conduct interviews with persons in prison and talk to the management, with a limited scope covering only the issues that need to be clarified. Follow-up visits may lead to the submission of a follow-up report (on the progress of implementation of previous recommendations), but they may also contribute to a general or thematic report (after corroborating findings).

4. Reactive/Ad hoc visits

Reactive/ad hoc visits are usually prompted by specific serious incidents, such as killings, suicides, prison riots, violence, or by other issues of major concern, e.g., the persistent non-implementation of recommendations. The scope of such visits will normally be limited to the triggering incident or series of incidents, and the way the institutional management has handled the situation, including looking at the underlying causes of the incident in order to prevent its repetition. Reactive/ad hoc visits may include many of the steps of a monitoring visit, as deemed relevant by the monitoring body, i.e., talks with the management,

interviews, reviewing records, and a tour of the premises. It is important to keep in mind that such visits, although reactive in nature, should not overlook the potential for serving a preventive purpose as well, by submitting recommendations aiming at preventing recurrence and improving the future handling of incidents.

Announced or unannounced visits

Depending on whether a visit has been announced to the detention authorities in advance or not, visits can also be divided into announced and unannounced visits. As a general rule, monitoring bodies should have the right to conduct unannounced visits to any place of detention.¹⁷⁶ The rationale behind visits without prior notification is to ensure that the team gains an accurate, reliable and uncensored picture of the conditions and treatment in detention. It is aimed at reducing the risk that authorities may remove traces of abuse (for example by transferring persons to another prison before the visiting team arrives), make improvements to mask poor conditions, such as cleaning cells and living areas, improving the food, repairing toilets or painting the walls, and threaten persons in prison to make them give or not give certain information to the monitors. Unannounced visits are a particularly important safeguard in places of detention with a high risk of torture and other ill-treatment and can have a deterrent effect. For this reason, many NPMs carry out unannounced visits as a standard practice.

Nevertheless, in some cases, it may be useful to notify the authorities about the upcoming visit, especially when the monitoring team needs to gather and examine specific information before the visit in order to be able to make detailed analyses and when it is assessed that there is a low risk of the authorities taking steps to alter the conditions in the facility. In some contexts, where monitoring bodies are obliged to announce their visit in advance, the visit is announced with very short notice (sometimes only a few hours) to ensure that there is no opportunity for altering the situation.

Some monitoring bodies adopt a middle way, whereby they inform the authorities that they intend to visit a particular institution (or provide a list of institutions they will visit during the current year), without providing any specific dates. This practice provides the opportunity for the monitoring body to request and gather information from the authorities in advance, without revealing the specific dates of the visit. Therefore, the monitoring team will be in a position to prepare and plan the visit in a more targeted way based on the material received from the authorities, without risking that the authorities will take measures to alter the situation in the facility. Of course, as with all announced visits, such a practice requires that there is mutual trust between the monitoring body and the authorities, to ensure that there is no risk of threats against persons in prison for giving certain information to the monitoring body when the visit is conducted.



[BOX 6.2] Good practice of conducting different types of visits by an NPM

In several countries, the national preventive mechanism conducts three types of visits to places of deprivation of liberty:

1. Comprehensive, in-depth visits;
2. Special (ad hoc) visits, planned on the basis of complaints received by the mechanism; and
3. Interim visits, which are follow-up visits to ensure the implementation of the recommendations from the previous visits.

Determining the length of visits

The length of the monitoring visit will depend on several factors. These include, for instance, the purpose of the visit, the type of visit, the size of the visiting team, the size of the institution, and the number of persons in prison. The length will also depend on how much is already known about the prison and the extent and gravity of the human rights violations facing the persons accommodated in this place. Also, the possible need for interpretation services and the location of the prison will influence the length of the visit.¹⁷⁷

Some monitoring bodies have set standards for the proportion of persons in prison to be interviewed, which determines the duration of the visit proportionate to the total number of persons in the prison. In general, however, it is difficult – and not necessarily useful – to set absolute standards for the duration of visits.

Defining the frequency of visits

In order to have a preventive effect, visits should take place as frequently as possible. Considering that monitoring bodies have a certain amount of human and financial resources and should use them efficiently, there is a need to define and make strategic decisions about how often each place of detention should be visited. The frequency at which a monitoring body visits different places of detention should be based on a risk assessment, i.e., the places with the highest (actual or potential) risk of torture and other ill-treatment should be visited more frequently than others. As a general rule, places with a high turnover, where interrogations are conducted and where persons are held during the early stages of their detention, should be visited more frequently. Similarly, places with a high concentration of persons in a particularly vulnerable situation (for example children, persons belonging to the LGBTIQ+ community, persons who have committed a sexual offence, persons with disabilities, and persons held under very strict regimes), should be visited more frequently than others.¹⁷⁸

Depending on the annual planning and the strategic priorities of the monitoring body, it may decide to visit a particular type of institution or particular parts of institutions in order to address its priorities. For example, if the monitoring body decides to focus on disciplinary sanctions, it may decide to visit disciplinary cells, examine disciplinary procedures, review individual disciplinary files, and participate as observers in disciplinary hearings more regularly.

6.3 Preparing for a visit

Defining the purpose, focus and scope of the visit

The purpose, focus, and scope of each visit should be clearly defined. This is crucial as it helps to determine how best to prepare and conduct the visit and to achieve the aims of the visit. The purpose, focus and scope of a visit will be decided depending on the type of visit (general, follow-up, thematic, ad hoc), factors related to the overall strategic plan of the monitoring body and its priorities, as well as contextual factors related to the specific prison to be visited. The purpose, focus and scope of the visit will determine the next steps such as the composition of the visiting team, the information to be consulted prior to the visit, the duration of the visit, etc.

Setting up the visiting team

A visiting team should be established from the pool of monitors available to conduct monitoring visits. A visiting team is typically composed of between two and eight monitors.¹⁷⁹ The size of the team will often depend on the type, purpose, focus and scope of the visit, and the size of the prison. It is assumed that all monitors have solid background knowledge of relevant international standards, national legislation and regulations as well as of the policy framework related to prisons, such as on the use of force.

The team should be gender-balanced,¹⁸⁰ and should include at least one monitor with a health background and one with a legal background. The team should ideally be composed of monitors from a diversity of professional backgrounds, enabling a multidisciplinary approach to monitoring while also ensuring specific expertise on penitentiary issues. When visiting places of detention where persons from different ethnic or minority groups are held, this should ideally be taken into account in the composition of the team. The team should preferably include monitors who have visited the institution before, as this will save time, may allow for a more focused visit and can contribute to building a relationship of trust with the authorities as well as the persons in prison.

It may be necessary to engage external experts within areas such as psychiatry, psychology, forensic medicine, children's rights, or refugee/migrant rights to supplement the expertise of the team. To safeguard the independence of the team, external experts should not be employed within the prison system or criminal justice system. They also need to be familiar with the visit methodology and working modalities of the monitoring body, and have signed a confidentiality agreement.

Unless team members are able to speak the language of the persons visited, the team should bring its own interpreters. Other persons in prison should, as a principle, not be used as interpreters. It is important to ensure that confidentiality and conflict of interest issues are addressed when using interpreters during visits.

Dividing roles and coordinating the team

A team leader is to be designated, whose responsibility it is to manage the team's work and lead discussions with the prison management. All important operational decisions are taken by the team leader, and it is crucial to the outcome of the visit that the team speaks with only one voice. The team leader must have strong organisational and communication skills and be able to command the respect of the authorities in charge. It is useful to maintain the same team leader over successive visits, to facilitate the development of a relationship of trust with the detaining authorities and the persons in prison.

It is important that all team members respect each other's roles and responsibilities and that all monitors respect the authority of the team leader. At the same time, it is crucial that the team leader adopts a participatory approach so that the team is adequately included before the visit, involved in formulating the plan of the visit, sharing their findings during the visit and involved in summarising the preliminary observations to the prison management. In many parts of the world, the institutional culture in places of detention places a great deal of weight on hierarchy and chain of command. An uncoordinated team will give the impression that the team lacks professionalism, which will undermine its ability to engage in a serious dialogue with the authorities and achieve impact.

For a visit to take place under the best possible conditions, it must be well prepared. The team leader needs to ensure that all team members are properly briefed and know their roles and tasks during the visit. Before the visit, the monitors will therefore:¹⁸¹

- **Gather and summarise available information** about the place to be visited, including key concerns in terms of actual or possible violations, relevant legislation, public policies, prison rules, and regulations.
- **Organise the work of the visiting team:** assign tasks and responsibilities to each team member, decide which premises to visit and in which order to visit them, decide on the visiting schedule, prepare checklists/tools, review modalities for group and individual interviews, remind team members of the code of conduct and security procedures, agree on communication channels (within the visiting team and with the management of the establishment), and make logistical arrangements such as transportation, meals, etc. A useful tool in organising the work of the visiting team is the triangulation matrix, which can be used prior to the visit to discuss the topics that will be examined during the visit, and to identify the sources of information to be consulted on each of these topics. Possible questions could be discussed, and arrangements could be made within the team about who will cover what. The triangulation matrix is presented in Figure 6.1 and discussed in more detail in Chapter 7.
- **Inform the authorities of the visit** and the visit schedule (unless the visit is unannounced) and clarify with the authorities in advance what items the team is allowed to bring into the prison (e.g., notebooks, drinking water, camera, recording device).
- **Make sure that the team has copies of all the documents** necessary for getting access to the premises (e.g., monitors' identification documents, access agreement if relevant).



[FIGURE 6.1] The triangulation matrix

SOURCE OF INFORMATION:	TOPIC 1	TOPIC 2	TOPIC 3
MANAGEMENT			
CUSTODIAL STAFF			
PERSONS IN PRISON			
HEALTH STAFF IN PRISON			
OTHER CIVILIAN STAFF			
DOCUMENTS			
OBSERVATIONS			

Consulting information in advance

Before the monitoring visit, the team should familiarise itself with some key information available about the place to be visited. Some information will be publicly available, while other information may be requested from the authorities before the visit. Below follows an overview of documents to consult in preparation for a visit and information that may be requested from the authorities in advance of the visit.

1. Specific documents about the institution available in advance

- Institutional policies, strategies and guidelines of the prison establishment
- Complaints received in the past by the monitoring team pertaining to the place to be visited
- Information from families, released persons and lawyers
- Previous visit reports
- Reports by NGOs or other institutions visiting prisons
- Media sources
- Reports by international bodies (e.g., reports by UN thematic/country mechanisms, international or regional visiting bodies)

2. Information that may be requested from the authorities in advance

If the visit is an announced visit, the following documents may be requested from the institution in advance of the visit:¹⁸²

- Information on the official capacity of the prison and the current occupancy levels.
- Information on the number, gender, nationality, legal status (convicted or on remand), and categories of persons in prison.

- Information on the layout of the prison, including the different wings, special units (e.g., high security), and special cells (security cells, disciplinary cells, observation cells).
- Information about the total number of management and staff positions (custodial and civilian) with an indication of vacancies.
- Information and statistics on security measures (use of force, means of restraint, searches), disciplinary sanctions (types and frequency), complaints, etc.
- Institutional policies, e.g., recruitment and training of staff, disciplinary measures, prevention of violence, prevention of self-harm and suicide, etc. and the house rules.
- Budget.
- Copy of the registry of persons in prison, broken down by section, unit, etc.
- Statistics, e.g., cases of death in prison, riots, violent incidents, escapes, and other extraordinary incidents.
- Information about ongoing and recent criminal investigations involving staff of the institution, especially concerning unlawful, and/or excessive use of force.
- Information about education, work and other activities offered to the persons in prison, including statistics about the number of persons benefiting from meaningful activities.
- A detailed map of the prison facility.
- Particular challenges as indicated by management and how they are countered.

6.4 Further reading

- APT (2004). *Monitoring places of detention: A practical guide*. Association for the Prevention of Torture, Geneva, 2004.
www.apr.ch/sites/default/files/publications/monitoring-guide-en.pdf
- CoE (2010). *The European NPM Project. 3rd Thematic NPM Workshop, "Methodology: Preparing and planning strategies for an NPM Visit*, Council of Europe, Yerevan, Armenia 13-14 October 2010.
bip.brpo.gov.pl/sites/default/files/12874040150.pdf
- UN OHCHR (2011). *Manual on Human Rights Monitoring (revised edition). Chapter 7: Gathering contextual information*. United Nations Office of the High Commissioner for Human Rights, 2011.
www.ohchr.org/sites/default/files/Documents/Publications/Chapter07-24pp.pdf

CHAPTER 7

Visit methodology

This chapter goes into depth about the visit methodology. It covers the collection of findings during a monitoring visit, the validation of findings by the monitoring team, including the concept of triangulation, and the analysis of findings as the basis for drafting reports with well-founded findings and recommendations. The term 'findings' does not refer to findings in a legal sense, such as findings by a judicial body, but to the observations and facts identified during the visit.

The chapter presents the typical structure of a prison visit, including meetings with management, observation, interviews, document review, and preliminary validation. It also explains how findings should be analysed in light of human rights standards, underlying causes, and risks of torture or other ill-treatment.

Finally, the chapter briefly addresses monitoring without physical access to the prison as an alternative or complementary monitoring methodology.

CHAPTER 7

Visit methodology

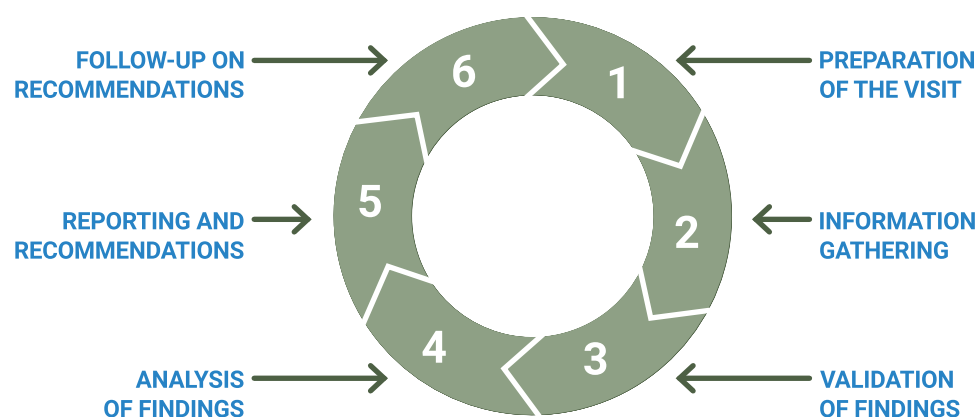
7.1 Introduction

The purpose of visiting prisons is to obtain insights into the conditions and treatment in prison with a view to identifying ways of strengthening the protection against torture and other ill-treatment. To this end, monitoring bodies may use different techniques of information gathering before, during and after visits.

In Chapter 1, we introduced the concept of a ‘monitoring cycle’, as shown again in Figure 7.1.



[FIGURE 7.1] The six steps of preventive monitoring



The first step of the monitoring cycle (preparation of the visit) has been addressed in Chapter 6. This chapter will cover the following steps of the monitoring cycle:

- Step 2: Information gathering
- Step 3: Validation of findings
- Step 4: Analysis of findings

The steps related to reporting, recommendations and follow-up will be covered in Part 4 of this manual.

Firstly, this chapter introduces the structure of a typical visit to a prison by identifying the different steps and sources of information available to the monitors and the ways in which the monitors may collect and validate data in the context of a monitoring visit.

Secondly, the chapter introduces the concept of ‘triangulation’, which is important in the validation of findings (step 3 of the monitoring cycle).

Thirdly, the step of analysing findings (step 4 of the monitoring cycle) is introduced, in order to form the basis for drafting reports with well-founded findings and relevant recommendations.

Finally, the chapter elaborates on the concept of 'monitoring without access', a monitoring methodology to be applied when conducting physical visits to prisons is not possible.

7.2 Step 2: Information gathering during the visit

A monitoring visit typically consists of the following six elements:

1. Initial meeting with the prison management
2. Tour of the premises: observation
3. Interviews (persons in prison, custodial staff, health care staff, other staff)
4. Review of documents (written/electronic)
5. Initial validation by triangulation
6. Final meeting with the prison management

Apart from the first and last element (initial and final meetings with prison management), the other elements are typically undertaken in a dynamic fashion rather than in a linear fashion. For example, the monitoring team may opt for checking records first to identify some preliminary issues that they will follow up on during interviews and then choose to return to reviewing more records based on the findings during interviews or the observations during the tour of premises. Each of the elements will be elaborated on below.

Initial meeting with the prison management

The initial meeting is a valuable opportunity to gain preliminary and up-to-date information about the prison, including recent developments and challenges, which can then be cross-checked during the visit. The initial meeting could prove crucial for building trust and rapport with the prison management and therefore it is important to be respectful and appreciative of the efforts made by the prison authorities.

During the initial meeting, the team leader introduces the team, its mandate and the purpose and duration of the visit. It is important to explain the concept of *preventive* monitoring visits, i.e., visits with a focus on prevention of torture and other ill-treatment, including examining different areas of prison life, identifying (underlying) causes and gaps, and engaging in a constructive dialogue with the authorities. Also, the monitoring team's visiting modalities, including confidentiality, talks in private with any person of the team's choice in a place of the team's choosing without witnesses, review of records and files, risk of reprisals, etc. could be elaborated on. It is also important to stress to the prison management that the views of the prison officers will also be taken into account during the visit and to explain how the dialogue and cooperation are envisaged to continue after the visit.

During the initial meeting, the team leader should explain that the prison management is expected to facilitate unhindered access to all facilities in the institution and discuss in what way this can be achieved, without further disruption of prison life. Access to records will also need to be discussed during the initial talk. The team leader should ask the prison management to make specific records available to the delegation in case they have not been shared with the monitoring team in advance, including records on extraordinary incidents, disciplinary sanctions, use of means of restraint and complaints, as well as medical records. If records are kept in a digital format, then the monitoring team will need to discuss with the prison management how best to ensure their access to the electronic records and how prison officers can facilitate such access, where necessary.

While recognising the need for gathering some information during the initial meeting, lengthy talks at this stage are best avoided. In order to avoid having a lengthy talk, the monitoring team should decide ahead of the visit what information they will request during the initial meeting. Such information should be limited to what is absolutely necessary to have at the start of the visit. It is also possible to ask questions and request answers later, at the end of the visit, either orally or in writing. Alternatively, a team can split into two groups, with one group (1-2 team members) participating in the initial talk with prison management, while the other group immediately commences the visit.

The monitoring team may consider requesting some of the following information during the initial talk with the management, if necessary:

- The total official capacity of the prison, the current occupancy level (i.e., the total number of persons in prison on the initial day of the visit) and disaggregated data of persons in prison
- The number and types of staff, including the total number of positions and vacancies
- Important incidents, such as escapes, fires, riots, self-harm, suicide, deaths, disciplinary offences, use of force, use of restraints, other security measures
- Daily programmes related to visits, work, education, recreation, exercise, etc.

In case of an announced visit, the monitoring body has usually requested some of this information from the prison authorities already in advance of the visit. In case of a follow-up visit, the recommendations made at the previous visit could be presented again and discussed with regard to their implementation.

During the initial meeting, the team should avoid asking questions about issues where the information is publicly available (such as legislation), which the team should have familiarised itself with prior to the visit. If the establishment has been visited before, the discussion would focus on changes since the last visit.

The team leader will ask the prison management for a final meeting with the management at the end of the visit, during which some obvious preliminary findings may be presented.

Tour of the premises: observation

Observation constitutes an important monitoring technique that complements and adds texture to the information gathered through other means (e.g., interviews and review of records). Observation primarily takes

place during the tour of the premises, but should also be undertaken during any other activity, such as during interviews with persons in prison or the review of documents in the offices. Observations should be systematically collected by all team members to ensure consistency and to enable the comparison of data and triangulation. Sometimes diagrams, maps and sketches can be employed to support the observations. Observing audio or video surveillance systems may also take place during the tour of the premises, including identifying areas where such surveillance may not be present or functional and areas where such surveillance should not be present (i.e., areas where people in prison should be allowed privacy, such as cells, bathrooms and lawyers' rooms).

Particularly during the first visit to a prison, it is essential to visit all areas of the facility (admission unit, living quarters including those for people in special circumstances like those charged with terrorism or other serious crimes carrying a life sentence or death penalty, security cells, punishment cells and other special cells (e.g., for supervision), health care unit, courtyards, sanitary installations, kitchen, exercise areas, recreational, work, and educational facilities, visiting areas, offices with surveillance screens, etc.).

A full tour of the premises is not necessary during every visit, unless there is a specific reason for such a tour, for instance if a long time has passed since the last visit, if there are many new monitors on the team, or if there are suspicions/allegations that some persons may be hidden from the monitors. The tour of the premises is typically conducted with the management or another member of staff and all or selected members of the visiting team. The length of the tour of the premises depends on the size of the establishment and the purpose of the visit (full visit vs. thematic/ad hoc visit). It is important to manage time during the tour so that it does not extend to a degree that reduces time for other planned activities.

The tour of the premises is a good opportunity to gain an initial impression of the conditions of detention, and a visual picture of the premises and their layout. Particularly when it comes to large establishments, it will facilitate the orientation of the team members during the visit. During the observation of the premises, it is good to remember that architecture and design can also have a significant impact on how prisons are experienced (for more on prison climate, see Chapter 2).

The tour may also serve as an opportunity for an initial identification of persons to be interviewed, for example if there are persons who are placed in solitary confinement, persons who show signs of torture or ill-treatment, or persons who are in a situation of increased vulnerability, etc. It could also provide an opportunity to observe specific procedures, such as daily routine activities including meals, outdoor exercise, visits, admissions, searches, etc. Objects observed during the visit, such as handcuffs, truncheons, straitjackets, unauthorised weapons, such as baseball bats and stun guns, or other instruments of force or restraint, should also be noted down by the visiting team, as they could yield evidence to support information received from persons in prison. Finally, the monitoring team may also wish to briefly introduce itself to the persons in prison, outlining the purpose of the visit and informing them that the team will come back to conduct individual interviews.

Interviews

This is the most important stage of the visit, where persons in prison and staff members can share their experiences and viewpoints regarding the conditions of detention and the treatment of the persons in prison. Both group interviews and individual interviews may be conducted by the monitoring body. These two types of interviews are explained below. In both cases, interviews need to be conducted out of sight and hearing of prison staff. The information shared during such interviews should be kept confidential, unless informed consent for disclosure has been obtained.

Although interviewing is one of the key components of visits, it also carries risks of doing harm or collecting inaccurate or unreliable information, if not conducted properly. Therefore, interviewing is dealt with in more depth in Chapter 8. Below follows an overview of the different groups that may be interviewed by monitors, i.e., persons in prison, custodial staff, health staff, and other civilian staff.

1. Interviews with persons in prison

The team may conduct different types of interviews with persons in prison, notably individual interviews and group interviews.

Individual interviews with persons in prison should always be conducted in full confidentiality (out of hearing and out of sight of prison staff and other persons in prison). Such interviews will allow monitors to ask detailed questions about the conditions and treatment in the prison, also covering more sensitive topics such as violence, ill-treatment, discipline, safety and security. Particularly in remand prisons, monitors could also ask about what happened at the time of arrest, at the police station, in the court etc. The selection of interviewees may be random, representative of the prison population, or based on specific criteria depending on the focus of the visit or the initial observations of the monitoring team (i.e., intelligence-led selection). For example, if the monitoring team observes from the records that solitary confinement is used very often, then selecting to interview those who are currently or have recently been in solitary confinement would provide more insights into this practice.

The topics addressed during interviews may be purely factual, procedural or may require a subjective assessment by the persons in prison:

- Factual questions would, for example, be to ask how many persons share a cell or a bathroom, how many hours the persons in prison are locked up in their cell, and what activities are offered.
- Procedural questions that shed light on different procedures within the prison would, for example, ask what the procedure is for signing up for a consultation with the prison doctor, what the procedure is for accessing educational and other activities or for receiving family visits.
- Questions requiring a subjective assessment by the person in prison would typically relate to the treatment of the person in prison, the conditions under which they live and the way in which procedures are applied. Examples of such issues would be the relations with staff (e.g., the tone used by custodial staff), relations with other persons in prison, how discipline is administered, how they feel when undergoing a medical examination and how safe they feel in the prison.

During interviews, monitors should always keep in mind that the interviewees may be in a situation of heightened vulnerability, for example, due to previous traumatic experiences, disability, or mental health conditions. In such situations, monitors need to be even more empathetic and pay attention to any signs pointing towards such vulnerabilities.

The selection of interviewees for individual interviews could be done in different ways. In case of general visits, the monitors may want to interview a random sample of persons in prison. Once the monitors have dug a bit deeper, for instance after having interviewed several persons or reviewed certain registers or files, they may want to move from random sampling to selecting interviewees based on their findings (i.e., intelligence-led selection). For instance, if the team discovers that certain persons are particularly exposed to routine strip searches or have been placed in solitary confinement multiple times, the team may select to interview these persons. In case of a thematic visit, the team will prioritise those persons for interviews who can provide detailed information about the issues under review, e.g., quality of health care, interventions by armed intervention groups.

In addition to individual interviews, **group interviews** could be conducted to cover common, everyday aspects of prison life, such as food, accommodation, and hygiene, and may be used as an opportunity to explain the purpose of the visiting team's visit and introduce the mandate and the monitors. However, group talks have their limitations, and sensitive issues such as ill-treatment, interpersonal violence or relations with staff should not be discussed during group talks as they can place individual persons at risk of reprisals. Monitors need to make sure to mitigate the risk of harm as much as possible and pay attention to internal power dynamics within the group of interviewees. Monitors should also be alert to signs of persons being more passive or evasive (e.g., standing more remotely, avoiding eye contact) and assess whether such persons may be acting like that due to fear of reprisals. The monitoring team should not pressure anyone into an interview and respect the wishes of those who do not want to speak to the team, while noting whether persons in prison seem afraid to engage with the monitoring team.

Interviewing, interviewing techniques, and selection of interviewees will be further addressed in Chapter 8.

Review of documents

During the course of the visit, the team may consult different official sources of written information, such as individual files, registers, statistics, records, and other data concerning the persons in prison. Such documents could be kept on paper and/or electronically. Audio recordings and video surveillance footage may also serve as sources of information. Already prior to the visit, it may be useful to compile a list of what types of documentation the prison to be visited is required to keep, in order to know what documents to request access to. Some prisons keep extensive documentation, and unless the team knows what documentation to ask for, it may not be easily found. As discussed in Chapter 6, in case of announced visits it may be possible and desirable to request some of the documentation in advance of the visit.

Recognising that availability and credibility of records depends on the specific country and context, the following documents may be relevant to review:

- Individual files of the persons in prison (name, age, gender, date of arrival, legal status (sentenced/on remand) and date of release, appearances in court and outcomes (i.e., extension of detention), language, nationality, placement within the prison, information on disciplinary offences and sanctions, injuries sustained, assessments of behaviour for change of regime/home visits/early conditional release, etc.)
- Registries and records of extraordinary incidents, including suicide and self-harm, violence, riots and escapes
- Registers and records on use of force and means of restraint
- Registries and records upon admission (including recording of injuries)
- Registries and records of disciplinary sanctions, including solitary confinement
- Registries and records of placement in observation cells and security cells
- Registries and records of medically justified isolation and quarantine
- Registries and records of death in custody
- Registries of diseases
- Individual medical records¹⁸³
- Registries of complaints
- Audio/video-recording or video surveillance footage (e.g., closed circuit television (CCTV) and footage from body-worn video cameras)
- Institutional policies, strategies, and house rules.



[BOX 7.1] Good practice on access to medical records

In some countries, monitoring teams may be restricted in their access to medical files due to national legislation with strict personal data protection rules, requiring informed consent by all the relevant persons in prison before access to the medical files can be granted. In other countries, access to medical files is only allowed for the medical professionals in charge of patient care for the respective individuals. A good practice would be for medical professionals on the monitoring team to have access to the medical records of persons in prison, even though they are not in charge of the treatment of these persons.

Written/digital records are an important source of information to the monitoring team. The team may approach their review of records from different perspectives, i.e.:

1. To identify prevalent problems
2. To use records as a basis for selecting persons for interview, e.g., selecting those currently in solitary confinement
3. To identify or validate specific cases as a source of triangulation
4. To assess the quality and completeness of record-keeping in the institution

Missing or poor record keeping may lead to an institutional or even systemic recommendation, i.e., to start keeping such records and have them reviewed regularly by an independent body.

1. To identify prevalent problems

In contexts where records are relatively accurate and reliable, they offer important information that could help monitors identify prevalent problems. For example, the records of incidents and disciplinary sanctions may be a valuable indicator of the regime within the institution. They may, for instance, reflect that the prison often resorts to solitary confinement as a disciplinary sanction or that violence between prisoners is frequently dealt with by armed intervention groups. Similarly, a review of medical records and records of medicines could provide valuable insights into issues such as medical confidentiality, medical examinations on admission, and the administration of medicines.

Although records may offer a range of information, the team should always review them critically, keep an eye out for discrepancies or gaps, and verify the information with other sources (interviews, observations). It is important to be aware that records are kept by the prison management and staff and may, for various reasons, not always be complete or wholly accurate. For instance, records on the use of force may not cover all instances of use of force or the records may not be accurate, impartial and comprehensive. In such instances, what is described in the record kept by prison officers may differ from the medical record kept by health staff and the allegations of the person in question.

2. To use records as a basis for selecting persons for interview, e.g., selecting those currently in solitary confinement

The team could also use the records for selecting interviewees. The records could for example cover cases of disciplinary sanctions, allowing the team to select the persons fulfilling the criteria for being interviewed, i.e., having received a disciplinary sanction.

3. To identify or validate specific cases as a source of triangulation

‘Triangulation’ refers to the process of collecting and cross-checking information among different sources of information. To use records as a source of triangulation, a detailed account of one or a few selected cases would be needed to triangulate with information obtained during interviews or observations. For example, a case of use of force, where a person in prison accuses a prison officer of excessive use of force, may be compared with the records of the incident, and the accounts of witnesses, both staff and other persons in prison. Video surveillance footage could also be reviewed in order to cross-check the allegations put forward.

4. To assess the quality and completeness of record-keeping in the institution

To assess the quality of record-keeping, the selection of records would be random or alternatively, include the most recent records. Records would be reviewed with a view to quality and completeness of entries. In cases of doubt, entries should be compared with alternative sources of information. The quality and completeness of the records is very important as a protective measure against

torture and other ill-treatment, e.g., the registry of persons in the institution. If this registry is not completely accurate, there may be room for disappearances or for arbitrary detention.

Initial validation by triangulation

During the visit, the monitoring team will collect a significant amount of information. All the relevant information should be documented, including the details regarding the sources of the information. Although monitors will strive to obtain accurate and reliable information, this may not always be possible and therefore, it is important to check the validity and accuracy of information. The monitoring team may have divided itself into sub-groups that monitor specific aspects or conduct certain steps of the visit. For example, the health professionals in the team may monitor the health aspects and observe relevant health care premises and procedures, while the legal professionals may focus on safety, security and discipline and observe relevant premises and procedures in relation to this.

Therefore, during the visit, it is important for the entire monitoring team to meet in order to share, validate, and triangulate the information collected. Such a process during the visit will allow the monitoring team to assess the information they have received by cross-checking it with the rest of the team and discuss their initial observations. In doing so, possible contradictions or information gaps may be identified. Where such gaps exist, the team should seek to fill the gaps by consulting additional sources during the rest of the visit.

A useful tool for collecting information is the triangulation matrix. It is a useful tool for organising the information on specific issues under each of the sources of information. Such a matrix can be used already *prior to the visit* to identify the sources of information that should be consulted on each topic that the monitoring team will look into (see Chapter 6). Each of the empty cells may be filled with the relevant questions or actions that the team will take to acquire data from the source in question. It is also a useful tool *during the visit* to identify the additional sources of information that could be consulted on a specific topic where more information is needed. *After the visit*, the tool can be used for the in-depth validation and triangulation of findings (see under 3. Validation of findings). The triangulation matrix is presented in Figure 7.2 overleaf.

The validation and triangulation process often takes place several times during the visit or, at least, before holding the final meeting with the management. Then, the team will be in a position to decide which preliminary observations it may want to share during the final meeting. The level of validation and triangulation required for sharing such preliminary observations may differ depending on the intended use of the information and the seriousness of the issues. For example, for issues relating to the material conditions, monitors may simply rely on observation and a small number of sources, whereas serious allegations concerning torture and other ill-treatment require the highest standard of documentation and verification.

**[FIGURE 7.2] The triangulation matrix**

SOURCE OF INFORMATION:	ACCESS TO HYGIENIC FACILITIES	HANDLING OF PERSONS AT RISK OF SELF-HARM OR SUICIDE	INCIDENTS OF ILL-TREATMENT
MANAGEMENT			
CUSTODIAL STAFF			
PERSONS IN PRISON			
HEALTH STAFF IN PRISON			
OTHER CIVILIAN STAFF			
DOCUMENTS			
OBSERVATIONS			

In some cases, it may be necessary to act with little supporting documentation, provided that the team finds the information to be reliable. This could be the case if someone's life may be in danger, or the exposure of the information could prevent further abuses from being committed. In such cases the team may have to act quickly and will have to make its own assessment of the reliability of the information and the urgency of transmitting the suspicion/allegation to the management (or the central prison authorities).

During the preparation for the visit (or at least at the start of the visit) the team should, to the degree possible, decide on when and where to hold such internal discussions for initial validation and triangulation, as well as how to convene them.

While the powers of monitoring bodies are usually guaranteed either by the law, Memorandums of Understanding, or ad-hoc permissions, the exercise of those powers by the monitors may not be fully respected during a visit. If significant aspects of the powers are not respected – for example if the confidentiality of the interviews is jeopardised or if there are obstacles to accessing some premises or records – the monitoring team may consider interrupting the visit rather than proceeding under conditions that would compromise the outcome of the visit and could, in the worst case, harm the persons in prison. A decision to suspend a visit is usually taken by the team leader after initially validating and triangulating information with the rest of the team and should always be communicated to the prison director and the central prison service.

Final meeting with the prison management

The final meeting is an opportunity for the team to present some of its preliminary observations to the prison management, engage in a dialogue on these issues, and discuss the next steps before submitting a report. The extent to which the team chooses to engage with the management of the prison depends on the reliability

of the information gathered during the visit, the management's openness towards dialogue and cooperation, and whether the team considers that the problems can be resolved at this level.

As during the initial meeting, the team leader leads the final talk with the prison management. This does not preclude the participation of other team members, who may be asked to elaborate on specific aspects requiring their specialist expertise.

To contribute to a constructive dialogue, it can be useful to adopt a so-called 'sandwich approach' (positive – negative – positive). The team leader begins with positive findings: for instance, the level of cooperation by the prison authorities, and the team's ability to carry out the visit according to the necessary criteria. If the establishment has been visited before by the monitoring body, the team's findings will be held up against the recommendations made after the previous visit. Before presenting the team's assessment, the team leader should first ask for the director's opinion on the issue, and whether he/she has some ideas of how to resolve the problem. The final meeting can also be used to clarify issues.

Any serious and urgent cases, for instance of ill-treatment, should also be raised with the prison management, provided that the individual concerned has given full and informed consent. However, keeping in mind the preventive purpose of the visit, individual cases should primarily be used as illustrations of systemic failure. If individual cases need to be further investigated, the monitoring body may refer them to other appropriate agencies with the full and informed consent of the person concerned. A person's name or other sources of information should not be disclosed, and it should not be possible for the authorities to find out where the information originates from as this would pose a risk of reprisals.

Finally, the team leader explains what next steps the team will take, notably drafting a visit report and sending it to the prison and other relevant authorities, following up on possible reprisals, and any other action. The duration of the final meeting will depend on the scope of the visit as well as the gravity and number of findings. Overall, it is essential that the team makes clear that what is being shared are preliminary findings and that these will be further analysed after the visit and elaborated on in the visit report. After having this meeting with prison management, it is important to end on a positive note, for example by stressing that the monitoring team is open to continuing the dialogue and to supporting efforts for further improvement of the conditions and treatment within the prison.

7.3 Step 3: Validation of findings

As presented above, a visit allows for gathering information from a range of different sources (interviews, documents, observations). Some of this information will initially be validated and cross-checked by triangulation during the course of the visit. Nevertheless, the validation process will continue in more depth after the visit. The first step of validation is to assess the quality of the information and the second step is to triangulate the information. The validation process will facilitate the identification of issues that need to be addressed in the report and will allow for an analysis of instances and risks of torture and other ill-treatment. It will also allow the monitoring team to draw well-founded conclusions and recommendations.

The first step in validating the collected information is to assess its quality. There are different ways of assessing the reliability and validity of the information. In general, information could be considered credible (i.e., both reliable and valid) when it fulfils, to the greatest extent possible, the following criteria:

- It is first-hand: preferably from the person involved and/or a direct witness
- It contains a high level of detail (dates, places, names – well described)
- It is recent
- It is consistent with other interviews, and does not contain important contradictions
- It has been confirmed by different unrelated sources (witnesses, written documentation, observations, audio, or video recordings)
- It demonstrates a pattern (the same type of allegation has been reported by other unrelated sources). While not a prerequisite, demonstrating a pattern serves to further strengthen the allegation.

Once the quality of the information has been assessed, the monitoring team will triangulate the information by cross-checking it with different sources.



[BOX 7.2] Definitions of key concepts around the quality of information¹⁸⁴

Credibility

The overall degree of trustworthiness, determined by the degrees of reliability and validity.

Reliability (precision)

The degree of repeatability, i.e., will the same information be provided when the question/observation is repeated?

> **Example:** *'It is difficult to get an appointment with the prison doctor'* is more reliable if it is mentioned or confirmed by many persons in prison and staff members.

Validity (accuracy)

The degree of consistency between what is actually measured and what was intended to be measured.

> **Example:** The number of incidents of use of force was found to be five per year in a prison. This estimate was based on the reports provided by the management. However, according to the superintendent, in three cases, reports on the use of force were not prepared for various reasons. Hence, the number of reports is not a valid measurement of the actual number of incidents.

In Figures 7.3–7.5, examples of a filled-out matrix for triangulation are presented (as was first introduced in the previous paragraph under 'Initial validation by triangulation'). As examples, three different topics and the information from the different sources have been placed in the matrix, i.e., 1. access to sanitary facilities, 2. handling a person at risk of self-harm or suicide, and 3. incidents of ill-treatment.



[FIGURE 7.3] Matrix for triangulation example: Access to sanitary facilities

SOURCE OF INFORMATION:	ACCESS TO SANITARY FACILITIES
MANAGEMENT	There are no toilets in the cells. The persons in prison call the guards to be escorted to the toilet. Guards respond promptly. All persons in prison have the possibility to take a bath every day.
CUSTODIAL STAFF	The persons in prison have to use the bell to be escorted to the toilet. There is understaffing so we are occupied with other tasks, and the person must wait. However, they all have bottles in the cells and can safely use these instead. The bathing facilities are sufficient and work fine.
PERSONS IN PRISON	At night we have to pee in bottles in the cell because the guards ignore our calls and tell us to use the bottles. Access to the bathing facilities is decided by the dominating gang leaders, and those of us who are not a member of the gangs only get access to take a bath once a week at inconvenient hours.
HEALTH STAFF IN PRISON	We are not aware of how procedures function in practice, but we hear persons in prison complain that they have to pee in bottles at night.
DOCUMENTS	The plans show that there is one bathroom and toilet for every 20 single-occupancy cells.
OBSERVATIONS	Testing the functionality of the bathrooms indicates that half of them are out of service, meaning that there is just one bathroom for 40 single cells.
CONCLUSION	In conclusion, the triangulation reveals that the real access to toilet and bath is considerably poorer than was presented by the management and the staff.



[FIGURE 7.4] Matrix for triangulation example: Handling a person at risk of self-harm or suicide

SOURCE OF INFORMATION:	HANDLING A PERSON AT RISK OF SELF-HARM OR SUICIDE
MANAGEMENT	A person at risk of self-harm or suicide will be stripped of belts and other dangerous possessions and placed in an observation cell. Guards will check on them every 30 minutes.
CUSTODIAL STAFF	The person is placed in an observation cell, and we try to support them by talking and calming them down. We check on the person approximately every 2 hours.

PERSONS IN PRISON	Recently a person was taken to the observation cell as he was threatening to commit suicide if the administration did not allow his wife to visit him. When he returned, he talked about being tied to a bed for 23 hours a day while he was in the observation cell. While in the observation cell, he did not see a prison doctor.
HEALTH STAFF IN PRISON	We are alerted by the prison officers every time a person shows signs of risk of suicide. We evaluate the case and give advice to the guards on how to handle the case. After this, a psychiatrist is called, or the person is brought to a psychiatric hospital.
DOCUMENTS	There are no available procedures or guidelines on how to handle cases of risk of suicide. However, in the guidelines for use of observation cell, it appears that it is for use, <i>inter alia</i> , in cases of risk of suicide.
OBSERVATIONS	When observing the observation cells, it appears that the lamp (bulb and socket) sticks out from the wall. This 'ligature point' could be used to commit suicide by hanging, using a piece of clothing like a shirt. Further, the alarm button does not work.
CONCLUSION	The different sources of information are highly inconsistent and present different versions of how persons at risk of self-harm or suicide are dealt with.



[FIGURE 7.5] Matrix for triangulation example: Incidents of ill-treatment

SOURCE OF INFORMATION:	INCIDENTS OF ILL-TREATMENT
MANAGEMENT	We have not had any complaints about ill-treatment for several years.
CUSTODIAL STAFF	There was an incident about three months ago where a person on wing A behaved unacceptably disrespectfully and several guards put him in his cell and locked him up. He complained about ill-treatment but there was no use of force.
PERSONS IN PRISON	Person X explains that he filed a written complaint because he felt treated wrongly. He explains that he was cooking together with others when a guard told him to return to his cell because he and his cell were going to be searched, due to suspicion of possession of drugs. He got upset and refused to return to his cell. Suddenly, four officers assaulted him and brought him to his cell very violently and locked him up. He was beaten inside his cell before they left him, and he was not allowed to go to the yard.

HEALTH STAFF IN PRISON	The health staff confirm the story of person X, including a description of fresh bruises all over his chest and back. The health staff even took photos of the bruises, with name and dates. They asked person X if they should report the case to the prosecutor, but he refused this. He went to the prison doctor for treatment and documentation of bruises. No report was prepared in this case.
DOCUMENTS	The medical record shows clear evidence of the injuries on the day of the incident. There is no entry on this incident in the person's general file, and the written complaint cannot be found anywhere. The CCTV camera in the corridor outside his cell was not operational at the time of the incident and none of the guards were wearing body-worn cameras.
OBSERVATIONS	No observations relevant to this case were made.
CONCLUSION	The different sources of information are not very consistent. The prison officers do not think the incident qualifies as a reporting issue, the written complaint has disappeared, but the medical record corroborates the account of person X.

7.4 Step 4: Analysis of findings

After triangulation of the findings, the monitoring team can embark on the process of analysing the findings guided by national, regional and international standards and in an effort to identify where the gaps lie in terms of protection against torture and other ill-treatment. This will allow the monitoring team to conclude whether the conditions and treatment encountered during the visit create risks of torture and ill-treatment and use these findings as a basis for its conclusions and recommendations.

While using legal standards as a guiding reference for the analysis of findings, monitoring bodies may encounter a challenge: in some cases, the national legal framework may not be in line with international standards. For example, although the international standards set a limit of 15 days for solitary confinement, national legislation may allow it for an extended period that exceeds this limit. In such cases, it is an opportunity for the monitoring body to highlight that national legislation is not in line with international standards and to recommend an amendment of the national standards. This, in itself, is a finding that requires specific attention in order to submit relevant recommendations. Although many international standards are 'soft law' (and not legally binding), any national legislation that prescribes treatment below such standards may raise the risk of torture and other ill-treatment. For example, if, in line with national legislation, someone can be subjected to indefinite solitary confinement, this type of treatment is in breach of international standards and may amount to

torture and other ill-treatment. Therefore, it is important for monitoring bodies to suggest steps in order to align national legislation with international (and regional) standards.

Another challenge monitoring teams may face when applying legal standards for the analysis of their findings is that, in some cases, there may not be a particular standard for the specific situation at hand. For example, if detainees are required to bow their heads and button their shirts when they are in contact with prison staff (otherwise, they will be disciplined by sanctions), monitoring teams may not find a specific legal provision prohibiting such a practice. Nevertheless, the monitoring body may, guided by basic human rights principles (for example, dignity), still submit a finding and relevant recommendations if it considers such a practice an act that may create a risk for ill-treatment.

During the analysis of findings, monitoring teams may seek to also assess whether a finding is an isolated finding or a reflection of a pattern. Furthermore, such an analysis will need to go beyond a situational analysis (what needs to change) and identify the immediate and systemic causes of the findings (causal analysis – why is this happening) in a way that will allow monitoring bodies to identify measures that, if applied, will contribute to preventing torture and other ill-treatment (how can it change). Such a causal and a contextual analysis lies at the heart of adopting a preventive approach.

In practice, this means that monitors need to analyse the situation at hand through a multi-dimensional lens that looks into individuals (persons in prison and staff), institutions (prisons), systems (criminal justice system), and society at large (cultural norms). Through this analysis monitors will be able to identify the various underlying factors that may legitimise, incentivise, sustain, or even facilitate torture and other ill-treatment and the interrelations between them. While it is crucial to identify negative practices, it is also important to identify good practices and analyse the factors that led to such practices, in order to be able to suggest their replication elsewhere.

This analysis will ultimately lead to identifying and submitting relevant recommendations on measures to be taken that will contribute to preventing torture and other ill-treatment and improving the conditions and treatment of those in prison. The process of reporting and submitting recommendations is addressed in further detail in Part 4 of this manual.

7.5 Monitoring without physical access

In some countries and contexts, monitoring needs to take place without having physical access to the prisons. The notion of remote monitoring – also referred to as monitoring without access or indirect monitoring – is understood as monitoring prisons *without* having physical access to enter the facilities, to observe material conditions, review documents, and interview persons in prison as well as staff members. Having access to the offices and meeting rooms of an institution does not qualify as having physical access to conduct a monitoring visit, and in such instances the concept of remote monitoring also applies.

Remote monitoring may be considered an option for monitoring bodies who have a preventive monitoring mandate but are not able to access prisons in order to conduct monitoring visits. This can be due to two reasons:

- A lack of agreement by the prison authorities to grant access for monitoring purposes. This applies especially to civil society organisations which are often dependent on prior authorisation by the prison authorities to access prisons. On the contrary, if the monitoring body has a legal mandate with the power for unhindered access, as is the case for example for NPMs, then access should be pursued and other means for advocating for visits should be applied.
- Exceptional circumstances which are beyond the control of the prison authorities. This includes extraordinary situations, such as armed conflict or other public emergency during which the physical access may be restricted or denied by the authorities in order to safeguard national defence or public safety. The COVID-19 pandemic is a clear example of such a situation.

Apart from considering remote monitoring as a monitoring methodology in and of itself, *remote* monitoring may also be considered as complementary to *on-site* monitoring visits. In some countries, monitoring bodies are expected to visit a very large number of places of detention throughout the country regularly, but with very limited resources. Thus, monitoring bodies are often not able to visit all prisons regularly, challenging the fulfilment of their preventive role. Remote monitoring may therefore, in such cases, offer an alternative, which complements on-site monitoring. Moreover, remote monitoring may offer an opportunity to focus on aspects that may receive less attention during visits (for example, post-release support) and may allow persons who have recently been released to share their experiences without the fear of reprisals.

As with preventive monitoring visits, the *thematic focus* of remote monitoring may be broad (all aspects of prison conditions and treatment), intermediate (a selection of prison conditions and treatment, e.g., material conditions, health), or narrow (one particular issue, e.g., treatment of withdrawal symptoms, use of body searches, use of solitary confinement, death in custody).

A lot of important information is available and can be gathered without being on site. The remote monitoring methodology includes four elements which represent the key steps to gather information, i.e.:

1. Gathering core data from the authorities

Information from the authorities which is publicly available can contribute with basic features of single institutions, such as occupancy, capacity, staffing, regime, etc. In addition, specific information of interest can be requested from the authorities.

2. Reviewing records remotely

A set of records can be requested from the authorities. The way in which records are requested and received may vary depending on the nature of the documents. Some digital records may be easily reviewed virtually by accessing a database, while hard-copy documents may be accessed through sending copies of the documents or accessing them physically in an office outside the prison. Data security rules should always be taken into consideration.

3. Gathering information from sources outside prisons

In addition to the first two steps, information can be collected from sources outside the prison, in order to gain a better understanding of the situation in the prison and to triangulate the information already obtained. One always has to be careful when using external sources, as situations can change over time and what people on the outside think is happening is not always reliable. The sources of information outside prisons are numerous, context-specific and very different in their nature. A non-exhaustive list may include:

- Persons released from prison
- Former and current prison staff
- Persons outside prisons who may provide additional information about what is happening in prison – either because they themselves have access or because they are in contact with persons in prison
- The media

4. Gathering information from sources inside prisons (remotely)

In some contexts, monitors may be able to get in touch with persons inside prisons even though they do not have physical access to the premises. It may be possible for monitors to interview people in prison by phone or video call, and some monitoring bodies have also successfully used questionnaires to compile information.

Opportunities and challenges of remote monitoring¹⁸⁵

Key opportunities of remote monitoring include that important information about the treatment and conditions of persons in prison can be obtained and may be published despite the lack of access to prisons, hereby providing an alternative form of oversight to an otherwise 'closed world'. Moreover, interviews with informants take place in freedom, which is likely to provide a more open process yielding more information than interviewing within the prison. Conducting interviews in freedom may provide more security and safety for the informant, with lower risk of reprisals compared to when interviewees are in custody. The decision of informants to participate and provide information is likely to be more voluntary compared to the risk of feeling pressured into participation while in prison.

Overall, the remote monitoring methodology expands the possibilities of understanding 'access' in a way that is not framed by a focus on being inside or outside, but rather a focus on accessing multiple views and experiences that may be placed even beyond prisons.

Information from newly released persons can provide information about the whole sequence of events in the criminal justice system, from arrest to pre-trial detention and trial, to serving the sentence. Such encounters with released persons may hold the potential of shifting more focus to the lived experiences of imprisonment, rather than to the prison itself. Since monitoring bodies are concerned with both conditions and treatment in prisons, the stories shared by those released are of value and push monitors to define and approach their work beyond spatial boundaries ('the prison'), looking at the phenomenon ('imprisonment'), and the

related experiences. Moreover, remote monitoring may enable collecting data systematically from a larger number of persons than what would be feasible during a direct monitoring visit.

As for documentation of instances of torture and other ill-treatment in individuals who allege that they have experienced this while in prison, the conditions under which documentation can take place may be better (more time, possibility to see the person more than once, better options to refer to a specialist, etc.). In addition, the person may have easier access to rehabilitation if needed. However, documentation may also become more difficult because acute signs may have faded by the time the person is seen by the monitor or by a documentation specialist.

Remote monitoring also comes with some other key challenges. These include that it takes time and effort to build an effective system of identifying and contacting informants. Also, data may be subject to different types of bias, e.g., recall bias if the release took place a long time ago. And furthermore, data from informants released a long time ago reflect conditions that may be outdated and no longer relevant.

Building a system of remote monitoring usually requires extensive collaboration with external organisations, and the build-up of a technically demanding data management system. If successfully built, this system may – independently of government permissions – provide valid data of considerable significance on the functioning of prisons, with its own value different from the data collected through direct monitoring.

In case of interviewing via phone or video calls, there are certain challenges that need to be taken into account. It may be more difficult to build good rapport with the person being interviewed, and an interview on the phone will not allow the monitor to read the body language of the person which makes it less likely that the interviewer will discover signs of distress or other emotions arising during the interview. In addition, it may be more difficult to establish a confidential space for the interview since the interviewer cannot be sure that there are no other persons present in the room during the conversation or listening in from close by or on an insecure virtual connection. Thus, secure platforms should be used to ensure that the person providing information is not at risk of reprisals. If questionnaires are used, it needs to be ensured that they can be collected without prison officers and management having access to the responses.

Finally, safe data handling, processing, and storage need to be ensured. This equally applies to remote monitoring as to monitoring with access.

7.6 Further reading

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CHAPTER 8

Interviewing for monitoring purposes

This chapter focuses on interviewing as one of the principal methods of gathering information during prison monitoring visits. It explains how interviews with persons in prison and staff can provide first-hand insight into prison life, treatment, conditions, and possible human rights violations.

The chapter sets out the key ethical principles for interviewing, including mitigation of the risk of harm, confidentiality, anonymity, autonomy, and informed consent. It introduces rapport-based interviewing as the preferred methodology for preventive monitoring and outlines how interviews should be planned, conducted, closed, and evaluated.

The chapter also addresses different types of interviews, selection of interviewees, good interviewing practices, and the use of interpreters and notes.

Finally, it considers the specific safeguards required when interviewing survivors of torture and other ill-treatment, as well as prison officers, health staff, and other civilian staff.

CHAPTER 8

Interviewing for monitoring purposes

8.1 Introduction

Interviewing is one of the principal methods of gathering information during a visit to a place of detention. This is because first-hand information received from primary sources is often the most important source of information. Interviews with persons in prison and staff members allow the monitors to gain an insider's perspective into the way in which the prison is run and how problems are seen and experienced by those who live or work in prison on a daily basis. The main purpose of interviews is to gather relevant, accurate, and reliable information. Interviews are also a key means to obtain information about allegations of human rights violations, particularly about incidents of torture and other ill-treatment from the primary sources (victims and witnesses). Interviews with persons in prison allow the monitor to compare and triangulate the first-hand information gathered with information obtained from other sources, such as: interviews with prison officers, health staff and other civilian staff; medical files; records on security, use of force and disciplinary sanctions, and complaints of ill-treatment; and audio or video recordings.

The quality of an interview determines how a monitor is able to use the information; and unless the information is credible, it has limited value and can neither easily be used in the dialogue with the authorities nor for advocacy purposes. Thus, learning how to interview is crucial in order to gain information about alleged ill-treatment and, not least, to reduce the risk of causing harm, e.g., through retraumatisation of torture survivors.

This chapter focuses first and foremost on interviewing persons in prison, for monitoring purposes. In doing so, the following questions are addressed:

1. What are the guiding principles when interviewing for monitoring purposes?
2. What is the preferred interviewing methodology for preventive monitoring?
3. How to plan and prepare for an interview?
4. What are the different types of interviews that can be conducted?
5. What are good interviewing practices?
6. What are the special considerations when interviewing survivors of torture and other ill-treatment?
7. What are the special considerations when interviewing staff members, i.e., prison officers, health staff, and other civilian staff?

The initial and final meetings with the prison management during a monitoring visit are not conceptualised as interviews and are therefore not addressed in this chapter (see instead Chapter 7).

8.2 The guiding principles when interviewing for monitoring purposes

When conducting interviews, there are some important ethical principles that need to be followed. These include first and foremost the mitigation of the risk of harm, as well as ensuring confidentiality and anonymity, respecting personal autonomy, and obtaining informed consent.

The mitigation of the risk of harm

Mitigation of the risk of harm is a cornerstone in all human rights work. It is the duty of human rights professionals to help ensure the safety and security of the persons they come into contact with, by carefully assessing the risks and weighing them against the benefits of any actions taken to improve the situation in the place of detention. This is particularly important in the closed environment of a prison where persons are in a position of dependence and heightened vulnerability.

Monitors should always keep in mind that the security of interviewees is paramount. Caution and sensitivity should always be exercised to avoid any direct – or indirect – action that could increase the individual's vulnerability or have other negative consequences, such as reprisals.

In order not to create any unnecessary risks of harm for anyone, it is important to take some precautionary measures before embarking on an interview. To this end, it is recommended that the monitors assess the potential risks and benefits of interviewing a particular person. Not all persons may face the same risks; certain individuals or groups may face specific and heightened risks related to their situation or status. For example, persons belonging to certain groups in a situation of vulnerability, such as 'political prisoners' and persons detained on terrorism charges, may face heightened risk either from authorities or fellow persons in prison. Sometimes the risk of reprisals is so high compared to the potential benefits of interviewing the person, that it is better not to interview anyone rather than to risk causing harm. Alternatively, the monitor may choose to interview all persons on a particular wing in order to conceal the origin of an allegation of ill-treatment.

A monitoring visit may create unrealistic or false expectations among persons in prison who may believe that the monitoring team has the power to change their situation, e.g., to facilitate the processing of their court case or their release. It is therefore important to clearly explain the mandate and limitations of the monitoring team. Similarly, the monitor should always avoid making promises that they are not able to keep.

Confidentiality and anonymity

Confidentiality in the context of monitoring is commonly understood as a promise made by the monitor not to reveal information, given in confidence by the interviewee, to a third party, such as the prison authorities. In practice, it means that the monitor should keep the person's name and the specific details of the interview secret to prevent the authorities from identifying the source of information. For example, a monitor who comes across victims of physical

ill-treatment must not pass on details that can be traced back to the persons without their informed consent. However, the monitor may raise the general problem of ill-treatment in the prison in an anonymous manner, so that the individuals concerned are least likely to be identified. The duty of confidentiality may be ethically breached only in exceptional circumstances where a failure to do so will give rise to serious harm.

Ensuring confidentiality of the information gathered during monitoring is an essential component of mitigating the risk of harm and crucial to the interviewee's security and to the monitoring team's credibility and effectiveness. A breach of confidentiality can undermine the persons' trust in the monitoring team and, even worse, place them in danger.

Autonomy and informed consent

Obtaining informed consent to the interview from a person in prison is an essential requirement, which respects the interviewee's autonomy to make decisions about their interactions with the monitoring team. At the start of an interview, the monitor should seek the interviewee's informed consent to undertake the interview, and at the end of an interview, the monitor should seek the interviewee's informed consent to use the information provided for the purposes outlined by the monitor, e.g., in the meetings with authorities or in the monitoring report.

Informed consent can be said to have been given if a person agrees to a course of action after having been fully informed and having understood the facts and consequences of this course of action, including the potential benefits and risks. When carrying out interviews in a detention monitoring context, there are three levels of informed consent:

- Consent to use the information **internally, only within the monitoring body**, for instance to corroborate information from another source, as background information, or for statistical purposes.
- Consent to use the information **externally, anonymously** (in reports or talks with the authorities, etc.) without disclosing the source's name or any other details that could lead to identification.
- Consent to use the information **externally and for specific well-defined purposes, using the source's name and personal details**.

When asking for informed consent, the monitor needs to be sensitive to the unequal power dynamics that exist between the monitor and the interviewee. Persons in prison are in a situation of vulnerability and may feel pressured to consent, perhaps harbouring unrealistic expectations of the monitoring team's powers and abilities. A monitor should not try to influence the interviewee directly or indirectly, trivialise risks, or raise (false) expectations of what can be achieved through the action.

Informed consent consists of three key elements that are all essential to obtaining truly *informed* consent. Even if only one of the elements is missing, the consent cannot be said to be informed. The three key elements are information, comprehension and voluntariness, and they all need to be addressed when seeking informed consent at the start of the interview as well as at the end of the interview.^{186, 187}

At the start of an interview, informed consent should be sought to carry out the interview. In practice, the three key elements can be covered as follows:

- **Information:** Inform the interviewee about the monitoring team's mandate, the objectives of the visit, the purpose and duration of the interview, to what end the team would like to use the information and the benefits and risks of doing so, and, possibly, the risk of retraumatisation.
- **Comprehension:** The information should be given in clear and simple language that is understood by the interviewee. The monitor should assess whether the interviewee has really understood the information, for instance by asking them to repeat the information given in their own words. Mental ability, language, age, and other aspects may all affect the individual's ability to give informed consent.
- **Voluntariness:** Agreement to be interviewed should be voluntary and no pressure may be exerted, promises made or incentives given in an effort to obtain the information.

After assessing whether the three key requirements have been fulfilled, the monitor should ask the interviewee to provide their explicit informed consent to the interview. The informed consent would usually be given orally and need not be in writing. The monitor should also inform the interviewee that they have the right not to answer specific questions and the possibility to decide along the way whether they want to answer or not.

Since it may not be clear from the outset what types of information the interviewee will provide during the interview, informed consent to use the information cannot be given at the start of the interview. It is therefore necessary to repeat the informed consent procedure at the end of the interview where the interviewer can concretely explain what the information will be used for, and the interviewee can fully consider the implications of using their information for the outlined purposes.

- **Information:** The monitor should inform the interviewee about the ways in which the information provided by the interviewee will be used by the monitoring body and, possibly, the risk this may entail, e.g., reprisals. The monitor should also outline the possible risks (physical, psychological, social, legal) and benefits of using the information and what measures the monitoring team will adopt to minimise the identified risks.
- **Comprehension:** The monitor should assess whether the interviewee has really understood the implications of the monitoring body's use of the information, notably in case issues will be raised with the prison authorities. The higher the risk, the greater the obligation to ensure a proper understanding of potential risks.
- **Voluntariness:** Agreement to the specific use of the information provided should be voluntary and no pressure may be exerted, promises made, or incentives given in an effort to obtain consent to use the information.

If informed consent is given, the monitor should inform the interviewee that it can be withdrawn at any time and how this can be done. The monitor should also explain to the interviewee how they plan to follow up on the person's situation, if relevant and possible.

8.3 Preferred interviewing methodology for preventive monitoring

The way in which interviews are prepared, conducted, and ended has a direct impact on the accuracy and reliability of the information obtained. Ultimately, the choice of interviewing methodology will be decisive for the potential impact of the monitoring body.

Different *interviewing styles or methodologies* will affect the interviewee, either positively or negatively. A dominant interviewing style may prompt the interviewee to freeze, become frightened, or become stressed. It also damages the brain's capacity to retrieve memories and decreases the interviewee's ability and willingness to cooperate. An empathetic interviewing style, on the other hand, can help the interviewee feel respected, seen, and acknowledged. By establishing and maintaining a connection with the interviewee based on trust and respect, they will be more likely to cooperate and to provide reliable information.¹⁸⁸

Scientific research conducted within a wide range of disciplines – including psychology, criminology, sociology, neuroscience, and medicine – provides significant evidence that the use of coercion to obtain information can enhance resistance on the part of the interviewee and lead them to provide false information. For instance, if a monitor suspects that the interviewee has been subjected to torture, it may be tempting to pose leading or suggestive questions in order to get confirmation from the interviewee. However, such questions have been shown to contaminate the interviewee's memory and corrupt the accounts they provide.¹⁸⁹

By contrast, the methodology of *investigative interviewing* has been shown to be one of the most effective ways of obtaining accurate and reliable information. Investigative interviewing is a non-coercive and rapport-based method for questioning victims, witnesses, and suspects of crimes. The term investigative interviewing was introduced in the UK in the early 1990s in response to a number of documented forced confessions and associated wrongful convictions in the 1980s and 1990s. It represented a shift in police interviewing away from a confession-oriented approach and towards evidence gathering.¹⁹⁰ While investigative interviewing originated within the police as a tool for crime investigation, it is not only used for investigations. The methodology has since spread to many other areas, and it is applied in a wide range of contexts of information gathering.

Information gathering is a crucial element of preventive monitoring, since monitors aim to collect credible information from the people they interview (and triangulate it with other sources, such as records and observations). Although monitors are not investigating a particular case, the methodology of 'investigative interviewing' is very helpful to guide monitors on how to conduct rapport-based interviews more efficiently.

Rapport is achieved by the interviewer establishing and maintaining a connection with the interviewee based on trust, empathy and respect for human dignity. Rapport-based interviewing offers the interviewee autonomy over what they do or do not say and facilitates a positive interaction between the interviewer and interviewee, thereby increasing the likelihood of collecting accurate information.¹⁹¹

Rapport-based interviewing has taken different forms in different contexts, but it essentially consists of six phases:

1. Planning and preparation
2. Engaging, explaining and establishing rapport
3. Free account
4. Exploration and clarification
5. Closing the interview
6. Evaluating the interview

The methodology of investigative or rapport-based interviewing is further elaborated in the Principles on Effective Interviewing for Investigations and Information Gathering (Méndez Principles).¹⁹² Grounded in science, law, and ethics and developed by an international group of experts from different professional disciplines, the Méndez Principles provide guidance on obtaining accurate and reliable information in full respect of human rights and dignity.

8.4 How to plan and prepare for an interview?

Planning and preparation are an important part of the interviewing process, in order to avoid causing harm to the interviewees and to create a safe and trusting environment, which facilitates memory retrieval and willingness to provide information to the monitor. This is crucial to be able to elicit relevant, accurate, and reliable information. There are some questions that monitors should consider prior to the visit which are outlined below.

How to fulfil the purpose of the interview?

Effective monitoring involves thinking strategically about what types of information the team needs to collect during the visit. It is useful to prepare an outline of the topics to be discussed. This will help to focus the interview, save time, ensure that all issues are covered, and help ensure that all the monitors collect information that is comparable. A written interview form for individual interviews may also be helpful to make sure that the monitor remembers to cover all relevant issues and questions. However, an outline or list of questions should merely be used to *guide* the interview, but it cannot stand alone. The interviewer should remain flexible and listen attentively to the concerns raised by the interviewee, so as to capture the issues of importance to them. The interviewer should also be alert to any small indications from the interviewee that torture or ill-treatment is taking place in the institution, keeping in mind that talking about such issues is often painful and that the interviewee may be reluctant to do so and may therefore not mention it up front but only very subtly. It is also important to keep in mind that certain types of ill-treatment have become ‘normalised’ in some prison contexts to the

extent that they are not considered as such by the interviewee. The interviewee may therefore not elaborate on them unless being primed to do so by additional probing questions.

Who should conduct the interviews?

All monitors should have knowledge of the local context, including cultural and gender aspects. The ability to communicate in the interviewees' own language is an asset. Monitors should be properly trained on interviewing techniques and the ethical and safety aspects of documenting allegations of torture and other ill-treatment. In some contexts, gender considerations may influence the choice of interviewer, for example it may not be culturally acceptable for men to interview female persons in prison and vice versa. When in doubt, the interviewee should be asked if they feel comfortable with the interviewer (and the interpreter, if relevant).

To create an environment of trust for the interviewee and avoid intimidation or evoking associations of being interrogated, the interview should preferably be conducted by one or, at most, two monitors. It can be useful to have one monitor asking the questions, building rapport and maintaining eye contact with the interviewee, while the other monitor takes the notes and only intervenes if something remains to be asked or clarified. If need be, the second monitor may pose additional questions at the end of the interview. The monitors should aim at maintaining the same roles throughout the interview. Inexperienced monitors should work in pairs with experienced monitors.

During the interview, appearances matter. The monitor should therefore consider what impression they wish to make. Clothing, language and other personal traits will often be context-specific. In some countries, the monitors would need to respect local customs and traditions in relation to clothing, in other countries they will need to wear more formal clothes in order to instil respect and authority, while more casual – although still decent – clothing would be appropriate in other countries.

What invisible features should monitors be conscious of?

The *power structure* in an interview situation is inherently imbalanced. The interviewer should understand this power asymmetry and how it influences communication, as well as how the monitor can mitigate it. Transparency alleviates some of the imbalance. Clarifying frameworks, roles, and expectations creates predictability. Showing respect, empathy, and sincerity also helps to mitigate the power imbalance.¹⁹³

The monitor should also be aware of their own *conscious and unconscious bias*. Their conscious bias – understood as their deliberate bias or prejudice towards a particular group of persons based on their identity – may prompt them to discriminate or stereotype interviewees belonging to such a group, e.g., persons belonging to ethnic minorities or to the LGBTIQ+ community. Similarly, monitors may have unconscious bias – understood as unintentional bias or prejudice that influences their attitudes and behaviour towards certain groups of people – outside of their conscious control. Such bias can be very ingrained and directed toward people of certain races, gender identities, sexual orientations, physical abilities, or even personal traits.

Where are interviews conducted?

Privacy is essential in building trust between the interviewer and interviewee. Interviews should take place at a location that ensures confidentiality and the highest level of security to the interviewee, i.e., out of hearing and preferably also out of sight of staff and fellow persons in prison. In prison this is however often a challenge. It should be ensured that the interviewee is comfortable with the location of the interview. In a place where persons are housed in individual cells, this is usually the best place to conduct the interview. If persons share cells, the interviewee can be asked to suggest an undisturbed place in the communal areas or move to a quiet corner of the cell. Other options may be in rooms used for family visits or meetings with lawyers or in the courtyard or garden area. In case of overcrowding and lack of undisturbed space, persons may suggest that the interview be conducted in the presence of others. Conducting the interview in the presence of others may be unavoidable in some situations where no alternatives can be found. However, to the extent possible, it should be avoided as it can also place others at risk of harm and limit the interviewee's ability to share personal and delicate information. Monitors should also avoid conducting interviews in the offices of the director or custodial staff, as it may evoke fear and mistrust, and it may also enable the authorities to monitor who is interviewed. Finally, monitors should always be aware of the presence of video surveillance that may jeopardise the privacy of a location used for an interview.

If an undisturbed location cannot be found, the monitoring team would have to determine whether it is still justified to continue the visit as the basic criteria of interviews in private cannot be fulfilled.

How will the information be recorded?

The interviewer should take detailed notes, as far as possible in the interviewee's own words. An interview form or checklist can be useful as an *aide memoire*. In case a person alleges torture and/or ill-treatment, see Chapter 9 on documentation.

Monitoring bodies are increasingly making use of modern technology, such as iPad and audio-recording devices. Audio-recording carries both advantages and disadvantages. On the one hand, it enables the monitors to obtain a comprehensive and authentic record of the interview, and it allows them to concentrate fully on the account of the interviewee. On the other hand, it may discourage the interviewee from sharing sensitive information and such devices may not be allowed into the prison by the prison management. In any case, before using any electronic equipment, it is good practice that the monitor asks for the interviewee's permission.

How long should the interview last?

An ordinary interview that covers the main issues regarding the treatment of persons in prison and the prison conditions usually takes about 20-30 minutes, while interviews in which allegations of torture are made may require 1-2 hours or more if there is a need for more thorough documentation of the case. In such instances, additional interviews and a referral for medical examination may be required so as to complete the information once the facts have been corroborated with other sources of information, e.g., medical files and testimonies of fellow persons in prison. However, in places where torture is commonplace it may not

be necessary to spend this length of time on an individual case, and it may even jeopardise the victim, as spending so much time on one case may make it clear to prison staff what is going on. In all cases, therefore, the interviewer needs to keep the purpose of the visit in mind as well as the safety of the interviewees.

An interviewer should never rush through interviews; it destroys trust and negatively affects the quality of the information obtained. When deciding on the time allocation for interviews, the monitor should keep in mind the daily routines of the prison (meals, shower time, visits etc.) as it is rarely possible for the persons in prison to catch up on any missed activities later. It is also important to strike a balance between obtaining relevant information from various sources, on the one hand, and respecting the concerns of the interviewee, on the other hand. The yardstick should be to focus on key information, which allows the monitor to foster a change towards preventing torture and other ill-treatment. This may entail having to politely interrupt an interviewee if they wander off into areas beyond the monitoring mandate. To avoid misunderstandings, it may be a good idea to let the interviewee know from the start of an interview how much time is available, but the interviewer should of course have the flexibility and time to extend the interview, if important information is being provided.

Whom to interview?

As a guiding principle, it is the monitors who decide whom they want to interview. Monitors should be cautious in following the advice or recommendations of prison officers since they may have an interest in guiding the monitors to speak or not speak with certain persons.

The selection of interviewees will depend on the purpose of the visit. In case of general visits, the monitor may initially want to interview a random sample of persons in prison followed by intelligence-led interviews, whereas visits with a specific purpose, e.g., focusing on inter-personal violence or discipline, may warrant intelligence-led selection from the outset.

The team may select a sample of interviewees that is as representative as possible of the prison population, i.e., a number that statistically reflects the larger entity. There are various ways of doing this, which will depend on the number of persons in prison, the size of the monitoring team and the length of the visit. While different monitoring bodies have different standards regarding what constitutes a representative sample, the determination of who to interview is equally important to all. The team will need to be strategic in its selection of persons to interview. There are four main approaches for the selection of interviewees, as will be presented below. It is important to stress that the approaches can be combined to give a realistic picture of both the overall conditions as well as the situation of particular groups at risk.

During the visit, it is likely that many persons in prison will ask to speak to the team. It could of course also happen that no one wants to speak to the team – if so, the team would need to investigate the possible reason for this. It may be that the persons in prison have been warned by the authorities or by leading fellow prisoners not to speak to the team. The team should speak to as many persons as possible, depending on the issues they want to explore. Monitors should make

a point also to try to speak to those who do not approach them for an interview, those who are quiet and withdrawn, while respecting their choice, if they do not want to speak to the monitoring team.

There may be a prepared list of persons who have requested to be interviewed. The monitoring team may not always be able to rely on such lists, as they may have been prepared by the persons in prison in agreement with, or even by, the authorities or cell leaders. Generally, monitors should be aware of informal hierarchies among persons in prison and the possible presence of informants. In some institutions, there may be elected representatives who would often want to speak on behalf of the others. The monitor should keep in mind that they may have been selected – or at least have been approved – by the authorities and will often not present a true or balanced picture of the situation.

The approach(es) for selection of persons to interview should be decided by the team before the visit. The actual selection of interviewees is usually done when the team has completed the initial part of the visit, i.e., the initial talk with the management and tour of the premises.

In order to minimise the risk of reprisals, monitors should avoid drawing attention to specific persons or revealing the reasons for the selection of certain persons, e.g., those who may be at increased risk of ill-treatment, or those who have complained about ill-treatment.

Below follows an overview of the different approaches to the selection of interviewees:

- **Simple random sampling** is one method used in preventive monitoring. The team chooses a number of individuals from within the broader prison population whom they wish to interview. Each individual is chosen randomly from a complete list of all persons in prison. An unbiased random selection is crucial to ensure that the sample selected is representative of the total population in the prison. However, simple random sampling may be challenging for practical reasons, for example because it may be difficult and time-consuming to locate specific persons in a large and overcrowded prison where there is movement to and from work, court hearings, consultations with health staff etc.
- When the prison population is very diverse, it is an advantage to sample each sub-population independently. This is called **stratified or skewed sampling**. The team divides the persons in prison into homogeneous sub-groups, for instance, according to sex, nationality (nationals or foreigners), legal status (remand or sentenced), security regime (low, medium or high) or another relevant indicator. Thereafter, the team randomly selects those individuals they wish to interview, proportionally from the different sub-groups. Stratified sampling is also useful if the monitoring team wishes to focus on a particular issue, such as the use of solitary confinement. In these cases, the monitoring team will divide the prison population into sub-groups defined according to criteria such as 'number of times placed in a punishment cell'.
- In smaller prisons, in which only a few persons are accommodated, it may be difficult to ensure that individuals who allege ill-treatment are not identifiable by the authorities, despite attempts by the monitoring team to conceal their source of information. In such cases, the monitoring team should consider either to

interview everyone or none at all. The **all-or-nothing approach** helps to ensure the safety of the persons and to conceal the source of information in cases of serious violations.

- Based on information about particular individuals who have been exposed to torture or other ill-treatment, received from sources outside the prison before the visit (such as family members, former persons in prison or NGOs), the monitoring team may decide on **responsive selection** in which the individuals in question are selected for an interview. However, in order not to draw attention to these persons, a substantial number of other persons should also be interviewed, and even then, it may be difficult to conceal that the monitor is trying to get information from one individual in particular, potentially putting the person in danger. The same may be the case if during the visit the monitoring team's attention is drawn to a particular individual, e.g., because others mention them in interviews as someone who has been exposed to violence or whom they believe would have something to tell the monitoring team. Other reasons may be a person's name appearing repeatedly in records on the use of force or disciplinary measures, or a person's medical file showing that they have presented the health services with physical injuries or signs of severe mental distress.

8.5 Different types of interviews

Interviews in the context of preventive monitoring should mainly consist of individual interviews but can also – under certain conditions described below – be held as group interviews.

Regardless of the type of interview, it is important that the interviewer comes well-prepared and is in control of the interview to ensure that they get the information needed. However, interviews can be more or less structured as described below.

Interview structure

An interview may be structured in different ways which all have their advantages and disadvantages in relation to the information that can be gathered and how much the interviewer is in control of the interview. Often, different approaches will be used during an interview depending on its aim and the information provided by the interviewee.

- A **structured interview** is an interview where the interviewer has a set of prepared and standardised questions requiring precise answers. The interviewer is in control. The questions are closed-ended, e.g., questions can be answered only with predefined answer categories such as yes/no or I agree/I agree partly/I disagree. These types of questions should be avoided at the outset of an interview as they restrict the type of information that the team will gather and do not allow the interviewee to speak freely about issues of concern to them. However, closed-ended questions may be useful if the monitor is seeking confirmation of a particular problem of which they have previous knowledge or in case they are seeking quantitative information.

- A **semi-structured interview** is the most frequently used interview format in preventive monitoring. It enables the interviewer to maintain control over the topics discussed by having a prepared set of questions or list of issues to guide the discussion. The interviewer seeks to obtain qualitative information about the conditions of detention or about situations that the interviewee has experienced in prison, including incidents of torture or ill-treatment. The questions are primarily open-ended, requiring descriptive answers, e.g., What does your average day in prison look like? How are the staff members treating you?
- In an **unstructured interview**, the format is loose and only the general topic is defined in advance. It is a qualitative method that prioritises the depth of the interviewee's answers. The interviewee is mostly in control of the conversation and does most of the talking. This type of interview does not require any interview questions to be prepared in advance except for those necessary to open the interview. The interviewer notes down as much as possible of the conversation, using the interviewee's own words. This kind of interviewing technique is useful as a means to gain preliminary information about the situation in a place of detention – in order to be able to narrow down on more specific issues at a later stage. It can also be used for a first interview with a survivor of torture or ill-treatment, as a means of establishing the necessary trust for carrying out a more in-depth interview about the events at a later stage.

Group talks

In order to optimise the use of the team's time, some non-sensitive topics relating to the general conditions of detention, for example food, sanitation, activities etc., can be covered through group talks with persons in prison. Indeed, this is often the best way of swiftly and effectively learning about many aspects of prison life. There is a degree of 'self-moderation' by the members of the group who cannot really say things that others disagree with, and they are often able to collectively discuss issues in a way which is highly useful.

A group talk with persons in prison should be held in a private location, out of hearing and preferably also out of sight of prison staff. To minimise the risk of reprisals, it is important that the topics discussed during group talks are kept at the level of general conditions. The group participants should be informed that anyone wishing to speak to the team in private can do so afterwards.

The monitor maintains control of the discussion by keeping it structured and giving everyone the possibility to speak. A group talk is most effective when the number of participants is not more than twelve, but this may sometimes be difficult to control in large prisons where many persons want to have their voice heard by the monitoring team. Group talks are also unlikely to work well where there is a clear informal prison hierarchy and the 'cell leader' is either leading the conversation or is clearly monitoring what others say. If that appears to be the case, it is best to quickly wrap up the conversation.

As with private interviews, the monitor should begin by properly introducing the team and its mandate, the purpose of the visit, and what issues the monitoring team would like to speak to them about.

If held early during the monitoring visit, a group interview will also provide the monitor with the opportunity to observe group dynamics, which may help them understand power relations and identify individuals who they would like to conduct

an individual interview with afterwards. For instance, less vocal persons may be suitable candidates for individual interviews, but the interviewer needs to be very aware that they may have a reason for staying quiet and singling them out may put them at risk.

8.6 Good interviewing practices

The key to a successful interview is the ability to establish trust with the interviewee. This means showing respect and empathy for the interviewee both through words and actions. It means ensuring that the interviewee feels safe and comfortable with the interview and the place chosen for the interview. And it means adopting a non-threatening tone of voice and posture, paying full attention, and establishing a rapport-based and empathetic environment.

The interviewer should listen attentively, maintain eye contact, and not focus too much on prepared questions. The most important aspect of an interview is for the interviewer to listen attentively and actively to the interviewee, which includes paying full attention, acknowledging through nodding, and repeating words and phrases. The interviewer's posture and the seating arrangement can influence the interview environment; being seated too close can be intimidating but being seated at each end of a table can evoke memories of an interrogation. The appropriate distance can be determined by being sensitive to the interviewee's body language, behaviour, and what is appropriate in the cultural context. Also, security considerations are important here. For instance, the interviewee should not sit between the monitor and the door, so that the monitor always has a clear line of exit if a problematic situation should arise. Also in a group interview, the monitor should remain within easy reach of the exit.

The need for gaining information about specific topics must be balanced with the needs of the interviewee to speak about what is important to them. This may mean spending some time discussing family or other matters, which may be marginally relevant for the purposes of the preventive monitoring visit but will demonstrate that the monitor is genuinely concerned about the interviewee's well-being, which will contribute to building a good rapport.

The interviewer should be aware that the interviewee's recollections of an event or events may not necessarily be told in a chronological order. It is important to understand that a non-chronological account is not necessarily an indication of an unreliable interviewee but may be due to other factors such as stress, trauma or confusion. Clarifying questions can be asked to enable the interviewer to put the pieces together in a chronological order. If there are inconsistencies in a person's account, the interviewer should not confront the person directly but rather ask the question using different words.

In countries with multiple languages, the monitor may not be able to speak with persons in prison in their native language or in a common language. In such cases, it is important that the monitoring team has an interpreter on their delegation. Monitoring bodies should only use interpreters whom they know and trust. To the extent possible, monitors should avoid using others in the institution as interpreters, unless this is absolutely necessary and accepted by the interviewee.

Initiating the interview: engaging, explaining and establishing rapport

Initiating the interview in a way that makes the interviewer able to establish rapport with the interviewee is paramount to ensuring a successful interview. If the interview does not start in a way that makes the interviewee feel in good hands, it is highly likely that they will not volunteer as much information as they otherwise would, which means that the monitor may end up with less information.

Every good interview starts with greeting the interviewee in a culturally appropriate manner. This is respectful and it gives the interviewer a first impression of the interviewee that may inform how to manage and proceed with the interview. If the opportunity arises, the monitor may also choose to use an 'icebreaker'. For instance, if the interviewee has a poster on the wall with a particular football team, the monitor may wish to comment positively on their recent match.

After the initial greeting, the interviewer should introduce themselves and other team members, and any other persons present, e.g., an interpreter. The interviewer should also explain the purpose of the visit and the interview as well as the mandate of the monitoring body. Demonstrating concern for the interviewee from the initial contact is the first opportunity for creating trust and rapport. This is more likely when an interviewee is given early, explicit explanations of why they are being interviewed, which formalities apply, and how the interview will proceed. Providing such information is an early opportunity to display sincerity, create predictability, be respectful and attentive, and promote trust.¹⁹⁴

To manage expectations, it may be relevant to clarify what the monitor can and cannot do, emphasising that the monitor cannot deal with the person's legal case, but that by providing information, the person can help to identify general conditions and patterns that may amount to, or deteriorate into, ill-treatment. After this initial introduction, the interviewee should be asked to introduce themselves and given an opportunity to pose any questions.

Following the guidance provided in the informed consent section above, the monitor should seek to obtain informed consent to carry out the interview. They should then clarify that all the information provided will be kept confidential and/or anonymous, depending on what is agreed with the interviewee, and unless the interviewee decides otherwise.

If the interviewer intends to take notes or audio-record the interview, permission to do so must be sought. Notes and recordings are important to ensure accuracy, but the interviewee needs to understand and accept how the notes or recordings will be used and who will have access to them. Sometimes it is appropriate just to listen and write down one's notes later. If taking notes, they should reflect the interviewee's own words as precisely as possible.

Finally, the interviewer may want to ask for the interviewee's personal information (e.g., name, age, prison number, nationality, wing and cell number, date of arrival, legal status, security category). This is crucial to be able to identify and check files concerning this person after the interview and follow up on their case after the visit. The interviewee should not be asked about the crime they are suspected or convicted of as this may influence the relation between the interviewer and the interviewee negatively, and generally this information is not relevant to the monitor's assessment of the prison conditions and treatment of persons in prison.

However, if the information is volunteered or necessary, the monitor may use it to assess, for example, whether it is appropriate for someone to be in pre-trial detention or under a specific regime.

Conducting the interview

First free account

When conducting the actual interview, the monitor should continuously be attentive to how to establish a rapport of trust with the interviewee. Active listening throughout the interview is of key importance. The monitor should let the interviewee be 'in charge' of the interview from the outset by asking broad, open-ended questions, especially at the beginning of the interview. Through open-ended questions on broad themes, the interviewee is encouraged to provide a first 'free account'. The interviewee should be given a genuine opportunity to tell their story about life in prison – or particular aspects of it – without any interference or interruption from the interviewer. The free account enables the monitor to obtain a lot of information about conditions and treatment in prison, including details about issues the monitor was not alerted to.

It should be made clear from the beginning that the interviewee may choose not to answer particular questions and may, at any time, ask for a break in case of a long interview.

Exploration and clarification

While continuously assessing the interviewee's well-being by their replies, body language, and behaviour, the interviewer can then gradually begin to address the topics that emerged during the free account. The topics should be addressed one by one to increase focus and minimise fatigue and confusion.

The monitor can, at this point, start asking more specific and sensitive questions, for instance about the treatment in the prison. The monitor should remember to ask neutral and open-ended questions (what? when? where? who? why? how?). Questions that allow the interviewee to narrate their own story will be helpful, such as 'Could you tell me what happened upon your arrest?' or 'Could you describe the admission process in prison?' If the interviewer does not fully understand an answer or wants something clarified, e.g., if there are inconsistencies in what is being told, clarifying questions can be asked or the same question can be asked in different ways. Questions that can be answered only with yes/no, should only be put when seeking confirmation of the interviewer's understanding or existing knowledge of a particular problem or pattern. Leading questions (for example 'Were you tortured? Is the staff disrespectful to you?') should be avoided, as they may elicit responses that do not reflect the reality but rather what the interviewee thinks the interviewer wants to hear.

It is of paramount importance that the interview is conducted in a way that always shows respect for the interviewee. This implies that the interviewer should not interrupt or put words in the interviewee's mouth but let them control the interview process by being patient, listening, and by not dominating the conversation. Another way of showing respect is to use plain and understandable language and make sure that questions are being understood by the interviewee and rephrasing them if necessary. No matter how much the interviewer wants information of a

certain kind, the interviewee's boundaries should always be respected, and they should never be pressured into answering any questions. Care needs to be taken when addressing difficult and/or culturally taboo subjects, such as sexual abuse.

The monitor should try to use the methodology of appreciative inquiry¹⁹⁵ which means that they should ask questions also in relation to the positive aspects in the prison, while at the same time getting more knowledgeable about the challenges.¹⁹⁶ This means, for instance, asking what works well in the prison and, if people have been in the prison for a long time, what are some of the major improvements and achievements in recent years. In this way, the monitor will often learn about what is not working well (yet) and in which areas improvements are necessary. An example when interviewing persons in prison could be asking them what they like in their daily activities in the prison. In this way, interviewees will often talk about what they do not like, and which activities may be lacking.

During the whole interview, the interviewer should pay attention to both their own and the interviewee's body language. The interviewee's body language, facial expressions, tone of voice, and gestures can indicate the interviewee's emotional state, willingness to talk about a specific topic, reliability, etc. And the exact same can be said about the interviewer's own body language. For example, if inadvertently the interviewer sends signals that a particular topic is sensitive, the interviewee may decide not to talk further about it, and if body language signals boredom or other negative emotions, the same may happen.

Persons in prison are in a vulnerable position, and sometimes strong emotions surface during an interview. If persons become stressed, sad, or emotionally overwhelmed in any way, their difficult situation should be recognised through empathy. If they say that they will hurt themselves or even commit suicide, staff should be informed and referrals for medical assistance and psychological support should be offered. Some interviewees may become aggressive or expose sexual disinhibitions or delusions during the interview. If that happens, attempts should be made to de-escalate the situation, inform staff, and end the interview.

It is useful to have a list of topics (e.g., admission, material conditions, relations with staff and with other persons in prison, regime, health care, security, discipline, contact with the outside world, etc.) to guide the interview, but it should not be followed too rigorously. During the interview, follow-up questions that respond to what the person is telling, should be asked.

An interviewer may risk finding themselves in a situation where the interviewee only talks about matters that are not relevant to the preventive monitoring purpose, e.g., their own legal case or their wish for an early release. In such instances, cutting the interview short can be considered so as to not spend too much time; but it should always be done respectfully.

Ending the interview

When the interview is approaching the end, the interviewer should close the interview, making sure that the interviewee has given the information that they wanted to give, and that the interviewer has received all the necessary information. Before closing the interview, the interviewer should ask whether the interviewee has anything to add or has any questions.

Since it is only at the end of the interview that the interviewee can provide true informed consent about the use of the information they have provided, the next step will be to go through the informed consent procedure, as stated earlier. This includes making sure that the interviewee is fully informed of, and has truly understood, the consequences of the course of action, including the potential benefits and risks.

Before closing, the interviewer should inform the interviewee of the next steps, i.e., the final meeting with the prison management, a report submitted to the authorities, a follow-up visit by the monitoring team, etc. The interviewer should also inform the interviewee how the monitoring team or other relevant actors could be contacted, if needed, for example in case of reprisals. Finally, thanks and a proper farewell should be given to the interviewee for their time.

After the interview

While still in the course of the prison visit, the interviewer may want to seek to corroborate the information gathered during the interview, e.g., in case of an allegation of ill-treatment. This can be done in subsequent interviews with other persons in prison, review of records and medical files, observation of premises, etc. This should always be done in a way that does not reveal the identity of the interviewee.

In some situations, the interviewer may even have to return to the interviewee *during* the visit to ask additional questions prompted by the interviewer's information gathering. In case the interviewee has injuries resulting from ill-treatment, violence or serious health issues, the monitoring team may also wish their own medical doctor to speak with and examine the interviewee, and to record any medical findings. Conducting such follow-up interviews should always be done with great caution, as they may alert the prison staff to the fact that the monitors have serious findings. As such follow-up interviews may carry a risk of reprisals, the monitoring team should consider carefully whether such follow-up interviews are strictly necessary.

If the monitoring team fears that the interviewee may be subjected to reprisals by the prison staff *after* the visit has ended, they should consider conducting a follow-up visit to the prison. With the permission of the interviewee, the monitoring team may alternatively ask other trusted persons to follow up, e.g., the lawyer, family, or other independent monitoring bodies. In either case, the monitoring team should take steps to minimise the risk of reprisals if there is a suspicion that they might be imposed. For further information about how to minimise the risk of reprisals, please refer to Chapter 5.

If an interviewer is alone with an interviewee during an interview, which may often be the case, it will be difficult to make comprehensive notes and carry out the interview at the same time. And even with comprehensive notes, people forget over time, so it is important that the notes from the interview are written up as soon as possible after the monitoring visit in order to ensure that important details are captured. When doing so, the exact words of the interviewee should be used as far as possible. This adds to the authenticity and credibility of the quotes that may later be used in the monitoring body's reports, etc. It is also advisable to include non-verbal information, such as impressions about the atmosphere, reactions, non-verbal signs, own reflections, the credibility of the

information, and the interview situation. This information will aid the memory when the notes are to be used at a later point in time and again may relay information that adds to the credibility of the information. As soon as possible, the notes and records should be stored in a secure location, and if possible, the data should be de-identified.

8.7 Special considerations when interviewing survivors of torture and other ill-treatment

Speaking about torture and other ill-treatment can be very difficult and painful for survivors who are likely to be traumatised, may be afraid of reprisals, or may be harbouring feelings of shame and even guilt. Allegations of torture and other ill-treatment may come up unexpectedly in an interview, and all monitors need the basic training to handle an initial conversation about this. However, it is important to recognise that in-depth interviewing of survivors of torture requires particular sensitivity, an interview protocol, and careful preparation, and should only be carried out by experienced monitors who have undergone relevant training. If a person has been exposed to torture, physical and/or psychological, it is important that the case is documented. See for more on documentation of torture Chapter 9.

Many types of torture and other ill-treatment leave no marks on the human body, and the monitors will therefore need to be aware of psychological signs, such as anxiety, in the absence of physical bruises. A frequent consequence of torture and other ill-treatment is post-traumatic stress disorder (PTSD). PTSD is an anxiety disorder that may develop after exposure to a life-threatening event with intense fear and helplessness. PTSD has been shown to be particularly frequent following torture and other man-made trauma like sexual violence. PTSD could be described as an alert button, which is switched on all the time. Its four cardinal symptoms are outlined in Box 8.1.



[BOX 8.1] Dominant features of Post-Traumatic Stress Disorder (PTSD)¹⁹⁷

1. Intrusion

Intrusive thoughts such as repeated, involuntary memories; distressing dreams; or flashbacks of the traumatic event. Flashbacks may be so vivid that people feel they are reliving the traumatic experience or seeing it before their eyes.

2. Avoidance

Avoiding reminders of the traumatic event may include avoiding people, places, activities, objects, and situations that may trigger distressing memories. People may try to avoid remembering or thinking about the traumatic event. They may resist talking about what happened or how they feel about it.

3. Alterations in cognition and mood

Inability to remember important aspects of the traumatic event, negative thoughts and feelings leading to ongoing and distorted beliefs about oneself or others (e.g., 'I am bad,' 'No one can be trusted'); distorted thoughts about

the cause or consequences of the event leading to wrongly blaming self or other; ongoing fear, horror, anger, guilt or shame; much less interest in activities previously enjoyed; feeling detached or estranged from others; or being unable to experience positive emotions (a void of happiness or satisfaction).

4. Alterations in arousal and reactivity

Arousal and reactive symptoms may include being irritable and having angry outbursts; behaving recklessly or in a self-destructive way; being overly watchful of one's surroundings in a suspecting way; being easily startled; or having problems concentrating or sleeping.

It is important to always be aware of situations of heightened vulnerability when interviewing persons in prison, such as persons with disabilities, with previous traumatic experiences, or with mental health conditions. Especially persons who may have experienced torture or other traumatic experiences (violence, conflict, sexual abuse) may exhibit signs of PTSD, and a poorly conducted interview may lead to reactivation of the trauma. This may lead the interviewee to suffer again, not only during the interview but also in the days, weeks and months to come. Therefore, the guidance stipulated above should be taken even more seriously when speaking with a traumatised person. The interviewer should seek to have the best possible conversation, let the interviewee guide the speed of the interview, be alert to signs of distress, and navigate according to the explicit or implicit preferences of the interviewee with regard to the course and continuation of the interview.

Concretely, there are additional precautions that should be taken when interviewing a person who is a survivor of torture or ill-treatment, many of whom may have symptoms of PTSD:

- First of all, the interviewer should be careful not to retraumatise the interviewee. This involves coming to an interview well prepared, always being mindful of the setting and the way questions are being asked, and letting the interviewee guide the interviewer along the way.
- Secondly, the interviewer needs to be aware of the interviewee's boundaries. Signs of distress include sweating, trembling, tics, flashbacks, and anger. If any of these occur, the interviewee needs to be asked if they would like to take a break or stop the interview. If the interviewer senses that the topic of discussion is too difficult for the interviewee to discuss, the conversation should be moved to a less sensitive topic, or the interviewee should be given the option to stop. Sexual torture may be particularly difficult to talk about as survivors of sexual torture often feel extreme guilt and shame. If this becomes a topic during the interview, a non-judgmental tone, language and attitude should be adopted, and the survivor should not be made to feel pressured to recount the experience. If relevant, it may also be useful (if possible) to ask if the person might wish to speak to a colleague of the same or opposite sex as the person.
- Thirdly, the interviewer needs to be aware that, due to the trauma suffered, survivors of torture and other ill-treatment may have impaired cognitive abilities or memory, and they may therefore have difficulties providing a chronological and coherent account of the events or may even have blocked out certain memories.

This is to be expected of survivors of torture and should not lead to the conclusion that their account is not credible. In such cases, the monitor will have to try to organise the details in a chronological order and ask the same question in different ways if the information appears incoherent or unclear.

When interviewing a traumatised person, it is very important that a caring attitude and attentiveness are demonstrated. However, physical contact or even proximity can be difficult for survivors of torture and therefore a respectful distance should be maintained.

Empathy can be shown in many ways including through body language and small supportive and understanding remarks during the interview. Another way of showing empathy is to support the strengths of the interviewee by drawing out the stories of resilience and resistance to the trauma/pain (coping mechanisms) and by focusing the attention of the interviewee on his/her strengths in overcoming the challenges.

In case there is a medical professional on the monitoring team, it might be relevant to have this person examine the interviewee to gather physical or psychological evidence of the torture or ill-treatment, e.g., in case the interviewee wishes to take the case forward and it is necessary to secure evidence that would otherwise disappear. Also, the monitoring team may favour such an examination in case the team needs evidence to support allegations of torture in their further prevention efforts. It should, however, be underlined that undertaking a full or partial medical examination of an alleged victim of torture in a place where this person is kept in custody, poses a difficult dilemma and may expose the interviewee to serious harm. While such medical evidence may serve to prevent torture of others, it may also be the cause of reprisals from staff or other persons in prison. The balancing of this dilemma has been thoroughly addressed in the Istanbul Protocol.¹⁹⁸

To avoid leaving the interviewee in a distressed state, it is crucial to ensure a proper closure of the interview. This can be done by moving the discussion onto a less sensitive topic to bring the interviewee into a more neutral and stable state of mind.

If the monitor senses that the interviewee is distressed and possibly even retraumatised, they should ask the interviewee whether they need and wish to have the attention of the health staff, given that such services exist and may be considered independent and impartial. Follow-up questions to the interviewee may be: 'Would you like me to notify the health staff or to directly ask the psychologist or psychiatrist to come and talk to you later?'. The monitoring team may also consider if a transfer of the person to another wing or section of the prison would be advisable to mitigate continuous stress for the person. If so, this should be discussed with the interviewee, and if they favour such transfer, the team should raise this issue with the prison management with the informed consent of the person.

A follow-up visit may be necessary in case the monitoring team senses or fears that a survivor of torture or ill-treatment may have been retraumatised or may risk reprisals. This will give the monitors the opportunity to report to the interviewee on action taken and to check up on their mental health condition.

8.8 Interviewing prison officers, health staff and other civilian staff

A lot of what has been outlined in this chapter so far, equally applies to interviewing prison officers, prison health staff (doctors, nurses, psychologists), and other civilian staff, such as teachers, social workers, or religious figures or members of religious organisations. There are, however, key differences, in relation to the persons' position of power and vulnerability, their role in the prison, and the possible experience of ill-treatment or even torture.

When interviewing staff in prison, it is as important as when interviewing persons in prison to be respectful, establish trust, and ensure privacy. It is also equally important to use the methodology of appreciative inquiry. If you ask officers to speak about what they are most proud of, they will probably also tell you what they are ashamed of. If you ask officers about violence, ill-treatment and torture they may become defensive. No staff member likes to be prejudged or criticised.

Monitors should be able to decide freely which staff members they would like to interview. For instance, it may be that a certain staff member has been mentioned in several interviews with persons in prison as being disrespectful or aggressive, and it may be helpful for the monitors to make their own impression of that person even though they are not there to make investigations for a case against the person. If the prison management seeks to interfere with the monitor's choice of interviewees, the monitoring team should kindly but firmly recall that they hold the power to have interviews with any person who they believe may supply relevant information.¹⁹⁹

It is not uncommon that prison officers and prison managers take a somewhat defensive stance towards monitors. Monitors may be seen as the ones entering the prison with the intention to criticise their performance. It is up to monitors to earn the respect and trust of prison officers and prison management by explaining the role of preventive monitoring, and by demonstrating a deep understanding and expertise on the prison system in general and on the duties and challenges of prison staff specifically. Expressing appreciation for work performed by prison staff and listening to their concerns is important. Impartiality and reasonable professional distance should always be maintained between the monitors and prison staff. Understanding the working conditions of the staff will also help the monitor understand the daily life in prison for those detained. For example, if staff members are completely overworked, it is unlikely that they are able to provide the necessary support to persons in prison.

Specific considerations that may be relevant when interviewing prison officers, health staff and other civilian staff are listed below.

Interviews with prison officers

Prison officers may be interviewed about various aspects of their duties and working conditions, for example, about how they maintain order and how often they use force, about procedures and practices in connection with de-escalation and resolution of conflict, about their initial and ongoing training, their working hours and remuneration, their job satisfaction, or job-related stress. If the monitor

is successful in gaining the trust of individual custodial officers, the monitor may also ask questions about how persons in prison are treated by other persons in prison or even by fellow officers. Prison officers may also be asked about the nature of informal prisoner hierarchies or practices of smuggling in drugs or other contraband. When interviewing prison officers, their account of procedures may differ from the more ideal picture, which is often presented by the prison management during the initial talk.

When interviewing prison officers, it is important to have an open and appreciative attitude, without bias and assumptions. In many cases, prison officers are the ones who have daily contact with those in prison and are well aware of the challenges they face. Therefore, prison officers may be able to give a more accurate account of prison life than the prison management, and they may be able to put into perspective the experiences of those in prison who may not always have understood why certain things are happening, e.g., sanctions imposed on, or transfers of, other persons.

Interviews with health staff

The health staff in the prison will be able to provide valuable information about aspects such as access to and quality of the health care system and access to outside specialised treatment. They will also be able to contribute to an assessment of ill-treatment and violence in the prison. For example, they could provide information about recent cases where persons in prison consulted them due to injuries from violence and provide statistics on such cases. They will also be able to inform the monitor about cases of torture or ill-treatment among newly arrived persons in prison, in case proper initial medical assessments are conducted routinely.

Interviews with other civilian staff

Finally, other civilian staff such as teachers, social workers, priests, imams, and rabbis, may also be able to provide valuable information about the prison regime and general well-being of those in prison. Given their lack of involvement in security-related tasks, they may to a greater extent enjoy the confidence of the persons in prison and therefore become more knowledgeable about aspects of prison life. Some of the non-uniformed staff may also spend more time with those in prison than the uniformed staff and may also feel more comfortable sharing information with monitors because of their independence from the prison. Civilian staff may be asked about a range of issues that relate to prison life, for example, about contact between persons in prison and their families and the outside world in general, the work and activities offered, the main issues that persons in prison raise in their interactions with them, and the relationships between those in prison and staff members. They could also be asked to talk about what they assess to be the main challenges in the institution, and whether they have any recommendations for improvement.

8.9 Further reading

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CHAPTER 9

Documenting torture in the context of preventive monitoring

This chapter deals with documenting torture in the context of preventive monitoring. It explains how documentation can contribute to the prevention of torture and other ill-treatment.

The chapter sets out the preconditions for documentation, including trust, informed consent, mitigation of harm, and knowledge of local patterns of torture. It introduces the Istanbul Protocol as the key international standard for medico-legal documentation and explains its relevance and limitations for monitors.

The chapter also provides guidance on obtaining and recording torture allegations, gathering corroborating evidence, and assessing the credibility of information.

Finally, it addresses follow-up after documentation, including protection, referral, treatment, and recommendations aimed at preventing recurrence.

CHAPTER 9

Documenting torture in the context of preventive monitoring

9.1 Introduction

Documentation of torture can be undertaken for various purposes: for the purpose of pursuing justice processes, e.g., to obtain redress for survivors of torture or to serve as evidence in criminal proceedings against alleged perpetrators, for the purpose of advocating against torture, or for the purpose of accessing treatment and rehabilitation. In the context of preventive monitoring, the documentation by monitors has the purpose of *contributing to the prevention of torture and other ill-treatment through the identification of risk situations and risks that have materialised, which may lead to recommendations for change*. Documented cases of torture or other ill-treatment may, in such situations, serve as part of the basis for the dialogue between the monitoring body and the prison authorities.

Documentation of torture aims to establish the facts of individual experiences of torture and other ill-treatment, guided by documentation standards that will be explained below. This documentation record may – in addition to serving a broader preventive purpose – also turn out to be the first and possibly the most valid documentation record of the event that happened. Eventually, the documentation may even turn out to be the only-ever record. For this reason, it is of utmost importance that the monitor aims to gain as much accurate and reliable information as the situation allows, with due consideration to the current context, the risks of retraumatisation and reprisals, and other negative consequences.

The current chapter deals with documenting torture in the context of preventive monitoring. In doing so, the following questions are addressed:

1. What are the pre-conditions for documenting torture?
2. What are the documentation standards as provided by the Istanbul Protocol?
3. What are the required skills for effective documentation?
4. What are the limitations of documentation by monitors?
5. How to obtain and record a torture allegation?
6. How to obtain other relevant evidence for the purpose of good documentation?
7. How to follow up after documentation?

9.2 Pre-conditions for documenting torture

This section describes various pre-conditions for conducting an interview with a person in the context of documentation of torture. Some of these have already been described in Chapter 8 on interviewing but are repeated briefly to stress their importance here.

Building trust

Properly establishing rapport and trust with the interviewee is paramount for a good interview, and even more so for obtaining accurate, detailed, and reliable documentation of torture.²⁰⁰ Since torture often results in mistrust towards other human beings, it is necessary for a successful interview that the person has trust in the interviewer.

Informed consent

Obtaining informed consent for the steps to be taken in the documentation of torture is an ethical obligation of the interviewer. The interviewee needs to understand the steps of the documentation process (e.g., the interview, a physical examination, a mental health assessment, forensic photographing, recording of the information). While not all steps may be carried out in the documentation process in connection with preventive monitoring, the monitor must weigh the potential benefits of documentation against the potential negative impact. Similarly, the alleged victim should give consideration to the pros and cons of documenting his/her allegation and injuries. An example of negative impact could be the pain/suffering stemming from flashbacks when retelling the story or exposing oneself to the risks of reprisals by the detaining authorities.

Mitigation of the risk of harm

When documenting an allegation of torture, it is crucial to keep the security of interviewees in mind. Caution and sensitivity should always be exercised to avoid harming the person or increasing the person's vulnerability to future harm and risk of reprisals. This includes being aware of the vulnerability of persons who experience symptoms of post-traumatic stress disorder (PTSD). Another important aspect of preventing harm is the safe and secure handling and storage of records from the documentation.

A classical dilemma of monitoring bodies is how to prevent torture, while also protecting individual victims from further harm. As the objective of preventive monitoring bodies is to *prevent* the occurrence of torture and other ill-treatment in prison for the benefit of many, monitoring bodies need to consider carefully what steps to take when they discover and document cases of torture in order to protect the individual concerned. The key question is how monitoring bodies can best contribute to preventing future instances of torture via documentation, while also – as far as possible – shielding victims of past violations from reprisals.

As outlined in Chapter 8, there are ways in which monitoring bodies can select persons in prison for interviews in ways that conceal the victims' identities. If done successfully, this will allow a monitoring body to gather information on instances of torture, which can be conveyed to the authorities in ways that allow the victims to remain anonymous and unidentifiable.

In case information cannot be sufficiently anonymised and made unidentifiable, the mitigation of the risk of harm should always prevail. The monitoring body should then explore other ways of bringing forward protection gaps in their findings.

Knowledge about settings and patterns of torture

Knowledge about the local context and the most common forms of torture and other ill-treatment is important as a background for understanding the individual case of torture. This includes knowledge about the most common treatment of persons at police stations and in prisons and at the specific prison being monitored, such as whether torture is inflicted in this prison, which are the most frequently used methods, and which groups may be specifically targeted. This local knowledge will make it easier for the monitor to be properly prepared, ask the correct questions, and collect the required information. Knowledge about patterns of torture could also be used to corroborate the individual story.

When documenting torture, it is important to keep in mind that many visible injuries disappear and most lesions heal within about six weeks. If, for instance, the thematic focus of a visit is to gather information about torture in police custody, the most effective way is to interview remand prisoners who have recently been admitted to the prison. This is important in order to seize the opportunity to document recent injuries effectively.

9.3 Documentation skills

Standards of documentation

Torture is a traumatic and stressful event, or in the words of the Istanbul Protocol ‘an extraordinary life experience’.²⁰¹ The Istanbul Protocol is the first international manual providing guidelines for the medical and legal documentation of torture and other cruel, inhuman or degrading treatment. It was first published by the UN in 1999 and updated in 2022. It provides a recognised, internationally accepted set of best-practice standards for the investigation and documentation of torture.²⁰²

The Istanbul Protocol focuses on cooperation between lawyers and forensic experts with a view to effectively examining, investigating, recording, and reporting allegations of torture to investigative or prosecutorial authorities or bodies. The importance of both categories of professionals in relation to documenting a case is acknowledged in the Istanbul Protocol and by the commonly used term ‘medico-legal documentation’.

The Istanbul Protocol is primarily used in connection with legal proceedings to assess possible cases of torture and to corroborate evidence of alleged torture, but as noted in its Chapter 7, it can also provide guidance and knowledge for other documentation contexts. Examples of how the Istanbul Protocol may be useful and relevant in a preventive monitoring context include:

- It provides knowledge of medical aspects of torture – examples of physical and psychological consequences.
- It prompts general considerations for the interview and guidance for the person’s testimony and information to collect (as explained below).
- It focuses on interdisciplinary cooperation between lawyers and health professionals, who often are part of the monitoring team.

The Istanbul Protocol stresses how the ethical obligations of beneficence, non-maleficence, confidentiality, and respect for autonomy demand uncompromising accuracy and impartiality in order to establish and maintain professional credibility,²⁰³ and it points to internal and external consistency as important aspects when assessing the validity of information.

Internal consistency refers to corroboration between elements of an individual case. It has to do with the level of consistency between specific allegations of abuse and the documentation of physical and psychological findings. The degree of consistency between the description of physical injuries and reports of subsequent symptoms, the healing process, and chronic symptoms and disabilities, may also support the internal consistency of the clinical findings.

External consistency refers to consistency between individual case findings and knowledge of torture and other ill-treatment methods and practices within a particular region or additional witness information. Examples of external consistency may include descriptions of torture methods as well as identifying information about perpetrators and places of detention. Finally, medical records and accounts from other people in prison who have witnessed the incident may corroborate information. In addition, other external sources of corroboration of the alleged events may be obtained from witnesses, such as other persons in prison, family members, friends, legal representatives, as well as photographs and incident reports.²⁰⁴

Skills required by the monitor

A monitoring team typically consists of various professionals, including for example doctors, psychologists, social workers and lawyers. A monitor should take advantage of the combined skills of the team and include other monitors in the documentation.

Good interviewing skills are fundamental for successful monitoring and documentation and for all interviews with survivors of torture. Although documenting cases of torture should ideally be conducted by a multi-disciplinary team of lawyers, doctors, psychologists, and social workers, there are two categories of professionals that usually become involved in the documentation of torture: lawyers and doctors. Each of these professionals has different expertise to contribute.

Both lawyers and doctors are trained in asking questions and in interpreting and documenting what they see and hear. However, the types of questions they ask are often different. For example, a lawyer may want to know who the perpetrator was and where a particular incident happened, whereas the doctor may be more interested in knowing about the torture methods and the symptoms that a person experienced after the torture happened. The latter may also be the focus for a psychologist on the team. Such medical and psychological impact may corroborate the allegations of torture. Asking these kinds of questions, observing, and shedding light on the case require professional skills that are different for the two professions. Therefore, to get the full picture, both types of professionals need to be involved, and they need to collaborate to be able to interpret and corroborate the testimony.

If a monitor with a non-health background has conducted an interview with someone who has told a 'torture story', it is recommended that they ask a team member with a health background to talk to the person, and examine the person if the person agrees to this and it is possible to conduct such examination in privacy and confidentiality, with minimisation of the risks of doing harm to the person. The same principle may also be true when a monitor with a health background speaks with a person who alleges torture, as advice regarding legal issues may be needed to avoid compromising the case.

Thus, it is recommended to always secure an interview by both a legal and a health professional, if possible, but the medical examination should only take place if the situation so permits, with informed consent, ensuring confidentiality, and when it adds information to the findings of the monitoring body.

No matter who undertakes the documentation, it has the purpose of carefully gathering accurate, detailed, and reliable facts about what happened on the basis of what the person tells and what the monitors can observe and record. The different professional groups will use their professional skills to write a coherent and detailed account on the basis of what is told and found – that is the purpose of documentation by monitors.

In addition, the monitor should be able to use sound judgement and assess the accuracy and reliability of the torture 'story'. Note-taking and final reporting skills are equally important and are often unrelated to the professional background. These skills should be learnt during a period of training/mentoring and supervision by experienced monitors.

9.4 The limitations of documentation by monitors

It is important to remember the limitations of interviews, examinations, and documentation undertaken by monitors, who are not specialists in medico-legal documentation of torture. Knowing the limitations of your profession and experience is particularly important when dealing with survivors of torture in order to avoid causing any harm. For example, an incomplete torture allegation, a retraumatised person unwilling to continue the interview, or a medical examination overlooking evidence of torture may be more harmful than refraining from detailed documentation. The Istanbul Protocol²⁰⁵ provides examples of factors to consider when assessing to which extent a full Istanbul Protocol evaluation can be carried out by a medical professional who is a member of the monitoring team. These include, but are not limited to, available time, expert training, and adequate professional space and conditions.

In many monitoring visits, the reality is that the possibility of documentation will be very limited due to these factors, and a monitor may therefore need to limit the scope of their work to recording the cases of ill-treatment without documenting them as such but rather in an effort to establish whether the allegation could be considered credible enough to inform the recommendations of the monitoring body. Even a monitor with the required expertise needs to carefully consider whether a full evaluation is indeed possible and needed, keeping in mind also that the time used for detailed documentation of a torture case is time that cannot

be used for other preventive monitoring purposes. If conditions allow, it may be a better option to refer the person to other bodies, such as the health services, which in turn may refer for a forensic examination, if this is possible in the country in question. Monitors may also consider, if possible, returning at a later point in time with the specific purpose of documenting the case further.

In the following, relevant steps of documentation are presented while at the same time recognising that it is not always possible to follow all these steps due to practical and physical constraints. Such constraints should not discourage the monitoring body from pursuing the gathering of credible information, in the best possible manner. It is important for monitoring teams to remember that the aim of documentation is not to gather evidence that will be used for justice processes, but rather to gather enough credible information to inform the findings and recommendations of the monitoring body. Therefore, even when documenting past abuses, the aim continues to be preventive.

9.5 Obtaining and recording the torture allegation

This section explains which questions to ask during the interview, what information to gather, and how to do so. What is explained in this section is the overall scope of a documentation interview and examination, but it needs to be remembered that depending on the context, the scope may be more limited for a monitor. For example, a monitor will typically be interested in collecting information about the prison being visited and may thus not want to collect detailed information about what has happened in other prisons. If torture and other ill-treatment are very frequent in the particular prison, the monitor may not want to go into detail on all aspects in all interviews since these may not add anything that they have not heard already.

It needs to be remembered that documentation of such a complex and sensitive issue as torture is not an easy task. Therefore, the monitor may not even succeed in obtaining a testimony about torture, especially not about certain forms of torture such as sexual torture.²⁰⁶

Time and place skeleton

Initially, the monitor should try to obtain factual information, including dates, places, duration of detention, frequency and duration of torture sessions.

As noted in the Istanbul Protocol, one should ‘allow persons to tell their own account of events without interrupting them to first obtain a free recall account but assist by asking questions that increase in specificity’.²⁰⁷

Then the monitor should make a ‘time and place skeleton’ in order to know what happened where and when. This is often helpful considering that traumatised persons may have difficulty in presenting their trauma history in a consistent, logical and sequential way. The time when torture was allegedly inflicted is particularly important to allow for an assessment of the compatibility of the symptoms and medical findings with the alleged torture. For instance, cuts in the skin follow a general development pattern over time towards scarring. Consistency between the history of the origin of lacerations and the findings with respect to scarring is important when evaluating the overall consistency.

The place where the torture was inflicted is often poorly described by the survivors, for instance, because the perpetrators have prevented the person from recognising the place by means of blindfolding or hooding. Furthermore, there is often general confusion and mix-up of facts due to reduced consciousness and extreme fear. The victim may have been exposed to ill-treatment on several occasions and at different venues, e.g., on arrest, during transport to the police station, while held in police custody, during the interrogation and during transport to the pre-trial detention facility.



[FIGURE 9.1] Example of time and place skeleton

23 February 2007 01.35pm	Arrest at home
23 February 2007 01.35pm–02.15pm	Transported by car to Police headquarters in Gega city (fictional city)
24–25 February 2007	Held in custody – multiple (at least 4) interrogations by four different interrogators
After 5–6 (?) days	Transported to Gega central prison
Next 3–4 days	Interrogated twice by the same interrogator ... brought back to the police?
7 March 2007 (Approx.)	Transported to an unknown distant place about 1 hour's drive away (blindfolded)
8 March 2007 (Approx.)	Repeatedly interrogated, returned to the cell numerous times
10 March 2007	Transported to Gega city and released on the street

Information to be gathered

Once a time-and-place skeleton is in place, details of interrogations, torture, and perpetrators may be filled in.

The key questions related to the legal standards aim at documenting:

Who did What to Whom? When? Where? Why?

In the ideal situation, the following information should be recorded:

- **Who:** Who were the perpetrators? From which police, prison, or other security agency? If unknown, can they be described in any way (uniform or plain clothes, names/identification numbers, age, sex, looks, language). Information about, or a description of, any witnesses to the torture is important for a future criminal investigation. Note that witnesses could also include fellow persons in prison, e.g., when the person came back from interrogation.

- **What:** What kind of physical, psychological and/or sexual torture was the person exposed to? Which methods were used (e.g., slaps, punches, kicks, baton blows, suspension, forced standing, electric torture, waterboarding, rape, blindfolding, threats, witnessing torture of others, denial of sleep, seclusion, use of drugs to induce extreme pain or certain symptoms of diseases) and which torture tools were used (e.g., cables, plastic bags, tasers)? Which body parts were affected and/or injured? What was the duration of each method? This information could also include a description of the immediate physical or psychological effects of the torture, as noticed by the person.
- **To Whom:** The identity of the survivor(s) including features of the individual(s) of significance to the impact of the methods used (e.g., physical or mental conditions, age, sex, ethnicity, or other characteristics).
- **When:** The time and duration of the arrest, detention, and interrogation and a description of when the different methods of torture were applied to the person.
- **Where:** The places of detention where the person was detained, if known, including a description of the premises as detailed as possible. In particular, unique features of the rooms and cells, which could be used for a later identification of the place, are of importance.
- **Why:** The motive for the torture is important for understanding the purpose and identifying the perpetrators. Common motives are to obtain information or a confession, to punish, intimidate or coerce the person or a third person, or for any reason based on discrimination.

In addition to the aspects above, an important question to ask to elicit information about the physical and psychological aspects of the ill-treatment experienced is 'How are you feeling now?' which will usually prompt the victim to share the physical and psychological effects of the events.

Challenges when collecting the information

Several factors may complicate the task of obtaining the above information:

- The person may be psychologically marked by the symptoms of traumatisation and accordingly have difficulties remembering and/or giving a coherent account of what he/she experienced and the circumstances surrounding it.
- The person may be re-experiencing the torture, triggered by giving the account, and in such case, the process of telling the story must be interrupted.
- The actual story of the torture allegation may be quite complicated – many arrests and detentions, many transfers between different police stations, many interrogations during each detention, and many torture methods and forms of ill-treatment during each interrogation.

In case of very complicated torture cases, the monitor may need to decide to focus on only certain parts of the story. The selection may use different criteria, for instance:

- The part of the allegation which is most important to the person
- The part of the allegation with the most brutal torture

- The part of the allegation relating to physical consequences, possibly those that are still present on the body of the person
- The part of the allegation that is related to the institution being monitored
- The most recent part of the torture allegation
- The part of the allegation that has aspects that may lead to concrete recommendations following the monitoring visit.

After the interview, the monitor should have gathered information about the following:

- The **survivor**, including name, personal identification number, gender, age, nationality, occupation, place of residence, place of detention, etc. – and their psychosocial history and any previous arrests.
- The **circumstances** around the torture episode(s) that should be systematised according to the questions: who? what? when? where? why?

Assessment and organisation of information collected during an interview

Subsequently, the information needs to be assessed in light of the standards of documentation. It is important to remember impressions during the interview (reactions from the person, non-verbal signs, etc.).

It is likely that some details are missing and that the chronologies are inaccurate. The monitor should be aware of the reasons for such inaccuracies (i.e., difficulty remembering and narrating due to memory difficulties), note the missing information, explain the inconsistencies, and assess whether the inconsistencies make the factual information unreliable or whether, as noted in the Istanbul Protocol, 'a broad outline of the traumatic events and torture will emerge and stand up over time'.²⁰⁸

9.6 Other relevant evidence

Documentary evidence

Any other evidence that could corroborate the information provided by the survivor should be pursued. This could include medical records, as available in the health clinic where the person may have been seen by a health professional. If torture happened during arrest, interrogation, or detention in a police station, the results of the initial medical assessment upon arrival in the prison may be particularly important. Records on the whereabouts of the person (detention register) may also be helpful. However, the monitors need to be aware that for both medical records and detention registers, the reality may be that there are incomplete or inaccurate entries.

Photos

In case the monitoring team has brought a camera into the prison, any relevant injuries such as bruises or scars could be photographed with the victim's consent for evidential use. The risk in relation to theft, copying, and misuse needs to

be carefully weighed against the potential benefits. In order to maximise the usefulness of the photography, basic principles of forensic photography should be complied with, as outlined in Box 9.1.



[BOX 9.1] Forensic photography

- Use a forensic ruler and specify date, person, place and photographer
- Ensure sufficient light
- Go as close as the situation permits
- Take an overview photo as well
- Protect the data carefully against theft, copying, and misuse

Information from witnesses

Finally, there may be witnesses who may contribute to the assessment of the case by providing a testimony. It could for instance be a fellow person in prison or health staff member who may have witnessed the torture. It may also be that they did not witness the torture but are able to describe the events before and after the torture, including the health state of the person.

In the context of use of force, no matter whether or not it was lawful, necessary and proportionate, the place of detention should draw up an incident report. This describes the incident and steps taken by the officers, including any use of force and means of restraint.

Following an incident within the place of detention, the person may be referred to the prison doctor for a medical examination to document injuries and other health consequences and provide treatment and follow-up as needed.

Footage from CCTV and body-worn cameras

In those cases where the survivor of torture is able to recall with some precision where and when the torture was inflicted in the prison, the monitoring team should seek to retrieve and watch the footage, which may confirm or disconfirm the allegation of torture.

9.7 Follow-up after documentation

The findings from one or several documentation interviews should be evaluated by the monitoring team, and it should be assessed whether there is consistent information that would lead to an assessment of the allegations as credible. It is not the role of a monitor to make an assessment of whether the alleged torture or ill-treatment has taken place, but rather to assess whether, based on the information received, there is a credible probability that such an incident has occurred. If the monitoring body considers that there is such probability, they need to consider a series of additional aspects, including but not necessarily limited to the following questions:

- Does the person need protection and if yes, how? The person may be at risk of reprisals after having provided an account of the torture or ill-treatment. If there are strong suspicions that a person may be at risk, the monitoring team should seek to protect the person as much as possible, for instance by follow-up visits to the prison or by referring the case to other protective mechanisms.
- Does the person need referral to further documentation, and how do relevant authorities become involved? If yes, how can referrals be ensured and facilitated through existing channels and to those who have the respective responsibility?
- Does the person need referral to treatment or other support? If yes, could this treatment/support be provided within the prison system or should referrals to external doctors and specialists be facilitated? Could the person be referred to civil society organisations providing treatment/support?
- What recommendations should be given to the institution and central authorities to prevent similar episodes in the future? Recommendations could, for instance, focus on the importance of conducting an initial medical assessment of all persons entering the institution, to be able to identify signs of previous torture and/or ill-treatment. They could also focus on the overall 'climate' in the institution, including the way prison officers and persons in prison interact, focusing on increasing mutual respect.

9.8 Further reading

- DIGNITY (2021). *Collaboration between medical doctors and lawyers when documenting torture in North Africa*. DIGNITY Danish Institute against Torture 2021.
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- WMA (2020). *WMA Statement on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment. Revised version (first adopted by the WMA General Assembly in 2003)*. World Medical Association General Assembly, 2020.
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Part 3

Key areas to monitor



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CHAPTER 10

Admission

This chapter addresses admission as a critical first stage of imprisonment and an important focus area for preventive monitoring. It explains how registration, provision of information, the initial medical assessment, searches, classification, and allocation shape a person's transition into prison.

The chapter addresses how poor admission procedures may lead to ill-treatment. It also highlights the role of admission in identifying injuries, health needs, risks of suicide or self-harm, and specific protection needs.

Finally, the chapter outlines how monitors can assess admission procedures through observation, review of registries and medical files, and interviews with recently admitted persons, health care staff, and prison officers.

CHAPTER 10

Admission

10.1 Why monitor admission?

Admission refers to the procedures and processes taking place during the period in which a person is being admitted to a prison. It is the starting point of a person's life in prison, and it brings significant and often detrimental changes for that person in many spheres. When a person arrives at a prison, there are certain routine procedures that are necessary for ensuring a smooth transition as well as the safety and security within the prison environment.

The admission process should be as smooth as possible to minimise the stress and challenges that persons face during their first hours of imprisonment. Important information needs to be exchanged. If the process of such exchange of information is well implemented, it helps to reduce the risk of uncertainty, fear, tension, and potentially harmful situations.

The registration of all persons upon admission in the prisoner file management system is essential. It is important to ensure a proper classification, which takes into account specific needs and risks, and an appropriate allocation to particular wings and cells. If such registration is not well-performed, it may lead to situations in which persons are exposed to safety and security risks. In the worst case, poor or non-existent registration may entail that persons are 'lost' in the system, which may amount to arbitrary detention or even enforced disappearance. Such a situation is unlawful, as clearly stated in several international standards.

The initial medical assessment is an essential safeguard against torture and other ill-treatment. It allows for the detection of any signs of ill-treatment that may have been inflicted before admission. It also facilitates the timely and adequate provision of health care and protection measures, if needed. If persons do not receive the necessary care and protection because of a failing admission procedure, this may in itself amount to ill-treatment.

The admission process often includes body searches, such as pat-down searches or strip searches. Body searches may be a necessary security measure to prevent the entry of dangerous and prohibited items, such as weapons, drugs, and cell phones, and to protect the safety of persons in prison and staff. However, they have to be carried out in a manner that respects a person's human dignity and privacy, and they are an important area for monitors to look into. International standards underline the need for regulation of searches, the exceptional nature of body searches, and the requirement that searches are conducted in a manner that respects human dignity. Body searches could be done in different ways and come along with different challenges and risks.²⁰⁹ More information on monitoring body searches can be found in Chapter 15 on Security.

Monitoring bodies should closely monitor the admission procedures during their visits and address the causes of any deviation from the relevant standards through their findings and recommendations. Advocating for the strengthening of admission procedures as prescribed by legal standards is directly related to minimising the risk of torture and other ill-treatment.

The examples below are fictional but based on real-life examples. They present scenarios in relation to elements of the admission process, which may amount to ill-treatment.

[EXAMPLE 1] Lack of initial medical assessment

A monitoring body notices that in several prisons in a country, persons do not undergo an initial medical assessment as a standard procedure after admission. When talking to persons in those prisons, the monitoring body was informed about several reports of physical ill-treatment by the police during arrest and interrogation. Due to the absence of an initial medical assessment, cases of physical abuse occurring prior to a person's admission to these prisons, are not being documented or investigated.

[EXAMPLE 2] Poor classification and individualisation practices

In a prison in a certain country, different categories of persons in prison are accommodated together while they should, in fact, be separated. For instance, healthy persons are accommodated together with persons with an infectious disease, non-smokers are accommodated together with smokers, young adults are accommodated together with adults. These practices may amount to ill-treatment and increase the likelihood of further ill-treatment during imprisonment.

10.2 What to monitor?

Admission is a phase during which a lot of information needs to be exchanged, both from the prison authorities to the newly admitted person and the other way around. It encompasses several elements, which can be summarised as:

1. Registration
2. Provision of information
3. Initial medical assessment
4. Searches
5. Classification and individualisation

Registration

All persons being admitted to prison should be registered in the standardised prison file management system. It may be an electronic database or a registration book. Records need to include a minimum set of information about the person, including their identity, the reasons for their detention, the date and hour of their admission and release as well as any transfer, any visible injuries and complaints about prior ill-treatment, an inventory of their belongings, the names of their family members, emergency contact details, and information on the person's next of kin.

Provision of information

All persons being admitted to prison should receive information about the prison and its rules, procedures, and practices, in order to be able to exercise their rights, honour their obligations, and feel safe in prison. Every person shall be promptly provided with written information, in a language he/she understands, about the prison law and regulations, their rights and obligations, the incentives/privileges scheme, and all other matters necessary for the person to adapt to prison life.

Initial medical assessment

All persons being admitted to prison should, as soon as possible after their arrival, undergo an initial medical assessment by a doctor or other qualified health care professional. Information about a person's health, health care needs, and medical history is needed, including any injuries sustained prior to admission, to ensure adequate health care, prevent the spread of contagious diseases, and identify risks and special needs, such as risk of suicide or self-harm. All medical examinations shall be undertaken in full confidentiality. More on the initial medical assessment is addressed in Chapter 14.

Searches

All persons being admitted to prison will undergo searches, both searches of their personal belongings and body searches. There must be clear rules on when and how different types of body searches, notably strip searches and body cavity searches, may be conducted. It is important that searches are conducted with dignity and in the least invasive way possible.

Classification and individualisation

All persons being admitted to a prison should be assessed for their needs and potential risks, such as risk of suicide or self-harm, aggressiveness, and risk of escape, to enable the prison authorities to make an informed decision about the person's classification and accommodation in the facility. It is important that an individual needs assessment is conducted upon admission in order to ensure security and rehabilitation during imprisonment and reintegration into society upon release in the best possible way. Different tools exist that can be used for this purpose, for example Level of Service/Risk, Need, Responsivity and Dynamic Risk Assessment for Offender Re-entry.²¹⁰ Such an assessment allows for early sentence planning and, as described further in Chapter 18, also for preparations for release from prison.

10.3 How to monitor admission?



Observations

A visit to the admission unit or quarantine unit will assist monitors in assessing the admission premises on the spot. In some countries, prisons have, apart from admission units, separate 'arrival units' where persons may be held for a considerable length of time before being transferred to the formal admission unit to be screened, assessed, and registered. These arrival units can be places where people who have been ill-treated in transit or in police custody are kept to 'improve' before being moved into the more formal screening and admission process and are therefore of key importance for monitors to visit.

The transportation to the prison as well as the material conditions during admission are important factors that will impact the overall assessment. For example, if there is no designated space for informing admitted persons about their rights, for conducting individual medical assessments, and for conducting body searches, this may indicate that admission procedures are carried out sub-optimally or that they are conducted in inappropriate spaces that lack privacy, confidentiality or security. In some cases, monitors may be able to follow and observe an admission process as it takes place.



Written information

Registries and individual medical files are an important source of information when monitoring the admission process. Various registries, including the prison file management system, may be reviewed to check whether persons recently admitted are included in the registry and whether all the required personal information has been recorded. A review of records is also necessary to assess whether they are kept up to date and to assess the quality of the admission procedures. The nature of the registries will depend on the relevant national legislation and regulations but should cover a set of minimum information provided for by international standards (see above). Individual medical files will provide valuable information regarding the initial medical assessment, medication, and signs of torture and other ill-treatment. Reviewing relevant written information may give rise to questions and concerns that could be further addressed by the monitors during interviews. Finally, the review of the admission registry will also help the monitor identify potential interviewees among the recently admitted persons.



Interviews with persons in prison and staff members

Interviews with persons in prison, health care staff and prison officers will yield important information about how admission is undertaken in practice. Persons recently admitted to the prison could be prioritised for interviewing, particularly if the monitor wishes to identify any instances of ill-treatment inflicted in the previous place of detention, such as during police custody or transport. It is important to assess which procedures the admission process comprised (for instance, was an initial medical assessment conducted? Were they screened for risk of suicide/self-harm?), how persons admitted to the prison experienced the relevant procedures and their first days in prison, as well as whether they are adequately aware of

their rights and the regulations. The monitor should aim to include interviews with persons in situations of vulnerability when it comes to admission and classification procedures. Some examples of specific considerations would be the management of withdrawal symptoms in persons with a substance use problem, the availability of interpretation services for persons who do not speak the local language, considerations on arrangements for children living with their mothers in prison, and classification of persons who do not conform to gender binary norms (i.e., transgender, intersex, queer).

The attitude of prison staff during the admission procedure, as well as their knowledge and skills are also important for assessing the level of compliance with international standards. Health care staff will be able to discuss with monitors the practical ways in which they perform their duties regarding the initial medical assessment upon admission and any recording and reporting of signs of torture or ill-treatment.



Standards of relevance to monitoring admission

Records/Prisoner file management system:

- Mandela Rules, Rules 6–10
- Bangkok Rules, Rule 3
- Havana Rules, Rules 20–21

Information upon admission:

- Mandela Rules, Rules 54–55
- Bangkok Rules, Rule 2
- Havana Rules, Rules 22–25

Admission procedures:

- Mandela Rules, Rules 30, 50–53, 67–68, 93, 119
- Bangkok Rules, Rules 2, 4, 6, 19–21
- Havana Rules, Rules 23–24, 27, 50

10.4 Further reading

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cti2024.org/resource/cti-initial-medical-assessment-of-detainees-upon-admission-tool
- The Yogyakarta Principles. *Principle 9: 'The Right to Treatment with Humanity while in Detention'*.
yogyakartaprinciples.org/principle-9

CHAPTER 11

Material conditions

This chapter addresses material conditions as a central element of preventive prison monitoring. It explains why advocating for improvements to material conditions and identifying risks of deterioration is directly related to ensuring the dignity of persons in prison and preventing torture and other ill-treatment.

The chapter examines key aspects of material conditions, including accommodation and sanitation, hygiene, clothing and bedding, nutrition, overcrowding, and States' duty of care.

Finally, the chapter outlines how monitors can monitor material conditions through observation, review of written information, and interviews with persons in prison and staff members.

CHAPTER 11

Material conditions

11.1 Why monitor material conditions?

Material conditions in prisons refer to the living conditions of persons in prison and the working conditions for prison staff. Material conditions, including those in the cells and dormitories, are important to examine as these are the conditions under which persons in prison live most of the day, often for months or years. They are central to their quality of life, including their health. Poor material conditions may, in themselves, amount to ill-treatment. They may hamper rehabilitation and reintegration upon release, while also creating various challenges for effective prison management.

Specific attention is required when poor material conditions are the result of overcrowding or when there is a risk of prison overcrowding. Overcrowding is a systemic and chronic issue that requires a thorough analysis of its causes to suggest measures for addressing it. The causes – and the recommendations of monitoring bodies – will have to go beyond the prison context and address policies and practices within the criminal justice system. These include sentencing practices and the use of non-custodial measures, such as alternatives to pre-trial detention and imprisonment, and early conditional release, as mentioned above.²¹¹

Monitoring bodies should closely monitor the material conditions during their visits and address the causes of any sub-standard conditions through their findings and recommendations. Advocating for improvements to material conditions and identifying risks of deterioration are directly related to ensuring the dignity of persons in prison and preventing torture and other ill-treatment.

The examples below are fictional but based on real-life examples. They outline scenarios in which material conditions amount to ill-treatment and power hierarchies in a prison increase the risk of ill-treatment.

[EXAMPLE 1] Poor material conditions amounting to ill-treatment

In several prisons in a certain country, living conditions amount to inhuman and degrading treatment. The space in which persons moved about in the dormitories was covered with mattresses. There were also mattresses under the beds (a space that was about 30 cm high) and in the bathroom, where they were in contact with water. In some dormitories, there were beds sitting atop the toilets. There was a widespread presence of bedbugs in mattresses and cockroaches in the cells. Several persons suffer from untreated skin rashes and wounds caused by the bedbugs.

[EXAMPLE 2] Black system with regard to living conditions

In many prisons in a certain country, persons are accommodated in different departments of the prison, based on a 'black system', i.e., a parallel system of governance of the life and privileges inside the prison. Persons belonging to certain groups in situations of vulnerability are clearly being disadvantaged and stigmatised because they are forced to stay in segregation with worse living conditions than the other persons. In some prisons, they even stay in separate premises with very poor conditions, and they are forced to carry out degrading tasks.

11.2 What to monitor?

Material conditions include various aspects of life in prison and monitoring material conditions therefore encompasses several elements. Some of these aspects are closely linked to the premises (such as space, ventilation, light), while others relate to services offered within the prison (such as nutrition, hygiene). They can be summarised as follows:

1. Accommodation and sanitation
2. Hygiene
3. Clothing and bedding
4. Nutrition
5. Duty of care
6. Overcrowding

Accommodation and sanitation

As highlighted by the European Committee for the Prevention of Torture (CPT) in its preventive standards, all persons in prison should have sufficient living space²¹² and be accommodated in adequately furnished cells (with a separate bed, table, chair and storage space), which are in a good state of repair. There should be access to natural light and ventilation and cells should be equipped with artificial lighting and heating, and a call system. Sanitary installations shall be adequate, including clean and decent toilets and bathing and shower installations, which will allow everyone to meet the needs of nature.

Hygiene

All persons in prison should be accommodated in facilities of clean and decent standard. They should also have adequate quantities of essential personal hygiene products, including sanitary pads for women, as well as cleaning products for their cell. Persons in prison should be provided with water and be able to take a hot shower as frequently as necessary for general hygiene, at least once a week.

Clothing and bedding

Persons who are not allowed to wear their own clothing shall be provided with clothes suitable for the climate. Such clothing shall in no manner be degrading or humiliating. All clothing shall be clean and kept in proper condition. Every person shall also be provided with sufficient bedding, which shall be clean when given out, and changed often enough to ensure its continued cleanliness.

Nutrition

Ensuring that all persons in prison receive nutritious meals is an essential obligation of prison authorities. All persons in prison should be provided with meals with adequate nutritional value and shall have access to clean drinking water whenever they need it.

Duty of care

When the State imprisons a person, it assumes a duty of care, which includes the responsibility to provide safe, secure, and dignified conditions within the prison. Since deprivation of liberty is imposed as punishment and not *for* punishment, it must in no way be made more severe by poor material conditions, which infringe on a person's dignity and result in inhuman or degrading treatment. Moreover, material conditions in prisons constitute the working conditions for prison staff. Therefore, poor material conditions affect not only those detained, but also prison staff and the way they are able to carry out their duties.

Financial resources provided to prison systems are usually limited.²¹³ Prisons require significant resource allocations for them to operate effectively both in terms of providing for the basic needs of those in prison (food, health care, accommodation) and in terms of covering the running costs (electricity, water, maintenance) and costs for safety and security (equipment, staff salaries, training and education).

Overcrowding

One of the main causes of poor material conditions is *overcrowding*. In 2024, only one in three prison systems worldwide reported operating within official capacity,²¹⁴ while in 2023 120 countries reported that their prisons were operating over official capacity.^{215, 216}

Although there is no universal definition of overcrowding, the most common definition relates to spatial density such as living space per person and to comparing the official capacity of a prison to the actual prison population.²¹⁷ Overcrowding impacts negatively on most aspects of prison life as it puts a strain on prison systems, which are expected to function effectively for larger prison populations than they were meant for. Material conditions are severely affected when prisons are overcrowded: cramped and unhygienic accommodation, bedding and nutrition may not be sufficient, while health deteriorates since sanitation, ventilation, and hygiene procedures may not be adequate. The level of overcrowding in a prison, or in a particular part of it, may in itself be inhuman or degrading from a physical standpoint.

Addressing overcrowding requires that the monitor examines issues beyond the prison setting. This includes sentencing practices and the use of alternatives to detention and imprisonment. Monitors may consider looking into the following questions:

- How long does it take for a trial to be completed with a final verdict?
- How often do courts consider alternatives to pre-trial detention (e.g., home arrest, reporting obligations, retention of travel documents) and on what grounds?
- Are persons placed in prison for very short periods, which do not allow for rehabilitation?
- Are there minimum sentences for specific crimes and how are the sentencing practices?
- How often do courts issue non-custodial sentences (e.g., fines, suspended sentences, community service)? For which crimes and on what grounds?
- Are other measures such as parole and early conditional release provided for and applied?

11.3 How to monitor material conditions?



Observations

A first impression of the material conditions may be gained during the initial tour of the prison premises. Monitoring material conditions is best done by visiting the individual cells, dormitories, and sanitary facilities, measuring the living space and recording how cells are furnished, the conditions they offer as well as their state of repair and cleanliness. It is an assessment that the monitor can only make by being present and seeing what happens in practice: How hot or cold are the cells? Are they well-ventilated? Is there enough daylight? What are the meals like? As monitors gain more visiting experience, the sights, sounds, and smells that they sense during visits to the premises will start having meaning and will form a clearer picture of the material conditions in the prison.

The accessibility of reasonable accommodation and adjustments, e.g., concerning sanitary facilities, should be assessed for persons with disabilities or other health conditions, to ensure their full and effective access to prison life on an equitable basis.

In order to assess the food, monitors are advised to visit the prison kitchen, to observe conditions and hygiene in the kitchen, and, if it is assessed to be safe for their health, even taste the food. The way food is stored and distributed as well as the timing of meals across the day are important aspects to monitor. In case the food is suspected to be insufficient in quality or quantity, this may be followed up with the health services, possibly searching for data on weight loss or nutrient deficiency disorders among persons in prison.



Written information

Documents, such as lists of persons in prison, may provide details or substantiation of the observations made regarding the occupancy level. Basic information about the current and projected number of persons in prison, as compared to the prison's official capacity, may provide information about current and expected levels of overcrowding. Similarly, maps of the prison with indications of cell and dormitory size can be used to establish whether there is sufficient living space for the current prison population.

Monitors may also look into daily menus and nutrition programmes (especially for persons with special dietary needs such as those with a physical health problem, elderly, or juveniles and young adults), health inspection reports, repair records, etc., and check with the persons in prison if these are accurate and upheld.

In women's prison, monitors may also look into issues such as the accessibility of sanitary pads and appropriate accommodation and daytime facilities for children who are staying with their mothers in prison.

If persons in prison raise complaints about material conditions based on special needs, the individual files, including medical records, may be helpful in determining whether such needs have been met.



Interviews with persons in prison and staff members

Interviews will shed light on how persons in prison experience the material conditions and how these affect their daily life and the overall functioning of the prison – both for persons in prison and staff members. In case of overcrowding, interviews with both persons in prison and prison staff should focus on the impact of such overcrowding on relations between persons in prison and staff, lock-up time, access to purposeful activities and outdoor exercise, access to health care, and overall safety in the prison. For instance, persons in prison may elaborate on the limited access to sanitary facilities or poor sleeping conditions. Interviews can also give the monitor information about the quantity and quality of the food and the way it is being distributed. It is important to keep in mind that what is an adequate quantity of food will vary from person to person and that some persons have special nutritional needs that must be met.



Standards of relevance to monitoring material conditions

Accommodation, sanitation and ventilation:

- Mandela Rules, Rules 12–17, 19–21, 35, 42
- Bangkok Rules, Rule 5
- Havana Rules, Rules 31–34, 36

Hygiene:

- Mandela Rules, Rules 18–21, 35, 42
- Bangkok Rules, Rule 5
- Havana Rules, Rules 33–34

Nutrition:

- Mandela Rules, Rules 22, 35, 42
- Bangkok Rules, Rule 48
- Havana Rules, Rule 37

11.4 Further reading

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CHAPTER 12

Daily regime

This chapter addresses the daily regime in prisons and explains why access to purposeful activities is essential for dignity, well-being, rehabilitation, and reintegration. It examines how work, education, vocational training, outdoor exercise, religious or spiritual guidance, counselling, sport, and other activities shape daily life in prison.

The chapter highlights the risks created by idleness, prolonged lock-up, unequal access to activities, and unlawful practices such as forced labour. It also considers systems of privileges and the need for transparency, fairness, and non-discrimination in access to activities.

Finally, the chapter outlines how monitors can monitor the daily regime through observation, review of written information, and interviews with persons in prison and staff members.

CHAPTER 12

Daily regime

12.1 Why monitor the daily regime?

Daily regime in the context of prisons can be defined as the daily schedule of activities for those in prison, including work, vocational training, education, library provision, offending behaviour programmes, counselling, group therapy, exercise, physical education, sport, religious or spiritual guidance, social and cultural activities, and preparation for release.²¹⁸

A satisfactory programme of activities is of crucial importance for the well-being of those in prison, whether sentenced or awaiting trial, and it facilitates their rehabilitation and reintegration into society. Structured activities also help maintain order within the prison, and they reduce idleness, boredom, and frustration, which can contribute to a safer prison environment.

Spending time in prison without engaging in meaningful activities often means that persons in prison remain physically and mentally inactive, do not socialise, and do not get opportunities to acquire new skills. This impacts negatively on persons' physical and mental health, it may trigger tension and violence, and it is likely to hamper rehabilitation and reintegration. Not providing a satisfactory programme of activities may also amount to ill-treatment. Similarly, offering activities under unlawful conditions, e.g., forced labour, may amount to ill-treatment.

Monitoring of the daily regime is crucial to ensure that all persons in prison, regardless of their background, criminal charge, sentence length, or behaviour, have equal access to activities, including those on remand as well as those who have been sentenced. It is also important to monitor whether those in prison are provided with varied opportunities to engage in purposeful activities. If a prison is not offering such opportunities, then monitors are well placed to identify the underlying causes and issue targeted recommendations to the responsible authorities to address these causes. Advocating for improvements to the daily regime is directly related to ensuring the dignity of persons in prison and preventing torture and other ill-treatment.

The examples below are fictional but based on real-life examples. They illustrate how working conditions for persons in prison and lack of access to daily activities may amount to ill-treatment.

[EXAMPLE 1] Working conditions amounting to ill-treatment

In a prison in a country with a warm and humid climate, all persons are required to work when a doctor or other qualified health professional has assessed the person fit for work. The work involves chopping wood for a full working day, in the sun. There are no opportunities for working in the shade. Work lasts from 9.00am till 5.00pm with only one 30-minute break. They are only allowed to

drink and eat during this break, leading to many persons being overheated and exhausted and on some days, this even resulting in persons fainting and/or suffering heatstroke.

[EXAMPLE 2] Poor daily regime for juveniles

In a prison in a certain country, juveniles are kept in the same department as adults, but they cannot mix during daily prison life. This means in practice that juveniles who are accommodated in this department end up being locked up for more than 19 hours a day, while the adults have a much more favourable regime with many more hours outside their cells. This implies that juveniles are de facto 'penalised' by the system despite their increased vulnerability.

12.2 What to monitor?

Introducing a balanced daily regime with purposeful activities of a varied nature linked to an individual sentence/treatment plan, which reflects the specific needs of the individual, is of great importance for their rehabilitation and preparation for release and reintegration into society. Underpinning the daily regime is the principle of normalisation, which entails that active steps should be taken to ensure that prison life is as close as possible to life in the community.²¹⁹ Unfortunately, many prison systems do not give sufficient priority to providing purposeful ways of spending time in prison. This may be due to challenges related to overcrowding, lack of human and financial resources, and concerns about safety. Nevertheless, ensuring purposeful activities of a varied nature also contributes to a more secure environment. Remaining idle during imprisonment raises persons' levels of anxiety, aggressiveness, and violence. Social order requires a balance between security and more humane values of mutual respect, sharing resources, and developing the human potential.²²⁰

Monitoring the daily regime encompasses several elements, which can be summarised as follows:

1. Activities
2. Outdoor exercise
3. Education and vocational training
4. Work
5. Systems of privileges

Activities

International standards require that activities provided by the prison shall be of a varied nature, such as education, vocational training and work, as well as other forms of assistance including those of remedial, moral, religious, spiritual, social, and health- and sports- based nature. Activities should also be delivered in line with individual treatment needs and with respect to the general principle of non-discrimination. Importantly, the aim should be to ensure that all persons

in prison, including those on remand, spend a reasonable part of the day (i.e., eight hours or more) outside their cells engaged in purposeful activities of a varied nature.²²¹

It is important to assess the individual person's access to education, work, etc., the reason being that in some prisons, these daily activities are only available for a very small group of persons. With a limited offer, different models are put in place in different prisons to decide who should benefit from the activities, e.g., as an earned benefit for exceptionally good behaviour or depending on time until release. Access to work and education, as well as other activities, should of course be applied transparently and equally to all.

Outdoor exercise

International standards provide a strict minimum time requirement for outdoor exercise, i.e., that every person in prison who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily. Of course, this minimum requirement shall not prevent authorities from granting longer periods of outdoor exercise if it is possible. This provision should also not be interpreted as allowing the practice of having to spend the rest of the day (23 hours) in the cells without any other out-of-cell activities. Facilities for outdoor exercise should be sufficient to permit persons to exert themselves physically.

Education and vocational training

The time spent in prison shall be used to establish the will to lead law-abiding and self-supporting lives after release by encouraging persons' self-respect and developing the sense of responsibility. Therefore, education and vocational training play a key role. According to international standards, education shall be offered to all persons capable of profiting from it, and education of illiterate prisoners and of young prisoners is compulsory.

Work

Those serving a sentence shall have the opportunity to work, after a doctor or other qualified health-care professional has assessed that they are physically and mentally fit for that. Sufficient work of a useful nature shall be provided to keep persons in prison actively employed. According to the international standards, the work offered shall be useful and, as far as possible, of such a nature that it will maintain or increase the persons' ability to get a job after their release. Certain basic rules should be in place to ensure that persons in prison are not exploited by the prison authorities. For instance, the maximum daily and weekly working hours shall be fixed by law or regulation and there shall be a system of equitable remuneration for the work.

Systems of privileges

Systems of privileges – appropriate for the different categories of persons in prison and the different methods of treatment – should be established at every prison. The purpose of a privilege scheme is to incentivise persons in prison to abide by the rules and engage in the prison regime and rehabilitation, including education, work, and substance use interventions. As such, the system seeks to

encourage good conduct, develop a sense of responsibility, and secure the interest and cooperation of persons in prison in their treatment. By contrast, if persons in prison behave poorly or refuse to engage, privileges will be taken away from them.

Such systems of privileges can be misused and become reason for corruptive practices. Therefore, relevant criteria need to be in place, as well as decision procedures. Transparency and fairness are crucial in ensuring that privileges are implemented in a way that promotes responsibility and cooperation by persons in prison.

12.3 How to monitor daily regime?



Observations

Observing the relevant premises (workshop areas, classrooms, exercise yards) is an important element in monitoring to assess whether activities are being offered in practice, are accessible, and are offered in a satisfactory, suitable, and non-discriminatory manner. Monitors may also observe whether persons in prison are mostly locked-up in their cells or whether they can circulate freely within the prison wings. Observing the energy levels and alertness of persons in prison may also provide an indication of whether they are sufficiently stimulated with purposeful activities. In a prison accommodating women, monitors should assess whether they are offered a balanced and comprehensive programme of activities that takes account of gender-appropriate needs.



Written information

It is useful to review relevant written information such as daily schedules, attendance lists of activities, and individual assessments regarding work. Information from such written information will allow monitors to validate the information received from interviewees or to clarify some issues through further interviews with prison staff or those in prison.



Interviews with persons in prison and staff members

Interviewing both staff and persons in prison will allow monitors to collect information on daily life in prison, and how daily activities are being offered, experienced, and assessed by those involved. It is especially useful to interview staff who are directly involved in the design and implementation of activities, such as social workers, teachers, and medical staff. Prison officers can provide information on the procedures applied, on their assessment of the activities offered, on the facilities and conditions available, etc.

Monitors may choose to prioritise interviews with specific groups of persons in prison who are more likely to face barriers in accessing daily activities, such as those who do not speak the local language and in need of interpretation services, or those with a physical or mental disability. There are several issues that monitors may discuss, including the procedures to access activities, whether they feel safe during such activities, whether purposeful activities are limited, who is involved in the delivery of the activities, and whether education/work is helpful for their lives after release.



Standards of relevance to monitoring daily regime

Activities:

- Mandela Rules, Rules 2, 4, 5.1, 65–66, 91–92, 104–105
- Bangkok Rules, Rules 42, 54
- Havana Rules, Rules 18, 38–48

Outdoor exercise:

- Mandela Rules, Rules 4, 23, 35.1
- Bangkok Rules, Rule 48.1
- Havana Rules, Rule 47

Education and vocational training:

- Mandela Rules, Rules 4–5, 64, 104, 105
- Bangkok Rules, Rule 37
- Havana Rules, Rules 18, 38–42

Work:

- Mandela Rules, Rules 4, 96–103
- Havana Rules, Rules 18, 43–46

12.4 Further reading

- APT Detention Focus Database. *Life in prison (Regime and activities)*.
www.apr.ch/knowledge-hub/dfd

CHAPTER 13

Contact with the outside world

This chapter focuses on contact with the outside world and explains why it is essential for a person's dignity, well-being, family life, and reintegration. It shows how contact with family, friends, lawyers, consular representatives, and the wider community can reduce the harmful effects of imprisonment and serve as a safeguard against torture and other ill-treatment.

The chapter examines the forms, frequency, location, supervision, and possible restrictions of contact, including visits, correspondence, phone calls, and digital communication. It emphasises that contact with the outside world is an entitlement, not a privilege, and should not be used as a reward or punishment.

Finally, the chapter outlines how monitors can monitor this area through observation of visiting facilities, review of rules and records, and interviews with persons in prison and staff.

CHAPTER 13

Contact with the outside world

13.1 Why monitor contact with the outside world?

This chapter focuses on contact with the outside world, i.e., the ways in which persons in prison can have contact with persons outside the prison. Especially in relation to contacts with family, such a possibility forms an integral part of the fundamental human right to family life. It is the duty of prison authorities to ensure that a person in prison has reasonable opportunities to maintain contact and relations with their family and close friends.

Persons in prison have the right to contact with the outside world. Maintaining good contact with the outside world is of crucial importance during imprisonment for a person's well-being, providing a source of emotional comfort and/or material support. Furthermore, contacts with the outside world are likely to counteract the damaging effects of imprisonment and facilitate order within the prison, since denial or unjustified restrictions on such contacts may contribute to unrest and disorder. If the purpose of reintegration of persons in prison back into the society is to be achieved, it is very clear that they should be able to remain in contact with their family, their community, and the outside world in general. Contact with the outside world is also a key safeguard against torture and other ill-treatment as regular family contacts may have a deterrent effect on anyone minded towards ill-treating a person in prison.

Contacts with the outside world must be seen as entitlements rather than privileges, and they should, therefore, never be used as either rewards or punishments.²²² When a person in prison is prohibited from contact with the outside world, without there being any legal and justified reason for this, this can amount to ill-treatment.

The examples below are fictional but based on real-life examples. They illustrate lack of possibilities for contact with the outside world, which may amount to ill-treatment.

[EXAMPLE 1] Denial of family visits

A person in prison who showed rather severe signs and symptoms of a mental health disorder, was temporarily transferred to another wing in the prison to be able to observe her mental status more carefully. During the three months she ended up staying in this wing, she was not allowed to receive any visits, not even from her family. The reason for this was simply that the staff found it too complicated to bring her to the visiting room. She was therefore only allowed to speak to her family by telephone once a week.

[EXAMPLE 2] Lack of access to legal aid for persons who do not speak the national language

In a certain country, the prison authorities reserve the right to be present at all meetings between persons in prison and their defence counsel, and to monitor their telephone communications and correspondence. The access to defence counsel is in itself subject to permission from the prosecutor. For persons with a foreign nationality who do not speak the national language, this often means that the language barrier and the lack of documents in other languages make access to legal aid extremely difficult.

13.2 What to monitor?

When monitoring contact of persons in prison with the outside world, there are a number of issues to look into, such as:

1. Which contacts are allowed
2. How contact is possible
3. How often contacts can take place
4. Where the contacts can take place
5. How restrictions on contacts are being implemented
6. How contacts are being supervised by authorities
7. Contact with lawyers and access to news

Which contacts are allowed

According to international standards, persons in prison are entitled to contacts with their family and friends. However, national provisions vary in terms of who is perceived as 'family and friends'. Some legislations include a rather broad circle of persons, while others rigidly keep to contacts with family members. For example, in some contexts, a spouse is only considered a spouse if the couple is a man and a woman who are married. In case contacts are restricted to family members only, 'family' shall not be interpreted in a narrow sense. Instead, it shall be interpreted more liberally so as to include those with whom the person in prison has established a relationship comparable to that of a family member even if the relationship has not been formalised.

Persons with a foreign nationality who are in prison also have the right to have contact with the diplomatic or consular representation of their State.

How contact is possible

Persons in prison shall be able to maintain contact with their families and friends by receiving visits, as well as by corresponding in writing and using, where available, telecommunication, electronic, digital, and other means. 'Open' visiting arrangements, where physical contact is allowed, should be the rule and 'closed' ones (behind a glass screen) the exception, for all categories of persons in prison. There are different types of visits in different countries typically including short-

term visits, extended family visits, and conjugal visits, all conducted in private. In exceptional cases, visits may be supervised by staff, if this has been found necessary following an individual risk assessment.

With the development of digital means of communication, new opportunities for contacts with the outside world emerge continuously. For example, Skype, Zoom, or Teams sessions can be considered as options for communication, especially when persons are detained far away from their home and family. Nevertheless, communication through technical means should never be regarded as substituting in-person visits.

How often contacts can take place

International and regional standards do not specify a minimum number of visits, phone calls, letters, etc. Instead, it is provided that communication shall be allowed 'at regular intervals.' Nevertheless, recognising the great importance of contact with the outside world, there are recommendations at both international and regional levels that, as a general principle, communication should be allowed at the maximum possible frequency. According to the CPT, all persons in prison (whether sentenced or on remand), irrespective of the regime, should benefit from a visiting entitlement of at least one hour every week. However, not only the frequency of the visits, but also their duration is important. In order to facilitate regular contact with family and friends, persons in prison shall be allocated, to the extent possible, to prisons situated in close proximity to the place they were living before their imprisonment. The particular vulnerability of women and juveniles needs to be kept in mind. As there are relatively few detention facilities for them, they are more often held at considerable distances from their families and friends. When determining the allowed duration of visits, the proximity of the visitors shall be considered.

Where the contacts can take place

It derives from the principle of respect for dignity, as well as from the principle of normalisation, that the arrangements for visits shall be such as to allow persons in prison to maintain and develop relationships in as normal a manner as possible. The prison authorities need to ensure that persons in prison can speak privately on the phone without being overheard by other persons in prison and that they and their visitors can meet each other in a clean, safe, and respectful environment. Providing appropriate facilities and ensuring privacy as much as possible contribute to this aim. Visiting rooms should enable persons in prison to meet openly with family and friends visiting them, and the environment should be child-friendly and include a play area for children. Although international standards do not explicitly provide for conjugal visits, such entitlement may be derived from the principle of normalisation and the right to family and private life. Of course, the facilities for conjugal visits need to ensure full privacy.

How restrictions on contacts are being implemented

In practice, communication and visits may be subject to restrictions, when necessary, due to ongoing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences, and protection of victims of crime. Such restrictions should always comply with the principles of legality, necessity, and proportionality, and there shall be clear rules and safeguards

against the prohibition or restriction of family contacts. In addition, they shall be based on an individual assessment of potential risks (they cannot be applied as a general rule) and should allow for an acceptable level of contact. Any reduction in contact with the outside world should not form part of the privileges scheme.

Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. Family contacts may only be restricted for a limited time and as strictly required for the maintenance of security and order. Persons undergoing segregation or isolation (including solitary confinement) as a disciplinary punishment shall not automatically be denied visits and telephone calls.

How contacts are being supervised by authorities

Contacts with family or friends may take place under 'necessary supervision'. In practice, if there is a possible risk of misuse of contacts with the outside world, visits may be supervised, and telephone calls and correspondence may be monitored. However, this should never be done as a general rule, but only after a thorough individual risk assessment. This assessment may be done by both the courts, e.g., if there is an ongoing investigation, and by prison authorities, e.g., in case of suspicion of smuggling of drugs into the prison. The person concerned should always be informed about the monitoring of his/her contacts and the reasons for such a decision.

Contact with lawyers and access to news

Persons in prison should also have adequate opportunity, time, and facilities to be visited by and to communicate and consult with a legal adviser or a legal aid provider. Contacts and consultations with legal advisors or legal aid providers shall take place in full confidentiality and without delay, interception, or censorship. In practice, meetings with legal aid providers may be within sight, if necessary, but not within hearing of prison staff.

Persons in prison should moreover also have possibilities for regular and meaningful access to news (e.g., newspapers, radio), information and entertainment as authorised by the prison administration.

13.3 How to monitor contact with the outside world?



Observations

Observations will give useful insights when monitoring contact with the outside world. A tour of relevant premises, especially the visit rooms, will allow monitors to assess on the spot the availability of adequate and appropriate facilities as well as how visits or telephone calls are being performed. With regard to groups with specific needs, the monitors should for example assess whether the visiting rooms are accessible for persons with a physical disability, whether the visiting facilities for children are conducive to a positive visiting experience, and whether there is access to books in foreign languages and with themes of specific interest to persons belonging to religious, ethnic, or racial minorities.



Written information

Monitoring contact with the outside world will involve consulting national legislation and regulations as well as house rules and procedures. Monitors can check whether there are written rules for all aspects of person in prison's contact with the outside world (visits, mail, phone calls). Monitors may also check relevant written information (for example, visit registries) to cross-check information gathered from other sources.



Interviews with persons in prison and staff members

Conducting interviews with persons in prison as well as prison staff will give the monitor information on how national legislation and regulations as well as house rules and procedures related to contact with the outside world are implemented in practice. Interviewing persons in prison will moreover tell the monitor about the person's experience with contacts with the outside world. Persons in prison may share what functions well and what needs to be improved, guiding the monitors on what to look into further and what to recommend. Interviewing prison management and staff can give the monitor an idea of the key challenges faced by management and staff in administering the persons' rights to contact with the outside world, and of how the institution handles these challenges.



Standards of relevance to contact with the outside world

- Mandela Rules, Rules 43.3, 58–63, 88.2, 106–107, 117, 120
- Bangkok Rules, Rules 23, 26–28
- Havana Rules, Rules 59–62, 67

13.4 Further reading

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CHAPTER 14

Health care services

This chapter addresses why monitoring health care services in prisons is essential for protecting persons' right to health. It explains how lack of access to adequate health care, breaches of medical confidentiality, or failure to identify signs of torture and ill-treatment may have serious consequences and may amount to ill-treatment.

The chapter examines key areas of prison health care, including the initial medical assessment, access to health services, equivalence and continuity of care, medical ethics, dual obligation dilemmas, confidentiality, and medical records. It also highlights the importance of the independence of health staff and their role in identifying, documenting, and reporting injuries, violence, torture, and other ill-treatment.

Finally, the chapter outlines how monitors can monitor health care services through observation, review of medical records and registers, and interviews with persons in prison, prison officers, health staff, and prison management.

CHAPTER 14

Health care services

14.1 Why monitor health care services?

All persons in prison are entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity, and they shall have access to health facilities, goods and services, without discrimination.²²³

Lack of access to, or insufficient or inadequate, health services may have serious consequences for a person and may amount to ill-treatment. Examples include:

- Precluding medical treatment for a newly occurring disease or discontinuing treatment upon a person's entry into a prison may lead to progression of the disease, causing unnecessary suffering and in the worst case implying a threat to the life of the person. This may amount to ill-treatment.
- If medical confidentiality is not upheld and, for instance, information that a person in prison is infected with HIV is disclosed to prison officers or others in the prison, this may lead to stigmatisation, social marginalisation, and/or harassment, amounting to ill-treatment.

Furthermore, by being alert to the look and demeanour of the persons in prison, a monitor might be able to identify victims of torture and other ill-treatment, for example by noticing bruises on visible body parts. Also, victims of torture, ill-treatment and/or violence will often encounter the health services when they seek help for injuries that have been inflicted in the prison, and thus the health staff can be expected to have knowledge of the level of violence in the facility.

Monitoring health services in prison should therefore also include monitoring the skills of the health staff and the circumstances under which they carry out their functions as this may impact the risk of ill-treatment occurring. It may include monitoring whether the health staff are carrying out tasks which they would not encounter in the community health system, such as checking on persons in solitary confinement and documenting and reporting on violence.

Monitors should also pay specific attention to the independence of the health care service. In many countries, health staff in prisons are employed by the prison administration, which inevitably leads to dual obligation dilemmas and a lack of independence in the provision of health care, putting the health staff at risk of serving the interests of the prison administration rather than the best interest of their patients. But even in a situation where the health staff are not employed by the prison administration, dual obligation dilemmas remain a serious issue for concern and need careful monitoring.²²⁴ A lack of independence of health staff in prison is likely to increase the likelihood of ill-treatment or even torture being covered up.

The examples below are fictional but based on real-life examples. They illustrate poor access to health care services, which may amount to ill-treatment.

[EXAMPLE 1] Poor prevention and treatment

In several prisons in a certain country, there is a shortage of health staff, medical equipment and follow-up procedures. As a result, the health staff are forced to focus their attention on urgent matters, to the detriment of prevention and treatment. This means that many persons in prison experience a severe delay in access to health care and, moreover, that prevention measures such as access to free condoms or clean needles and syringes are not prioritised or implemented.

[EXAMPLE 2] Lack of access to prison doctor

There are many examples of prisons in which LGBTIQ+ persons living with HIV/AIDS receive antiretroviral treatment but have extremely limited access to the prison doctor. This can be due to the filtering of requests to see the prison doctor by prison guards or a shortage of health staff. This is problematic because such patients typically need more medical care for common diseases, from which they are usually slow to recover. Moreover, patients do not have the opportunity to consult an infectious disease specialist about their illness.

14.2 What to monitor?

Providing health care for persons in prison is a State responsibility. As clearly outlined in international standards, they shall enjoy the same standards of health care as those available in the community and shall have access to necessary health care services free of charge without discrimination based on their legal status.

In most countries, the majority of persons in prison come from poor communities and marginalised groups in society. Often, these groups have had very little access to health care before their imprisonment and have, on average, a poorer general health status than the general population, both at the time of admission and during imprisonment. Compared to the general population, persons in prison have a higher prevalence of communicable diseases like HIV, tuberculosis (TB) and hepatitis B/C, higher risks of noncommunicable diseases (NCDs), oral health issues, as well as a broad range of mental health problems. Self-harm and suicide are more common in prisons than in the community and a higher proportion of persons in prison suffer from drug and/or alcohol dependencies compared to those living in the general community.²²⁵

Health in prisons affects not only those who are detained, but also prison staff and families as well as local communities and public health in general. There is a high interaction between prisons and the general community, as persons in prison, prison staff and others enter and leave prisons on a daily basis. In overcrowded conditions in which material conditions and the level of hygiene are poor, the health risks are even greater for everyone.

When monitoring conditions and treatment affecting the health of persons in prison, it is important to look into a broad spectrum of relevant health aspects. These aspects can be clustered into three categories:

1. The health of the persons in prison, including their physical and mental health.
2. The health care services. This refers to the availability, accessibility, and quality of prison health care services.
3. The prison health factors, i.e., environmental, situational, and procedural factors in the prison that directly or indirectly impact on the health of the persons in prison.

The three areas together constitute the prison health framework as illustrated in Figure 14.1.



[FIGURE 14.1] The prison health framework



Both the health care services and the prison health factors influence the health of the persons in prison. The health status of those in prison will give indications about the conditions and treatment in the facility and the health services available, both upon admission and during their imprisonment.

The focus of this chapter is on monitoring the health care services, while the prison health factors are addressed in the other chapters in Part 3.

Specific areas for the monitor to look into when monitoring the health care services include:

1. The initial medical assessment
2. The access to health care services
3. Equivalence and continuity of care
4. Medical ethics and dual obligation dilemmas
5. Medical confidentiality
6. Medical records

The initial medical assessment

An initial medical assessment refers to the process of a health professional assessing the health of a person as soon as possible after their arrival in a prison. As clearly outlined in Mandela Rule 30, the main purposes of the initial medical assessment are to ensure continuity of care for any illness for which the person is already under treatment, to screen for any health issues requiring urgent attention, to screen for any risk of self-harm or suicide, to identify any signs of torture and/or

ill-treatment, to assess the general health condition and fitness to participate in daily life, and to provide information about the health services available in the institution and how to access them.

The initial medical assessment is of key importance in collecting and assessing allegations and signs of torture and/or ill-treatment that a person may have experienced during arrest or transfer as well as during prior detention in another facility (police, pre-trial detention facility, other prison). It is a key measure in the prevention of torture and other ill-treatment and in the fight against impunity.²²⁶

The access to health care services

According to international standards, access to health care services means that persons in prison should have access to such services, free of charge and without discrimination based on their legal status. Access includes both access to the health services available in the prison as well as access to specialised and emergency services in the community, whenever needed. It includes access to the full range of health care services and health professionals, including primary care, emergency care, dental care and specialist care, by doctors, psychologists, dentists and specialists (such as psychiatrists, gynaecologists, oncologists, etc.), on the basis of equivalence to the health care services available to persons living in the general community.

Equivalence and continuity of care

Equivalence of care refers to the provision of health care in prisons of standards similar to those available in the community. Continuity of care (or 'throughcare') refers to the continuation of health care, including medication and necessary medical check-ups, for persons with health conditions – physical as well as mental – entering the criminal justice system, being transferred between different institutions within the criminal justice system, on temporary leave from an institution, and upon release into the community. Equivalence as well as continuity of care shall be guaranteed for all persons in prison.

Medical ethics and dual obligation dilemmas

Medical ethics can be defined as the system of moral principles that applies values to the practice of clinical medicine. In prisons, it relates to the code of conduct considered to be morally correct for health professionals working in prisons.

The four commonly accepted principles of medical ethics include:

- Principle of respect for autonomy
- Principle of nonmaleficence (do no harm)
- Principle of beneficence (do good)
- Principle of justice.²²⁷

Instances of conflicting obligations for health staff are referred to as dual obligation dilemmas and arise when a health care professional whose role should be caregiving and prioritising the health and well-being of their patient, gets a role in medical or other activities related to purposes that are not necessarily in the person's best interest in relation to their health (for example, solitary confinement, use of restraints, body cavity searches).

Medical confidentiality

Medical confidentiality is one of the core duties in medical practice. It requires health care providers to carry out medical examinations in private and to keep a patient's personal health information confidential, unless the patient provides informed consent to release the information or maintaining confidentiality would result in a threat to the patient or others.

Medical records

As stated in international standards, individual and accurate up-to-date medical files should be kept in prisons, and all persons in prison should have access to their medical file, possibly through a third party (lawyer, relative, etc.). Continuity of care should also be secured by a standard of transferring medical records together with the person, when they are moved to another prison or other institution, and upon admission of a person to an institution, information shall be entered into the person's file management system, including information on any visible injuries and complaints about prior ill-treatment.

In 2020, DIGNITY published a manual on monitoring health in places of detention, providing a comprehensive overview of all aspects to monitor in relation to health services (as well as prison health factors and the health condition of persons in prison), their monitoring methodology as well as the rationale for monitoring the different aspects in relation to the prevention of torture and other ill-treatment. It includes a variety of examples of how breaches of standards in each of these aspects may amount to ill-treatment or even torture. The manual is essential guidance when monitoring health care in depth.²²⁸

14.3 How to monitor health care services?



Observations

Observations are essential for assessing the overall conditions of the health clinic and the storage and availability of medication. Observations can also be made while conducting interviews with persons in prison, for instance to assess whether they look healthy, and during the tour of the clinic and the premises, to see whether facilities and equipment are clean and up to date.



Written information

Looking into the written information available includes foremost looking into individual medical records, written instructions, and registers, which should be assessed for their availability, completeness, and quality. Individual medical files will moreover give information about the health care services provided to individuals and the way health issues are followed up on. They may yield important information on the initial medical assessment, access to specialised treatment and care, and equivalence of the treatment and care provided. Medical records should be made accessible to members of the National Preventive Mechanism (NPM) and Subcommittee on Prevention of Torture (SPT) and should always be handled with confidentiality. Depending on the mandate of the monitoring team, a person's informed consent may be needed to look into their individual medical record and

if there is a need to follow up on the findings in such files and reveal information to third parties in a person-attributable way, informed consent should be obtained prior to doing so.

Death certificates and registries may also provide valuable information about the health of the people in prison and about the functioning of the health services.



Interviews with persons in prison and staff members

Interviews with persons in prison should focus on their experience with the health service, including the initial medical assessment, waiting times, access to medicines, and access to specialised treatment outside the prison. Persons with specific health care needs, such as a need for daily medication, or treatment for withdrawal symptoms, could be asked about the treatment they receive. Women could be asked about their access to gender-specific health care screening and services. They can also be asked whether there are possibilities for examination, treatment, and care from female nurses and physicians, and, if this is not possible, whether male physicians use a chaperone approach (another woman present during the consultation).

Interviews with prison guards can yield information about their views and involvement in health care services, including their role in communicating with persons in prison on access to the health services, in giving out medicine to them, and in handling situations of emergency. A key question is whether custodial staff are filtering requests from persons in prison to be seen by a health care professional or whether such requests are transmitted confidentially to the health care services.

Of course, interviewing health staff is key when monitoring health care services in prison. These interviews should foremost focus on the set-up and functioning of the health care clinic, including the management of resources, reporting lines, clinical independence, dual obligation dilemmas of the health professionals, identification, recording and reporting on injuries, handling of situations of torture and other ill-treatment, involvement in security and discipline, including any requirements to assess whether persons in prison are 'fit for restraint' or 'fit for punishment' (which health care professionals should not carry out), referral systems to community health care services, and procedures for managing cases of death in custody.

Interviews with prison management should focus on their policies and views, including the management and organisation of the health care service and its integration into or independence from the prison administration.



Standards of relevance to monitoring health care services

Initial medical assessment

- Mandela Rules, Rule 30
- Bangkok Rules, Rule 6–7
- Havana Rules, Rule 50

Access to health care services

- Mandela Rules, Rules 24–31, 109–110, 118
- Bangkok Rules, Rules 10–18, 25, 38–39
- Havana Rules, Rules 49–55

Equivalence and continuity of care

- Mandela Rules, Rule 24
- Bangkok Rules, Rule 10
- Havana Rules, Rule 49

Medical ethics

- Mandela Rules, Rules 32–35, 46
- Bangkok Rules, Rules 10.2, 11
- Havana Rules, Rule 52, 55
- UN General Assembly 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
- World Medical Association Declaration of Geneva
- World Medical Association Declaration of Tokyo

Medical confidentiality

- Mandela Rules, Rules 26.2, 31, 32
- Bangkok Rules, Rules 8, 11.2, 25
- Havana Rules, Rule 19

Medical files

- Mandela Rules, Rules 7, 26
- Bangkok Rules, Rule 8
- Havana Rules, Rules 19, 21(e), 27

14.4 Further reading

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CHAPTER 15

Security

This chapter addresses security in prisons and explains why monitoring security is essential for protecting persons in prison, prison staff, and the wider prison environment. It examines how prison authorities must balance legitimate security concerns with respect for human rights, ensuring that restrictions are lawful, necessary, and proportionate.

The chapter focuses on key security-related areas, including security classification, solitary confinement, mechanical restraint instruments, use of force, weapons, body searches, and informal prisoner hierarchies and criminal sub-cultures. It highlights how poorly regulated or excessive security measures may amount to torture or other ill-treatment.

Finally, the chapter outlines how monitors can monitor security through observation of facilities and practices, review of records and incident reports, and interviews with persons in prison, prison staff, health staff, and heads of security.

CHAPTER 15

Security

15.1 Why monitor security?

The duty of care that is owed by the prison authorities includes the responsibility to keep persons in prison safe. The credibility of any prison system rests on its ability to keep persons in prison safe and to protect everyone in the prison from the risk of harm as a result of unintentional acts (*safety*) and intentional acts of others (*security*). Persons in prison have the right to stay in a safe and secure environment. Feeling secure is extremely important for those living and working in prisons. Without security, prisons can put those within them at risk of physical and mental harm through various incidents, such as violence and unrest.

Prisons shall also prevent persons in prison from escaping and from committing further crimes while in prison.²²⁹ This is fundamental for protecting the society from further crimes and ensuring that the public trusts the criminal justice system.

This chapter will address issues related to security, but it is important to remember that depending on the specific context, safety issues may also be important, e.g., in relation to the work environment of people in prison if they handle dangerous machinery. Further, recent years have shown several examples of the importance of keeping people in prison safe, e.g., from infectious diseases like COVID-19, and from climatic disasters like floods and heatwaves.

Striking the right balance between security measures and human rights of persons in prison is not an easy task for prison management. Security concerns are often invoked by prison authorities as a justification for restricting the rights of persons in prison. Sometimes such restrictions may be legitimate, necessary and proportionate; other times, such restrictions may be unlawful, unnecessary or disproportionate and may amount to human rights violations, including torture and other ill-treatment.

Therefore, it is crucial to monitor all relevant aspects related to security, including the use of force, means of restraint and body searches. This serves to ensure that persons living and working in prisons are well-protected and feel secure. Monitors should also check that the practical implementation of security measures is aligned with the relevant legal framework and human rights standards. It is important to monitor security, keeping in mind that security and human rights are compatible rather than contradicting aims. Both aims can and should be delivered at the same time within a well-managed prison.

The examples below are fictional but based on real-life examples. They present issues in relation to the security in the prison which may amount to ill-treatment.

[EXAMPLE 1] Informal discipline regimes within the prison

An example of a *security* issue is ‘low-ranking persons in prison’ who are controlled by ‘high-ranking persons in prison’ based on informal hierarchies and discipline regimes operating within the prison. This is the case in several countries and prisons worldwide. Such control by ‘high-ranking persons in prison’ may be through threats and violence, and punishments of a non-legal nature may be imposed. When prison staff are aware of this and do not take action to protect persons from this, it may amount to ill-treatment or even torture.

[EXAMPLE 2] Voluntary segregation of persons at risk

In a prison in a certain country, persons at risk due to their vulnerability are offered the option of staying in segregation on a voluntary basis. While acknowledging that this is intended to protect these persons, it is concerning that they are held in conditions similar to those reserved for disciplinary confinement. These conditions, especially if extensively prolonged, may disadvantage persons with increased vulnerability, whose behaviour does not merit harsher material conditions or stricter security measures. In some cases, the voluntary segregation may, de facto, amount to being held in semi-permanent solitary confinement.

15.2 What to monitor?

Security in prisons is often divided into static and dynamic security (see Box 15.1).

Ensuring security within a prison is never an easy endeavour. How prisons function and how persons in prison behave is affected by many other factors that may not be, at first glance, directly related to security. For example, material conditions, daily activities, and contact with the outside world may impact on levels of anxiety and aggressiveness (both positively and negatively). Relations among persons in prison and with prison staff are a crucial factor in maintaining a secure and orderly prison environment. In addition, transparency in the way decisions are taken by the prison administration and the perception of fairness greatly contributes to persons’ willingness to obey the rules.

**[BOX 15.1] Static and dynamic security²³⁰**

Static security refers to the security infrastructure, including walls, barriers, lighting, locks, cameras, and equipment.

Dynamic security refers to the concept of prison staff actively and frequently observing and interacting with persons in prison to gain a better understanding and awareness of them and assessing the risks that they pose or face.

In general, it is crucial that monitors pay particular attention to the decision-making and appeal procedures related to security measures, the type of measures applied and their duration, and record-keeping. Looking into these issues will provide important information for assessing whether any security measures are posing a risk to human rights and whether they may result in torture or other ill-treatment.

Specific areas for monitors to look into when monitoring security in a prison include:

1. Security classification
2. The use of solitary confinement as a security measure
3. Instruments of mechanical constraint
4. Use of force
5. Batons, pepper sprays, electric discharge weapons, and firearms
6. Body searches
7. Informal prisoner hierarchies and criminal 'sub-cultures'

Security classification

Prisons are typically divided into different security levels, for instance, low, medium, high, and super-max security. The purpose of such division is to streamline the security regimes according to persons' perceived dangerousness and risk of escape and reoffending. In parallel, a security classification of those in prison is made in order to designate the person to an appropriate institutional regime. Persons in prison may be further sub-classified in order to assess in more detail the section and regime which would be most appropriate for the individual. In case someone exhibits behaviour that is considered a risk to themselves or others, they may be recategorised and transferred to a different prison or a different part of the prison with a higher degree of security. In many cases, however, there is a tendency to place persons in higher security regimes than necessary in the absence of an effective system that allows for a holistic assessment of a person's needs, vulnerabilities, and risks. Therefore, it is important to monitor whether there are appropriate procedures and criteria in place for a thorough security assessment and classification, as well as a regular review process. It is also crucial to assess the compliance of different security regimes with human rights standards, especially in the case of super-max security facilities, which often deny or severely restrict meaningful human contact and activities for very long periods of time.

The use of solitary confinement as a security measure

Solitary confinement refers to the confinement of a person for 22 hours or more per day without meaningful human contact. It is often applied as a security measure when a person needs to be isolated from the rest of the prison population due to them posing a risk to others or to themselves and thus, requiring increased supervision. It is also applied as a disciplinary sanction. Solitary confinement comes in many forms, such as placing a person in a segregation cell, an observation cell, a rubber cell, or a special care unit/cell with very limited exposure to meaningful human contact. No matter the exact form of the measure, if it leads to a person not having meaningful human contact for 22 hours or more per day, it falls under the definition of solitary confinement.

According to international standards, solitary confinement shall be used only in exceptional cases as the last resort, for as short a time as possible (not over 15 days) and subject to independent review, and only pursuant to the authorisation by a competent authority. Arbitrary, indefinite, or prolonged use of solitary confinement may amount to cruel, inhuman or degrading treatment and in more severe cases, torture. This is due to the serious adverse effects of solitary confinement on physical and mental health. For this reason, the imposition of solitary confinement or any other measures that in practice amount to solitary confinement is prohibited in the case of persons with mental or physical disabilities when their conditions would be exacerbated by the solitary confinement, as well as in cases involving children and particular categories of women. In such cases, other measures need to be considered and applied to mitigate any security concerns.

A register should be kept and include information on the persons placed in solitary confinement, the reasons for their placement, date of entry and exit, the deciding authority and the decision of any appeal made, information on medical assessments before and during solitary confinement, together with any medical recommendation.

Instruments of mechanical restraint

Mechanical restraint instruments are those that are intended to restrain or temporarily restrict the movement of a person, such as handcuffs, straps, and belt fixation. Instruments of restraint are often applied during transfers to prevent escapes and in prisons to prevent acts of assault, suicide, or self-harm.

The use of means of restraint shall be governed by clear regulations and they shall be applied observing the principles of legality, necessity, and proportionality.²³¹ Importantly, instruments of restraint should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail satisfactorily to contain those risks. They should never be used as a punishment or to compensate for shortages of trained staff. Restraint for periods of days at a time cannot have any justification and would amount to ill-treatment. Instruments that are inherently degrading or painful (chains, irons) shall be prohibited. Prison staff always need to be trained in the use of means of restraint to ensure that they do not cause harm when applying such means.

Any resort to belt fixation should be immediately brought to the attention of a doctor to assess the need for the measure. It should not be used for security reasons in a non-medical setting when hospitalisation would be a more appropriate intervention. The equipment used should be properly designed to limit harmful effects, discomfort, and pain during restraint, and staff must be trained in the use of the equipment. Persons in prison should never be fixated face down. The duration of fixation should be for the shortest possible time (usually minutes rather than hours).

Restraints should be removed as soon as possible after the risks posed by unrestricted movement are no longer present. The exceptional prolongation of restraint should warrant a further review by a doctor. Every instance of fixation should be recorded, and persons subject to fixation should receive information on the reasons for this. The prison management should issue formal written guidelines, taking into account the above criteria.

The reasons, type, and duration of the use of restraints are issues for monitors to look into, as persons should not be restrained unless absolutely necessary and not for prolonged periods. Furthermore, monitors should look at safeguards against abuse of restraints, such as reasoning, recording, reviews, and guidelines.

Use of force

Use of force should always be applied as a last resort, when all other interventions have failed. This could for instance be under extreme circumstances such as self-defence, attempted escape, and active or passive resistance to a lawful order. Record-keeping is crucial for monitoring the use of force. Any incident where force was used should be reported, including the date and time of the incident, persons involved, and reasons for the use of force. Other information may also be recorded as prescribed in relevant legislation or regulations. A specific and transparent set of rules and procedures governing the use of force is an important safeguard, while prison officers should be trained in the use of force so as to be able to react effectively in specific situations without disproportionate use of force and without putting themselves and others at risk.

The need for the use of force is inversely linked to applying dynamic security measures. Monitors may look into whether efforts are made to establish constructive relations between staff and persons in prison as these relations can play a key role in maintaining order, detecting potential tensions, and de-escalating before reaching a point where force is necessary. In addition, conflict prevention, mediation, or any other alternative dispute resolution mechanism may be established to prevent or resolve conflicts.

Batons, pepper sprays, electric discharge weapons and firearms

Except in special circumstances, prison staff performing duties which bring them into direct contact with persons in prison should not be armed. Prison staff should in no circumstances be provided with firearms if they have not been trained in their use. In some countries, prison officers openly carry batons, pepper spray, handcuffs or even firearms in detention areas while performing custodial duties. Such practices are not conducive to developing positive relations between staff and persons in prison but mainly contribute to intimidation and create a hostile environment, rather than heightening security. Prison officers should thus not routinely carry such equipment in detention areas.

Body searches

Body searches may be necessary in order to eliminate the risk of bringing or possessing forbidden substances or items into the prison. Carrying out such searches in a manner that respects a person's human dignity and privacy, poses challenges to prison staff. Searches may, in some cases, be performed in humiliating ways and used to harass, intimidate, or unnecessarily intrude on a person's privacy. Such practices are, of course, not in line with international standards.

Different types of body searches may take place, such as pat-down searches, strip searches, and body cavity searches. Each type poses specific risks to the respect of human rights, especially strip searches and body cavity searches. With regard to *strip searches*, every reasonable effort should be made to minimise

embarrassment. For instance, persons who are searched should normally not be required to remove all their clothes at the same time, e.g., a person should be allowed to remove clothing above the waist and redress before removing further clothing. *Body cavity* searches should be carried out only when there are reasonable grounds to suspect that a person may have hidden items, such as drugs or items that may be used to harm themselves or others or in the case where there may be evidence of a crime and such a search is necessary, it being unlikely that an ordinary search would be successful. Body cavity searches should be done by a person with appropriate medical training. However, in the interest of safeguarding the doctor-patient relationship, this person should not be the doctor who treats the prisoner with respect to health care issues. Body cavity searches pose dilemmas for health professionals who are often asked to conduct such searches, since this request raises ethical questions around patient rights, informed consent, and dual loyalty obligations.²³² Any type of search performed needs to be recorded, including information about those conducting the search, the reasons, and the result of the search.

Informal prisoner hierarchies and criminal ‘sub-cultures’

The existence of informal prisoner hierarchies among persons in prison is a known phenomenon in many prisons around the world. Such hierarchies may be related to affiliation with gangs, organised crime syndicates, or terrorist groups. In other words, the informal prisoner hierarchies are often linked to the phenomenon of ‘criminal sub-culture’. When such informal hierarchies or ‘caste systems’ exist, those at the top of the hierarchy can exercise power and control over those who are ‘lower’ in the hierarchy. Within the criminal sub-culture there is a system of leadership acting within and outside of prison with different sub-leaders in different prisons. These leaders often control the illicit markets in prison (drugs, mobile phones, and other prohibited objects). At the very bottom of the hierarchy are those deemed ‘untouchable’ or ‘humiliated’, which typically includes persons accused or convicted of sex offences, LGBTIQ+ persons, or persons having been sexually abused. The oppressive and violent power structure of the hierarchy leads to the segregation, humiliation, extortion, and abuse of vulnerable persons. Such practices may amount to inhuman or degrading treatment due to a failure of the State to protect them.²³³ Moreover, the existence of informal hierarchies is a security threat within the prison, both for imprisoned persons and for prison staff.

This is an issue that monitors will need to pay attention to and assess the factors that sustain such hierarchies and the ways in which they are addressed. For example, insufficient staff may lead the prison management to allow such hierarchies to take control of the prison. Some of the standard questions asked to the prison management should include information about staffing, ratios, work and shift patterns, as well as levels of pay, security training, the recruitment process, and levels of professionalism and workforce regulation. Another factor to keep in mind is corruption.

Investing in dynamic security measures and a strong prison intelligence gathering system is crucial in addressing this issue.²³⁴ Although dismantling such informal hierarchies is a systemic and long-term goal that will require a broad set of

measures and strong political will, it is an issue that requires particular attention as such hierarchies often pose one of the most serious security risks within prisons and cause a lot of human suffering.

15.3 How to monitor security?



Observations

Observing relevant facilities – such as solitary confinement cells, restraint rooms and equipment, and body search rooms – is important to assess compliance with relevant national, regional, and international standards. The monitor should also observe whether, for instance, juveniles are being accommodated separately from adults, and which groups may be at increased risk of being placed in higher security regimes than needed. Observations regarding the relations among persons in prison and with prison staff are also useful to assess whether such relations seem tense or conflictual, whether there seems to be an abusive informal prisoner hierarchy or whether they are constructive and relaxed. In addition to observing real-life interactions, it is often also important to watch CCTV footage, which captures incidents of the use of force and restraints.



Written information

Written information is a very important source for assessing how security measures are implemented in a prison. As mentioned above, all security measures (solitary confinement, use of means of restraint, use of force, body searches) need to be adequately recorded. Therefore, relevant reports and logbooks of such incidents provide useful insights into the way security is being pursued. Such registries can also guide monitors to choose specific persons that have experienced such measures to be interviewed in order to get first-hand information.



Interviews with persons in prison and staff members

Interviews with persons in prison, especially with those who have been subjected to security measures, will provide important information on their experiences and views about security in the prison. Also persons with an increased vulnerability should be interviewed. This includes for instance pregnant women, women with babies, and breastfeeding women, who should never be placed in solitary confinement, or persons with a mental health problem who are likely to be more seriously affected by solitary confinement.

Interviewing prison staff is equally important in getting an overview of how they perceive security, how they handle tense and difficult situations, and what they perceive as the key challenges in performing their duties in relation to security. In order to gain insight into the prison's system of security, it is advisable to speak with the head of security. Finally, health staff may be able to share information about the health effects of security measures.



Standards of relevance to monitoring security

Basic principles

- Mandela Rules, Rules 1, 36, 38.1, 76.1
- Havana Rules, Rule 1

Security classification

- Mandela Rules, Rules 11, 89, 93
- Bangkok Rules, Rules 40, 41
- Havana Rules, Rules 27–30

Solitary confinement

- Mandela Rules, Rules 37(d), 38.2, 43.1, 44–46
- Bangkok Rules, Rule 22
- Havana Rules, Rule 67

Use of physical restraints

- Mandela Rules, Rules 43.2, 47–49
- Bangkok Rules, Rule 24
- Havana Rules, Rules 63–64

Use of force

- Mandela Rules, Rules 76, 82.1, 82.2
- Havana Rules, Rules 63–64
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 15

Use of firearms

- Mandela Rules, Rule 82.3
- Havana Rules, Rule 65
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 9, 16

Body searches

- Mandela Rules, Rules 50–52, 60.2
- Bangkok Rules, Rules 19–21

Informal hierarchies

- Mandela Rules, Rule 40
- Bangkok Rules, Rule 31
- Havana Rules, Rule 71

15.4 Further reading

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CHAPTER 16

Disciplinary sanctions

This chapter addresses disciplinary sanctions and explains why the way discipline is regulated and applied is central to prison order, fairness, and protection against ill-treatment. It examines how disciplinary systems should be grounded in legality, necessity, proportionality, due process, transparency, and consistency.

The chapter highlights the risks of overly punitive or informal disciplinary practices, including unlawful punishment, prolonged solitary confinement, collective sanctions, or restrictions on basic rights. It also considers the implementation and supervision of disciplinary sanctions, the role of health care staff in these sanctions, and the material conditions in disciplinary cells.

Finally, the chapter outlines how monitors can monitor disciplinary systems through observation, review of rules, registers and case files, and interviews with persons in prison, prison staff, and health staff.

CHAPTER 16

Disciplinary sanctions

16.1 Why monitor disciplinary sanctions?

Prisons across the world impose discipline in order to maintain law, order, and control within the prison. The main reason for maintaining discipline is to facilitate the secure operation of the prison and a well-ordered community life. Therefore, only behaviour that may pose a threat to good order, safety, or security in the prison may be defined as a disciplinary offence. What constitutes a disciplinary offence and the procedure for imposing disciplinary sanctions should be clearly regulated in national law or prison regulations. Disciplinary sanctions serve a dual purpose: punishing those in prison for misbehaving and encouraging them to respect the prison rules.

Importantly, discipline shall be maintained with no more restriction than is necessary to ensure the above legitimate aims. Fairness, consistency, transparency, and due process are important elements of disciplinary rules and how they are applied.

The absolute prohibition of torture and other ill-treatment also applies to disciplinary sanctions, meaning that disciplinary sanctions should not amount to torture or other cruel, inhuman or degrading treatment or punishment.

An overly punitive regime related to discipline may have counterproductive effects in terms of ensuring security and order in the prison. A sense of fairness is important in how persons in prison experience their imprisonment and how willing they are to obey the rules. A feeling of absence of respect and fairness is perceived as psychologically painful by persons in prison and can generate negative emotions such as anger, tension, indignation, and rage.²³⁵ In addition, if prison management does not effectively exercise control over the prison by, among other things, maintaining discipline through relevant procedures, there is a real risk that informal hierarchies among persons in prison will take over that role, often with severe effects on persons' treatment.

Therefore, the way discipline is administered by prison management is a key component of prison life and how persons in prison are being treated. In some instances, disciplinary sanctions may, in themselves, amount to torture or ill-treatment, while lack of or excessive disciplinary sanctions may have trickle-down effects and lead to other human rights violations (violence among persons in prison, security incidents and excessive use of force, restrictions on family life, etc.).

The examples below are fictional but based on real-life examples. They present systems of disciplinary sanctions that may amount to ill-treatment.

[EXAMPLE 1] Unfair system of disciplinary sanctions

A preventive monitoring body comes across a high number of persons kept in disciplinary isolation cells during its visit to a certain prison. From interviews with these persons, it becomes clear that the punishment is often given in reaction to their complaints and that collective punishment is a regular occurrence in the prison. Persons in disciplinary segregation are usually confined 24 hours a day in a punishment cell with no window. The punishment cells are often flooded with rainwater.

[EXAMPLE 2] Excessive regime of confinement and unlawful punishment

In a prison wing in a certain country, there is an excessive regime of confinement of women who stay in prison with their children under two years of age. Even though this is not a disciplinary sanction as such, it certainly feels so for the women staying in this wing. It clearly affects their mental health and can have an adverse effect on their children's development. In the same prison, a pregnant woman was kept in solitary confinement as a punishment. This type of punishment is prohibited for pregnant women, as stipulated in Rule 22 of the UN Bangkok Rules.

16.2 What to monitor?

When monitors examine the disciplinary system in prison, it is important that they pay attention to:

1. The rules and regulations related to discipline (procedures and sanctions)
2. The way in which disciplinary procedures are implemented
3. The disciplinary sanctions issued
4. The implementation and supervision of disciplinary sanctions
5. The material conditions in disciplinary cells

The rules and regulations related to discipline

Disciplinary sanctions, such as limiting contact with the outside world or placing persons in solitary confinement, shall always have a legal basis in law or regulations (principle of legality). This contributes to legal certainty and predictability: persons in prison shall know which behaviour constitutes a disciplinary offence, the procedure to be followed and which sanction they are likely to receive, if they break the rules.

More specifically, relevant laws and regulations should always provide for:

- which conduct constitutes a disciplinary offence
- the types and duration of disciplinary sanctions that may be imposed
- the authority competent to impose such sanctions

- any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units, or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security.²³⁶

Certain types of disciplinary sanctions are prohibited at all times based on international standards, such as indefinite solitary confinement (assuming that solitary confinement is confinement of persons in prison for 22 hours or more a day without meaningful human contact), prolonged solitary confinement (in excess of 15 consecutive days), placement in a dark or constantly lit cell, corporal punishment or the reduction of diet or drinking water, collective punishment, and the use of restraints as a disciplinary sanction.

Other types of disciplinary sanctions may be lawful as a point of departure but are prohibited in relation to particular groups of persons in prison. For instance, imposition of solitary confinement should be prohibited in the case of persons with mental or physical disabilities when their conditions would be exacerbated by such measures, and in the case of children.

The way in which disciplinary procedures are implemented

In many prison systems, disciplinary sanctions may lead to loss or restriction of important rights and privileges (e.g., opportunity to work, right to have family visits, etc.) or even to a change in the security classification (harsher regime) and be an obstacle for early release. Therefore, it is extremely important that the prescribed disciplinary procedure is implemented rigorously so as not to lead to unfair results.

During disciplinary procedures, the rules of due process should be followed meticulously, including the following:

- Prompt reporting and investigation of an allegation of disciplinary misconduct.
- Prompt information provided to the persons suspected of misbehaving in a language they understand, including the accusations against them.
- Adequate time and facilities for the preparation of the defence of the accused.
- Possibility of the accused to defend themselves in person, or through legal assistance, particularly in cases involving serious disciplinary charges.
- Assistance of a competent interpreter free of charge if needed.
- Copy of the decision taken delivered to the person accused and written confirmation of receipt of the copy.
- Opportunity to appeal the disciplinary sanction.
- Opportunity for judicial review of sanction.
- If the disciplinary offence is also prosecuted as a crime, all due process safeguards shall be followed, including access to legal advice.²³⁷

The disciplinary hearing and the imposition of the disciplinary sanctions should take place as soon as possible after the alleged offence to ensure that the link between the offence and the punishment is maintained and that it serves as the maintenance of good order in the prison. Disciplinary sanctions shall only be imposed by the competent authorities, such as the prison administration

or a disciplinary commission pursuant to a set procedure. This is important to prevent informal systems of punishment being administered by staff or other persons in prison.

Finally, the prison should ensure that disciplinary registers are kept and that all disciplinary sanctions are adequately and accurately recorded, including information about the circumstances and justification of the sanction.

The disciplinary sanctions issued

The sanction imposed should correspond to the severity of the offence (*principle of proportionality*). For example, if a person in prison commits a mild disciplinary offence, they should be issued a correspondingly mild sanction, such as a warning. In several countries, this is facilitated by operating with different categories of offences and corresponding sanctions.

Solitary confinement is generally acknowledged as one of the most severe forms of disciplinary sanction. As is the case with solitary confinement as a security measure analysed in the previous chapter, it shall be used only in exceptional cases as a last resort, for as short a time as possible (maximum 15 days) and subject to independent review, and only pursuant to the authorisation by a competent authority. There should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement for more than the maximum period. In some cases, sequential disciplinary sentences within the maximum period of solitary confinement (less than 15 days) may still amount to torture or other ill-treatment due to the cumulative severe effects of solitary confinement.

The implementation and supervision of disciplinary sanctions

The sooner the sanction is served, the more likely it is to be effective. Any delay does not serve the needs of maintaining good order in the prison and weakens the link between the disciplinary offence and the punishment. Information recorded in relevant registers should be adequate to allow supervision by superiors in the implementation of the disciplinary sanctions.

Health care personnel shall not have any role in the imposition of disciplinary sanctions. They shall, however, pay particular attention to the health of persons placed in solitary confinement by visiting them on a daily basis and providing prompt medical assistance and treatment at the request of persons in solitary confinement or prison officers/management. Health care personnel shall report to the prison director and provide advice for relevant action based on the physical and mental health of the person in solitary confinement.

The material conditions in disciplinary cells

The minimum living conditions set out in international and regional standards apply to all persons in prison without exception. As such, disciplinary cells should meet these minimum standards notably with respect to space, light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, access to health care, and adequate personal space.

16.3 How to monitor disciplinary sanctions?



Observations

Inspecting the conditions in solitary confinement and disciplinary cells and observing disciplinary hearings, if possible, are important sources to assess compliance with relevant standards.



Written information

Written information materials are a very important source for assessing how the disciplinary system operates in practice. Monitors should pay particular attention to assessing whether the disciplinary system implemented in a prison is well regulated in the law and regulations, formalised and recorded, or rather unregulated, informal and at the discretion of prison staff or the prison manager (or persons in prison, if informal hierarchies are in place). It may occur that, even though relevant regulations are in place, registries reveal that the staff are in favour of applying informal (and illegal) sanctions in order to avoid the burden of formal procedures, which often require writing reports and carrying out a proper investigation.

Reports and logbooks on disciplinary offences, logbooks of disciplinary cells, minutes of disciplinary hearings, and incident reports, provide useful insights into the way discipline is administered. Monitors need to be attentive to possible overrepresentation of certain groups in prison in these reports and logbooks.

Records and registries should include adequate and accurate information about the circumstances, procedures and sanctions related to disciplinary offence, thus allowing further scrutiny by the monitoring team. In addition, the written information available may lead monitoring teams to selecting specific persons in prison for interviews based on their recent experiences with disciplinary procedures and sanctions.



Interviews with persons in prison and staff members

Interviews with persons who have served or are serving disciplinary sanctions are important to get first-hand information about their experience with the disciplinary system, while always seeking to mitigate the risk of harm as much as possible as these persons can be very easily identified by the authorities afterwards based on the information given to the monitors. Interviewing prison staff is equally important for getting an overview of how they perceive order and discipline within the prison, how they handle difficult situations and what challenges they may be facing in performing their duties. Interviewing health staff is also important for understanding their role within the disciplinary system, how they handle relevant ethical dilemmas and how they respond to the health needs of those serving disciplinary sanctions.



Standards of relevance to monitoring discipline

- Mandela Rules, Rules 3, 36–46, 54
- Bangkok Rules, Rules 22–23
- Havana Rules, Rules 66–71

16.4 Further reading

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CHAPTER 17

Complaint systems and inspections

This chapter addresses complaint systems and internal and external inspection mechanisms as key safeguards against torture and other ill-treatment. It explains how effective complaints and inspections promote transparency, accountability, legality, and fairness within prisons.

The chapter distinguishes between day-to-day requests, individual complaints, and broader inspection processes assessing prison performance against relevant standards. It pays particular attention to confidentiality, protection against reprisals, and the prompt, impartial investigation of complaints, especially allegations of torture or other ill-treatment.

Finally, the chapter outlines how monitors can monitor complaint and inspection systems through observation, review of complaint registers and inspection reports, and interviews with persons in prison and staff members.

CHAPTER 17

Complaint systems and inspections

17.1 Why monitor complaint systems and inspections?

Effective complaint systems and inspection mechanisms (internal and external) are important safeguards against ill-treatment and a way of ensuring transparency and accountability. Every person in prison shall have the opportunity to make requests or complaints to the prison director, the prison staff and the judicial or other competent authorities. Similarly, persons in prison should be able to speak with, and make requests or complaints to, an inspection body, which is either internal (under the same ministry responsible for prisons) or external (independent, such as an Ombudsman, National Human Rights Institution (NHRI), the judiciary, or civil society organisation (CSO)).

There is a difference between requests that are made concerning day-to-day matters within the place of detention (for instance about food, access to facilities/services, and other operational issues), and complaints which require a full process of investigation and conclusion, including appeals. There is also a difference between complaint mechanisms that look into individual grievances, and inspection bodies that look into wider issues of how the prison is performing against relevant standards.

Effective complaint and inspection systems are important to ensure that prisons function in a lawful, transparent, accountable, and fair way, by scrutinising them both from inside and outside. Complaints contribute to preventing and detecting torture and other ill-treatment in places of detention as they provide insights into the protection gaps within the prison and they are a means of ensuring accountability for human rights violations. Moreover, the possibility of inspections by relevant internal and external bodies is essential to ensuring scrutiny and accountability.

Overall, the way complaints and inspections are dealt with indicates whether or not the prison regime is open to scrutiny and accountability.

The examples below are fictional but based on real-life examples. They present examples of failing complaint systems.

[EXAMPLE 1] Censored complaint system

A person in prison submits a complaint of ill-treatment to the National Human Rights Institution (NHRI). The letter is however censored and never reaches the NHRI. A monitoring body finds out that it is general practice in the prison that complaints are first addressed and considered by staff working in the prison before they may be forwarded to the NHRI and that most complaints never reach the NHRI. This means that there is no effective means of submitting complaints for external scrutiny.

[EXAMPLE 2] Poor knowledge about the complaint system and compromised access to a complaint box

In a prison in a certain country, a special wing for persons with mental health problems has been established so that the provision of specialised health care can be improved. A monitoring body visits the prison. While the monitors welcome the initiative to separate persons in mental distress from others and provide them with specialised care, they are concerned that patients in the special wing lack knowledge about the complaints mechanism available in the prison. These patients are not aware of the presence of a complaints box, and about the fact that the complaints box is located on a top shelf by the security entrance to the wing, making it very difficult for them to lodge a complaint freely and confidentially.

17.2 What to monitor?

In relation to complaints, monitors may look into the following issues:

1. Confidentiality of complaints and risk of reprisals
2. Investigation of complaints

Confidentiality of complaints and risk of reprisals

Persons in prison may wish to submit complaints in order to bring forward their issues of concern. If the complaint is submitted to an external body, this communication should take place freely and in full confidentiality, without prison staff or the prison director being present. Such communication should not be subject to censorship when directed to the central prison administration, judicial, or other competent authorities, or international bodies. A person in prison must never be exposed to any risk of retaliation or intimidation (reprisals) as a result of having submitted a complaint. The risk of reprisals related to submitting complaints to such bodies should always be an issue of interest to monitors in order to strengthen the protection against such risk.

Investigation of complaints

Every complaint shall be promptly dealt with and replied to without delay. If rejected or unduly delayed, the person who submitted the complaint shall be entitled to bring it before a judicial or other authority. Especially when it comes to allegations of torture or other ill-treatment, a prompt and impartial investigation by an independent authority is key for ensuring accountability and non-repetition. In some countries a special – and sometimes independent – body is established for investigating such allegations, while in other countries the Prosecutor's Office or the court undertakes this duty. Information about complaints submitted shall be registered in the personal file of the complainant, unless they are confidential.

In relation to inspections, monitors may look into the following issues:

1. Internal and external inspection bodies
2. Powers of inspection bodies

Internal and external inspection bodies

There shall be a twofold system for regular inspections of prisons: (a) Internal or administrative inspections conducted by the central prison administration; (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies. The various bodies with a mandate to inspect prisons are introduced in Chapter 1.

In addition to identifying shortcomings and deficiencies, inspection bodies may be beneficial for the prison administration by suggesting solutions that are different from those routinely taken. Independent and effective external inspections are crucial for reviewing prison practices against the national legislation and regulations, as well as against international human rights standards. Monitors may look into whether inspection bodies (beyond their own monitoring body) are in place and functional and whether such bodies are considered credible and effective by those in prison.

Powers of inspection bodies

Inspection bodies shall have the possibility to conduct unannounced visits and confidential interviews with persons in prison and prison staff, while also reviewing written information. Close collaboration between the different bodies in a country shall always be sought. A person in prison must never be exposed to any risk of retaliation or intimidation (reprisals) as a result of having provided information to an inspection body. The risk of reprisals should always be an issue of interest to monitors in order to strengthen the protection against such risk and the effectiveness of accountability mechanisms, such as inspection bodies.

17.3 How to monitor complaint systems and inspections?



Observations

If complaint boxes are available within the prison, a tour of the premises is an opportunity to assess whether effective access and confidentiality are ensured. Monitors can observe whether complaint boxes are locked (and not accessible to prison staff) and whether they are located in the accommodation units in a manner accessible to persons in prison. Monitors may also observe whether relevant material for submitting complaints (stationary) is easily accessible within the premises. Information on complaint procedures should be available in the most common languages within the prison population.



Written information

Apart from national legislation and regulations (at both national and prison level) regarding the complaint and inspections systems in general, written information sources are a very important source for the assessment of their effective functioning. Monitors may look into the prison file management system and the complaints procedure to assess whether complaints submitted are being registered and dealt with appropriately without undue delay. Based on information from registries and personal files, monitors may select to interview persons who have submitted complaints, as well as prison staff members who have investigated such complaints as this will give insights into the effectiveness of the system.

Monitors may also look into recent inspection records, if available, as well as read inspection reports by both internal and external bodies. Such records and reports will provide valuable insights and an additional source of information for triangulation.



Interviews with persons in prison and staff members

Interviews with persons in prison should be conducted, in order to acquire their opinion about their familiarity with and trust in the complaint and inspection systems, their effectiveness, the possibilities to appeal initial decisions by the prison administration, confidentiality and risk of reprisals, provision of relevant information regarding this system (including external independent bodies), experiences from addressing such external bodies (e.g., the Ombudsman or NHRI, the Prosecutors Office, the court, etc.). Monitors should assess whether there are complaints about the medical care and treatment and whether there are opportunities to express these complaints confidentially. Monitors may also assess whether inspection bodies are in contact with those in prison and whether they seek their insights to inform their findings.

Monitors should pay particular attention to complaints of torture and other ill-treatment and how these are submitted and investigated.



Standards of relevance to monitoring complaint systems and inspections

- Mandela Rules, Rules 8, 54–57, 83–85
- Bangkok Rules, Rule 25
- Havana Rules, Rules 72–78

17.4 Further reading

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CHAPTER 18

Preparation for release from prison

This chapter addresses preparations for release from prison and explains why the period of imprisonment should be used to support social reintegration. It links preparation for release to the principle of normalisation, entailing that prison life shall be as close as possible to the positive aspects of life in the community and it shall facilitate the persons' reintegration.

The chapter examines key elements such as sentence planning, psychological and practical preparation, pre-release measures, home leave, and continuity of care after release. It highlights the particular risks faced by persons with long sentences, health needs, social marginalisation, or limited support outside prison.

Finally, the chapter outlines how monitors can monitor preparations for release through observation, review of sentence and treatment plans, and interviews with persons in prison, staff, external agencies, and civil society actors.

CHAPTER 18

Preparation for release from prison

18.1 Why monitor preparation for release from prison?

While acknowledging that 'reintegration' can, in most cases, be achieved more effectively through non-custodial measures, the period of imprisonment should be used to support social reintegration of persons in prison upon their release. Most persons in prison will return to the community and therefore prison life should be systematically geared towards achieving (re)integration into society. To this end, prisons shall offer various purposeful activities and support such as education, vocational training and work, and assistance (remedial, moral, spiritual, social, health).

The aim of reintegration goes hand in hand with the principle of so-called 'normalisation'. In essence, 'normalisation' entails that prison life shall be as close as possible to the positive aspects of life in the community and it shall facilitate the persons' reintegration. While recognising that prison life can never be completely similar to life in the outside community, the prison regime should seek to minimise the differences that tend to lessen the responsibilities of those in prison or the respect for their human dignity. In practice, prison administrations may take steps towards 'normalisation', such as allowing persons in prison to have their spouse and children stay overnight in appropriate facilities to experience, as much as possible, a normal family life, permitting men and women to associate on a voluntary basis, and providing persons with ample opportunity to undertake appropriately paid work.

If such programmes and activities are not offered, the conditions of imprisonment may contribute to the institutionalisation of offenders, which tends to hamper their ability to reintegrate into society upon release.²³⁸ Overall, prisons that achieve a higher moral quality of life (through the enjoyment of basic human rights and dignity) support better outcomes after release in relation to reoffending.²³⁹

Transition from prison life back to the community is a difficult process, even after relatively short periods of imprisonment. It becomes even more complicated if the time spent in prison is longer. If one recalls how daily life has changed over the last, for instance, 10-15 years (in terms of use of technical devices, bureaucracy, labour market, etc.) as well as how a person's personal situation (family, children, friends, etc.) will likely have changed, one can understand the difficulties for a person who is released after such a period of time.

It is also important to keep in mind that a significant number of persons in prison come from socially disadvantaged and marginalised groups. Their marginalisation and disadvantaged conditions have, in many cases, contributed to offending in the first place. Therefore, although we tend to talk about reintegration, it may be that

persons in prison were never integrated into society before their imprisonment. Therefore, they need additional support to address the challenges that they face in society to avoid reoffending.

In terms of preventing torture and other ill-treatment, preparation for release encompasses many positive aspects of prison life (activities, support programmes, work, contact with the outside world) and ensures that persons in prison are given the means and the opportunity to change and reintegrate in society.

The examples below are fictional but based on real-life examples. They are examples of poor preparations for release putting released persons at risk.

[EXAMPLE 1] Lack of continuity of care

A person in prison is about to be released. The person has informed the prison social worker that she has no place to stay upon release, while she needs to continue taking medication for a chronic disease which she cannot afford to buy when released. The prison social worker provides the person with contact details of the Welfare Services and does not inform the prison doctor about the issue with the medication. The person is released on a Friday afternoon without having the opportunity to speak to the prison doctor, with no medication, with no money and without being able to contact the Welfare Services until Monday morning. Such a situation puts the released person at risk of not being able to cover basic needs (housing, food) and not being able to take medication that is crucial for her health.

[EXAMPLE 2] Poor reintegration programmes

A monitoring body notices that in several prisons in a certain country, there is a lack of social services and reintegration programmes to prepare persons for their return into society. Persons in prison as well as staff members indicated to the monitors that they were not aware of community reintegration programmes and social services that would support persons upon release. Where such programmes exist, benefits are not automatic. In mother and baby units, for example, programmes exist for women six months before their release, but they are not made available automatically and only around 50 per cent of women participate in such programmes. The monitoring body is concerned that an absence of social assistance for mothers could have a detrimental effect on both mothers and their children after release. In addition, limited social support for all persons in prison puts them at a high risk of recidivism.

18.2 What to monitor?

Monitors may look into the following issues related to preparation for release:

1. Sentence planning
2. Psychological and practical preparation
3. Steps prior to release
4. Continuity of care after release

Sentence planning

Sentence planning is a process intended to support and prepare persons in prison for release into the community, spanning from the time of admission up to the time of release. Each person in prison should have an individual sentence plan, which sets out a tailored programme of activities and treatment with agreed targets as part of a support and rehabilitation plan for a person in prison. This planning is put in place to assist the individual in making meaningful changes that will improve their prospects after release. The individual sentence plan should be tailored to the individual needs of each person, taking into account their social and criminal history, physical and mental capacities and attitudes, personal temperament, the length of their sentence, and prospects after release. Sentence plans should be flexible enough to allow necessary adjustments throughout the period of imprisonment. Usually, sentence plans are developed and amended based on a set of assessments (classification, risk, needs) and in consultation with the person in prison. The plans should be reviewed at regular intervals and the person in prison should be involved in this process.

In many prison systems worldwide, persons serving a life sentence also have an opportunity to be released after serving a certain number of years, if they show good conduct and the risk of reoffending is considered low. Importantly, for a life sentence to remain compatible with the prohibition of torture and other inhuman treatment, there must be both a prospect of release and a possibility of review.

In many cases, life-sentenced prisoners are held under an extremely harsh regime during the whole imprisonment period, with limited or no contacts with others in the prison and the outside world. To prepare persons serving a life sentence for potential release, it is necessary to develop an individual sentence plan that allows for a gradual transfer to more relaxed regimes based on an individual assessment. The aim should not only be to provide the life sentenced persons with the possibility of having their sentences effectively reduced, but also to have a target to aim for, which motivates positive behaviour in prison.²⁴⁰

Psychological and practical preparation

Long-term imprisonment can have several de-socialising effects on persons in prison. In addition to becoming institutionalised, persons with long-term prison sentences may experience psychological problems (e.g. loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society, to which almost all of them will eventually return. Consequently, the regimes that are offered to persons serving long sentences should seek to compensate for these effects in a positive and proactive way.

Prison rehabilitation services or probation services often provide support with practical issues in the course of preparation for release, for example, by providing vocational training or education, dealing with arranging necessary documents, finding a place to stay after release, contacting social services, providing information on employment, on how to enter into tenancy agreements, etc. Psychological preparation is at least as important as practical preparation, for a person's ability to lead a life outside prison. Knowledge and skills in decision making, making positive and constructive choices, having balanced and not rushed reactions to stressful situations, conflict resolution, and anger management, may increase a person's ability to function in society well enough to avoid reoffending.

Steps prior to release

Before the completion of the sentence, it is desirable that the necessary steps are taken to ensure a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organised in the same prison or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid. Indeed, in some countries there are special units where persons are placed prior to release (for example, 'half-way houses') with a more relaxed regime and more opportunities for contact with the outside world, including meetings with probation services. It is also important that persons preparing for release are granted extended and regular periods of home leave so that they can establish strong ties with their family and their community and be well-placed to return. This is important not only for the person who is going to be released, but also for the family and community to prepare for welcoming them back and supporting them in the best way possible.

In order to support financial stability after release, a part of earnings during imprisonment could be set aside by the prison administration, with the consent of the person concerned, so as to constitute a savings fund to be handed over upon release. The money and articles retained by the prison upon admission shall be returned on release.

Continuity of care after release

The State has a responsibility for persons also after their release. There should, therefore, be governmental or private agencies capable of providing the released persons with efficient aftercare directed towards the lessening of prejudice against them and towards their social rehabilitation. Such agencies may assist released persons with appropriate documents and identification papers, housing and work, clothing, and sufficient means to reach their destination and maintain themselves in the period immediately following their release.

Continuity of care is extremely important, especially for those with health conditions, such as chronic diseases and psychiatric conditions. Therefore, it is desirable that steps be taken to ensure the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare. Means to ensure this include providing the person being released with a copy of, or at least easy access to, their medical record that they can show to the health providers outside prison taking over the care upon release. It also includes helping the person get a medical

appointment immediately after release and providing the person with sufficient medication to continue treatment until a new medical provider has taken over and made the necessary prescriptions.

The importance of preparation for release and continuity of care is stressed by the fact that studies have shown high post-release mortality among persons released from prison. This is often linked with the risk of drug overdose in the first weeks after release, but having spent time in solitary confinement or a high-security facility has also been found to be linked with higher mortality of non-natural causes (accidents, self-harm, violence) in the years following release, and having spent time in a high-security facility has even been found to be linked with dying from natural causes (diseases) post-release.²⁴¹

More generally, it is important that prison administrations allow access to agencies that are able to assess the respective needs, in due course, and plan ahead for the support needed upon release. Such efforts shall be coordinated in order to ensure that those released are provided with the necessary support, means and treatment.

18.3 How to monitor preparation for release from prison?



Observations

Monitors may have the opportunity to observe the procedure of releasing a person from prison during a visit. They may also be able to observe a process in which a person in prison is considered for early conditional release. Monitors will in most cases be able to observe the relevant activities or programmes taking place at the time of the visit (therapeutic sessions, educational activities, sentence planning sessions, etc.).



Written information

Relevant documents will provide useful information regarding the processes that take place before release (e.g., individual sentence/treatment plans, activity plans, correspondence with other agencies, plans for continuity of care for persons in need of continued treatment and/or medication, etc.). An important indicator of the success of preparation for release is a low reoffending rate, both nationally and, if available, with regard to a particular prison.



Interviews with persons in prison and staff members

Persons in prison who are close to being released, conditionally or unconditionally, as well as persons who have reoffended and are currently in prison, may provide useful information about the processes around preparation for release. In addition, any other persons in prison may provide information on whether they have been able to discuss and agree on an individual sentence plan with the prison, whether they are participating in any relevant activities, how often they go on home leave or contact their family, etc. Particular attention should be paid to whether the persons

in prison have individual sentence plans and whether they have been involved in the drafting and review of these plans, so as to secure their commitment to the implementation of the plans and to their social rehabilitation.

Prison staff involved in such procedures (social workers, health professionals, educators, and representatives of other relevant agencies) should also be interviewed by the monitoring team in order to get their insights into preparation for release. Before or after the visit, the monitoring team may explore ways of contacting other agencies as well as CSOs that have a mandate to offer support after release in order to receive information on the main challenges faced by those released from prison and how they are supported.



Standards of relevance to monitoring preparation for release

- Mandela Rules, Rules 4–5, 9, 24, 38.2, 67, 86–92, 94, 98–99, 103.3, 106–108, 110
- Bangkok Rules, Rules 45–47, 55, 63
- Havana Rules, Rules 19, 35, 45–46, 53, 57, 79–80

18.4 Further reading

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CHAPTER 19

Issues in relation to prison staff

This chapter addresses prison staff and explains why their professionalism, working conditions, and relationships with persons in prison are central to humane and effective prison management. It examines how prison officers, management, health staff, and other civilian staff shape prison climate, safety, security, rehabilitation, and the risk of torture and other ill-treatment.

The chapter focuses on key issues such as recruitment, professional requirements, remuneration, training, staffing levels, qualifications, and working conditions. It also highlights how poorly trained, unsupported, or insufficient staff may increase the risk of neglect, abuse, excessive force, degrading treatment, or poor prison management.

Finally, the chapter outlines how monitors can monitor staff-related issues through observation of interactions, review of staff records and policies, and interviews with persons in prison and staff members.

CHAPTER 19

Issues in relation to prison staff

19.1 Why monitor issues in relation to prison staff?

Prison staff refers to all staff working in prisons, including prison officers, prison management, health staff and other civilian staff. Prison staff of all levels and categories play a decisive role in the implementation of basic human rights standards in prison. They have a central role in any prison, in terms of facilitating a constructive prison climate (see also Chapter 2), supporting persons in prison, ensuring a safe and secure prison environment, and facilitating the reintegration of persons in prison into society.

The professionalism of prison staff, and especially prison officers, requires that they are able to treat persons in prison in a decent and humane manner, while paying attention to matters of safety, security, good order, and the special needs of certain groups of persons in prison. The development of constructive and positive relations between prison officers and those in prison will not only reduce the risk of ill-treatment but will enhance control and security in the institution. In turn, it will make the work of prison officers much more interesting, fulfilling and rewarding.

However, prison staff unfortunately often play a key role in ill-treatment and torture taking place in prisons, intentionally or by negligence. Examples include handcuffing a person in prison unnecessarily, conducting unnecessary or degrading strip searches, excessively disciplining persons in prison by taking away their telephone or exercise time, treating them in a disrespectful and degrading manner, or even subjecting them to physical ill-treatment.

The example below is fictional but based on real-life examples. It illustrates how operating with poorly trained prison staff increases the risk of ill-treatment.

[EXAMPLE 1] Poorly trained prison staff

In prisons in a certain country, there is a lack of training available for prison staff. Prison staff do not receive special training on the management and supervision of persons in prison and many are in fact not capable of dealing with the various challenges of daily life in prison. Prison health staff have not heard about the Istanbul Protocol and have little knowledge or understanding of how human rights relate to health. The lack of training and skills of prison staff results in a poor climate in the prisons, increasing the risks of ill-treatment.

19.2 What to monitor?

Prison staff are responsible for treating persons in prison with respect for their dignity and addressing their needs with a prospect of rehabilitation and reintegration. They have a broad range of responsibilities and tasks within the prison, and while implementing them, they are sometimes faced with dilemmas in maintaining safety and security in the prison.

Despite the crucial and difficult tasks that prison staff perform and the high expectations of achieving reintegration for those leaving prison, prison staff are often seen by the general public as a marginalised part of the justice system and being a prison officer may not be a highly esteemed profession. This may result from the fact that many people are not aware of the nature, responsibilities, and challenges faced by prison staff. Their work is largely invisible and even mystified due to the very nature of prisons being closed institutions.

It is not rare that prison staff take a defensive stance towards monitors. They may see monitors as the ones entering the prison with the intention of criticising their performance. It is up to monitors to earn the respect and trust of prison staff by demonstrating a deep understanding of the prison system in general and of the duties and challenges that prison staff face on a daily basis. Expressing appreciation for good work performed by prison staff and listening to the issues that are important to them are very important. On the other hand, monitors should not avoid expressing constructive criticism when prison staff are not performing their tasks as they should. Impartiality and reasonable professional distance should be maintained at all times.

Monitoring prison staff includes looking into the following issues:

1. Recruitment, requirements, and remuneration
2. Training
3. Qualifications and numbers
4. Working conditions

Recruitment, requirements, and remuneration

The climate in a prison is largely dependent on the quality and resources of its personnel. A well-functioning and humane prison system will always be dependent on properly recruited prison staff who know how to interact with persons in prison. The staff should have the right educational and professional backgrounds and should be physically as well as mentally fit for the job. They shall at all times perform their duties to influence those in prison for good by their example. There is arguably no better guarantee against ill-treatment than a properly recruited and trained prison officer, who knows how to adopt the appropriate attitude in their relations with persons in prison.

It is also important that prison staff get appropriate remuneration for their work, compatible with similar levels of remunerations in the community. Salaries shall be adequate to attract and retain qualified staff, both men and women, and employment benefits and conditions of service shall be favourable in view of the nature of the work.

This all also applies to the prison director. A qualified and experienced prison director is key for a well-functioning prison and to well-functioning staff. They need to be adequately qualified for their tasks by character, administrative ability, suitable training and experience.

International standards state that in prisons accommodating women, they shall be attended and supervised only by female staff members. This rule is very rarely upheld in practice. However, a gender-balanced and gender-sensitive crew of prison staff is of key importance.

Training

Prison staff should be properly trained prior to the start of their duties, as well as continuously during the course of their employment. Before starting their job as prison staff, they shall be provided with training tailored to the general and specific duties in the prison. This training shall include training on the relevant national legislation, regulations and policies, training on the rights and duties of prison staff in their work, training on security and safety matters, including use of force and means of restraint, and training on first aid, the psychological needs of persons in prison, social care and assistance including early detection of mental health issues. Importantly, prison staff shall also be trained on the prohibition of certain conduct, in particular torture and other cruel, inhuman or degrading treatment or punishment.

Ongoing training of prison staff should focus on acquiring interpersonal communication skills. Building positive relations with persons in prison based on the notion of dynamic security should be recognised as a key feature of a prison officer's vocation. In order to ensure that all instances of use of force are necessary and proportionate, it is also crucial that prison officers are properly trained in conflict resolution and mediation, as well as control and restraint techniques (i.e., manual control). With such training, they are able to choose the most appropriate response when confronted by difficult situations. In this way, the risk of injuries to both persons in prison and staff will be significantly reduced.

Prison staff who work with certain categories of persons in prison, for example those with a mental health problem, shall receive additional relevant training. During their employment, the prison administration shall ensure continuous training courses to maintain and improve prison staff's knowledge and skills.

Qualifications and numbers

Apart from prison officers, staff working in prisons include a broad variety of specialists, such as psychiatrists, psychologists, social workers, and teachers. The interaction of these specialists with persons in prison is crucial for their functioning within the institution as well as their chances for rehabilitation and reintegration.

The number of prison officers employed must be sufficient to guarantee staff safety and the physical and mental integrity of persons in prison. Sufficient staffing levels are important to be able to supervise persons in prison and contribute to the development of positive relations between staff and persons in prison, as it allows for more direct, personal contact, and generates a secure environment for both staff and persons in prison. This will be very challenging in situations of overcrowding, where the number of prison staff per person in prison will

consequently be lower than needed and planned for. This needs to be addressed by the prison administration in order to, even under suboptimal conditions, create the best possible circumstances and environments for prison staff as well as persons in prison. Ensuring appropriate levels of staffing should be a priority for the prison administration.

Working conditions

In order to attract and to retain high-quality prison officers, it is essential that not only are salaries set at an appropriate level, but also that other conditions of employment are favourable, including a humane working environment, safety and security, decent working hours, good arrangements for sick leave, support from superiors, and ability to access psychological support services. For instance, the number of working hours per shift should, as far as possible, resemble those in society. Long shifts will inevitably have a negative effect on professional standards as no one can perform satisfactorily for a very long time.

Prison officers are often exposed to highly stressful or violent situations, which can generate psychological reactions and disproportionate behaviour. Consequently, it is important that measures be taken to ensure that prison staff benefit from adequate psychological support.

Prison officers should be respected and appreciated by government officials for the work they are doing, and the general public should frequently be reminded that prison work is an important public service worthy of high respect.

19.3 How to monitor issues in relation to prison staff?



Observations

Observations are essential for assessing the prison climate. Simply observing the interaction between staff and persons in prison will give the monitor a lot of valuable information about staff's working conditions, by assessing body language, tone of communication, language used, signs of fatigue and stress, etc.



Written information

Available registries and records in the prison, such as lists of staff members, distribution of staff in shifts, policies and procedures concerning recruitment and retention of staff, levels of absenteeism and sick leave, staff turnover, training programmes, as well as legislation and regulations will also be very useful for the monitor to consult when monitoring issues in relation to prison staff.



Interviews with persons in prison and staff members

In order to assess the relationship between the staff and persons in prison, knowledge about the prison climate and its assessment is key (see Chapter 2).

Persons in prison can, for instance, be asked about how they are treated in general in the prison, what the tone of communication between them and staff is generally like, and how they assess the prison staff's capability to treat them in a decent and

humane manner, while paying attention to matters of safety, security, and good order. Persons in prison may be asked to offer their views on the sufficiency of prison staff to supervise the prison and intervene promptly in cases of violence between persons in prison. Women can be asked for their perception of the gender-sensitivity of staff members.

Prison staff can be asked about their daily work life and their job satisfaction, their remuneration, their training (including training related to gender-specific needs and human rights of women in prison, and issues like child psychology, child welfare and international human rights standards specifically for children), and their prospects for professional development. The way they refer to persons in prison, including to persons in a particularly vulnerable situation such as persons with a substance use problem, LGBTIQ+ persons, or persons with a mental health problem, can also give the monitor an idea of the level of respect and the climate in the prison. Staff may also be able to explain how overcrowding may affect their relations with persons in prison, possibly creating situations of conflict and security risks for both staff and persons in prison.



Standards of relevance to monitoring issues in relation to prison staff

Requirements and remuneration

- Mandela Rules, Rules 74–75, 81–82
- Bangkok Rules, Rule 29–35
- Havana Rules, Rule 81–84

Training

- Mandela Rules, Rules 75–76
- Bangkok Rules, Rules 29–35
- Havana Rules, Rules 85–86

Qualifications and numbers

- Mandela Rules, Rule 78–80
- Havana Rules, Rule 81, 86

Working conditions

- Mandela Rules, Rule 74.3
- Havana Rules, Rule 84

19.4 Further reading

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Part 4

Reporting and recommendations and strategic follow-up



CHAPTER 20:

Reporting and recommendations

CHAPTER 21:

Strategic follow-up

CHAPTER 20

Reporting and recommendations

This chapter deals with reporting and drafting recommendations as essential steps in the preventive monitoring cycle. It explains how monitoring bodies can communicate findings, conclusions, and recommendations in a strategic and systematic way to support dialogue and change.

The chapter examines the purposes of reporting, including describing and analysing situations, identifying root causes, acknowledging progress, and providing a basis for follow-up. It presents different types of reports, including general visit reports, ad hoc reports, thematic reports, follow-up reports, and annual reports.

The chapter also addresses report structure, quality, clarity, target audiences, and the need for well-substantiated findings. Finally, it explains how to formulate and communicate recommendations that are practical, prioritised, preventive, and grounded in a rigorous analysis of the facts and underlying causes.

CHAPTER 20

Reporting and recommendations

20.1 Introduction

Conducting monitoring visits lies at the heart of the work of any monitoring body. But for visits to be effective and meaningful, they must be followed by a reporting process that enables the monitoring body to effectively communicate its findings and recommendations to the relevant stakeholders and to initiate an ongoing, constructive dialogue with a view to bringing about change. Analysing findings against national and international standards, drawing conclusions, and drafting recommendations are crucial steps in the preventive monitoring cycle and should be pursued and conducted in a strategic and systematic manner.

Adopting a preventive approach has implications not only for the way a monitoring body conducts visits, but also for the way it communicates its findings, selects its recommendations, and presents them to stakeholders. Preventing torture does not merely include checking compliance with national and international standards and publishing the results in a report with recommendations. As the UN Subcommittee on Prevention of Torture (SPT) stated: ‘The purpose of such reports and recommendations is not only to bring about compliance with international obligations and standards but to offer practical advice and suggestions as to how to reduce the likelihood or risk of torture or ill-treatment occurring and will be firmly based on, and informed by, the facts found and circumstances encountered during the visits undertaken’.²⁴²

Bearing in mind that the prevalence of torture is influenced by numerous factors, prevention requires a holistic and multifaceted approach. This approach should be reflected in the way a monitoring body drafts its reports and recommendations. This implies that observations are systematised and formulated in a concise way through a rigorous analysis, not only in terms of compliance with standards, but also in terms of the context, the root causes, and other factors that increase the risk or enable torture and other ill-treatment to take place. In turn, this process will lead to concrete conclusions on the change desired and the steps needed and will guide the drafting of relevant recommendations to responsible actors at different levels.

The current chapter deals with reporting and drafting recommendations by a monitoring body. In doing so, the following questions are addressed:

1. What are the purposes of reporting?
2. What different types of reports can be drafted?
3. What would be suitable structures for the different types of reports?
4. How to ensure good-quality reports?
5. How to draft and communicate well-formulated recommendations?

20.2 The purposes of reporting

Reports may be produced for different purposes, such as for documenting and addressing a situation in a specific detention facility (visit reports), analysing a specific issue across different settings (thematic reports), providing an overview of the monitoring body's work within a given period, often annually (annual reports), or tracking the progress of implementation of recommendations (follow-up reports). Defining the purpose and deciding on the type of, and target audience for, each report requires a strategic approach and a clear vision about the impact that the monitoring body aims to achieve.

Regardless of the type of report, reporting is generally understood to serve some core functions that are briefly explained below.

Describing and analysing a situation

Any report almost always describes the situation in a prison facility or a particular human rights issue across different facilities. For this purpose, a clear and concise structure should be used and adapted to the particular purpose of the report. This means that the structure can and should vary from case to case to allow the report to focus on what is most significant. Presenting a well-grounded analysis of the situation through rigorously gathering, analysing, and triangulating information is crucial for the credibility of the monitoring body and the sense of fairness towards the responsible authorities.

Analysing the situation in a specific detention facility within a broader context

In order to provide a deeper understanding of the general context in which a certain issue is observed, the report needs to place the facts in a broader contextual picture. Therefore, reporting provides an opportunity to present the monitoring body's take on a given situation, analysing the relevant legal and social frameworks, and identifying root causes of the issues at hand. Assessing the factors that have an impact on the given situation will allow for more concrete conclusions and targeted recommendations to flow logically from this analysis. For example, if a prison is found to be understaffed, it should be analysed what is causing such a situation, and whether these causes are specific to the prison or apply more generally. Is the problem perhaps a lack of qualified candidates, insufficient financial resources to recruit additional staff, a lack of interested candidates due to low salaries, a poor working environment, or perhaps a general low level of respect for prison officers among the population?

The report also provides an opportunity for the monitoring body to analyse the consequences and the impact of a particular human rights violation on persons in prison and prison staff. In this way, the report also serves as a tool to sensitise authorities. For example, it could be documented that understaffing has an impact on the overall situation in a prison, such as less security within the prison endangering both staff and persons in prison, higher levels of burnout among staff, reduced human contact, and more filed complaints.

Identifying concrete steps, best practices and acknowledging progress

Giving credit where it is due is essential for a fair reporting process and could motivate authorities to further improve their practices. Furthermore, identifying concrete steps and best practices, analysing them, and presenting them through a report will allow other stakeholders to learn as well, which is useful in tackling common challenges. Reports should acknowledge any positive aspects/practices found regarding the conditions in the facility and the treatment of persons in prison and analyse their impact on the situation in general.

Basis for constructive dialogue and strategic follow-up

Good-quality reports can play a key role in framing the ongoing dialogue with responsible authorities by effectively communicating the monitoring body's findings and recommendations.

Certainly, one of the main purposes of a report is to create a basis for undertaking strategic follow-up action after the report has been communicated to the appropriate stakeholders. The way in which reports and recommendations are written will be instrumental for the success of the follow-up process.²⁴³ Clearly framed and sound findings leading to results-oriented recommendations provide the indicators against which the monitoring body should continue to follow up and evaluate the situation at hand. The follow-up process will be further addressed in Chapter 21.

20.3 Types of reports

The type of report flows from the specific objective of the monitoring work, which in turn corresponds to the strategic priorities of the monitoring body.

Reports may be drafted for confidential transmission to the authorities or for publication. Either way, the reports are typically drafted with the aim to address specific issues, analyse findings, and provide recommendations to bring about positive change. Reports are addressed to the relevant authorities that are in a position to implement the recommendations, be it at local, regional, or national level. In some cases, the monitoring body may decide to publish a report if it wants to reach a broad audience and/or the findings are so important that they justify a broad dissemination. The monitoring body may also include a summary of its findings and recommendations, as well as progress made, in its annual report, which is public.

General visit reports

Drafting a report after a visit to a prison serves the purpose of giving an overview of the situation in this specific facility, indicating and analysing shortcomings and good practices, as well as assessing the progress made since the last visit of the monitoring body (if any). General visit reports typically cover the whole range of aspects in a prison. In order to draft a general visit report on a particular prison, it might be necessary to pay a visit lasting several days or even a few separate visits in order to gather and triangulate all the necessary information.

General visit reports provide a general overview of the situation and may identify specific issues that require more in-depth analysis. This could be done either in thematic reports or follow-up reports.

Ad-hoc visit reports

Monitoring bodies may conduct ad-hoc visits to a prison, to assess a specific situation that has become known to the monitoring body and needs further investigation, i.e., they are 'required by the circumstances'. Ad-hoc visit reports will focus on the reason for the visit (i.e., the specific issue to be monitored) and the findings and recommendations on this specific issue.

Thematic reports

Thematic reports are devoted to a particular issue that has been monitored in several prisons through thematic visits, i.e., visits that focus on a specific theme. For example, if the aim of the monitoring body is to assess the medical care in prison, then existing frameworks, procedures, and practices of medical care in prison should be analysed in-depth across a wide range of prisons and prison hospitals. This will allow the monitoring body to assess how the framework and procedures are implemented in practice, including access to medical care, independence of the prison doctors, the initial medical assessment, and the opportunities for persons in prison to receive specialised medical care outside the prison.

A thematic report on a particular issue is usually addressed to the responsible central authority for that particular issue, for example, the Prison Administration, the Ministry of Justice, or the Ministry of Health. It may also be addressed to other authorities that have the power to implement the recommendations of the monitoring body, such as the responsible Ministry if there are recommendations for legislative reform. In some cases, it may also be focused on a given theme within one particular institution.

A thematic report on a particular issue contains a deeper analysis than that of general visit reports as it only addresses a specific theme. Causal factors as well as best practices may also have a more prominent place in a thematic report. Thematic reports hold the potential to generate impact across multiple institutions at legislative, policy, and practice level.

Follow-up reports

Follow-up reports are drafted in order to determine the extent to which previous recommendations made by the monitoring body have been implemented by the responsible authorities, as well as to assess the overall progress either in a particular prison or with regard to a particular issue (as a follow-up to a thematic report). A follow-up report may be limited to assessing implementation but may in some cases go further and also analyse the underlying factors and causes for non-implementation, mention the responsible authority, give credit for the progress made, and outline possible steps to be taken in order to enhance implementation.

Annual reports

Monitoring bodies often publish annual reports, summarising the findings and conclusions from the visits undertaken during the past year and the conclusions of thematic reports. These reports usually include an overview of all places of detention visited.²⁴⁴ Annual reports are publicly available and provide monitoring bodies with a good opportunity to publish a summary of their key activities and findings throughout a year. An annual report is also an opportunity to present key achievements, as well as priorities and perspectives for the following year. Annual reports may also take stock of positive developments and areas of concern within particular types of detention (e.g., police, prisons, psychiatric hospitals). The annual report complements the other types of reports that monitoring bodies may publish.

20.4 Structure of reports

A sound and logical structure of a report is crucial for communicating the findings and analyses of the monitoring body in a clear, concise, and coherent manner. This also helps recipients to perceive the monitoring body's findings and recommendations as substantiated and credible. The structure of a report varies depending on its type, e.g., the structure of a general visit report will differ from the structure of a thematic report as the first will cover a much broader scope of issues, while the second will contain more in-depth analysis on a particular issue. Examples of a good structure for a general visit report and a thematic report respectively are outlined in boxes 20.1 and 20.2 below.



[BOX 20.1] Example of a structure for a general visit report

- I. Summary of findings, conclusions, and recommendations
- II. Introduction
 - a. Context of the visit
 - b. When did the visit take place?
 - c. Who conducted the visit?
 - d. General information about the institution, such as capacity, current occupancy, categories of persons in prison, number and types of staff.
 - e. Cooperation of the authorities with the visiting delegation
- III. Institutional and legal framework²⁴⁵
- IV. Findings during the visit, including an analysis of the findings and the risk of torture and other ill-treatment, and of the root causes and underlying factors related to the findings, possibly including:
 - a. Individual allegations of torture and other ill-treatment
 - b. Findings in relation to (including special considerations on vulnerability):
 - i. Admission
 - ii. Material conditions
 - iii. Daily regime
 - iv. Contact with the outside world
 - v. Health care services
 - vi. Safety and security

- vii. Disciplinary sanctions
- viii. Complaints system and inspections
- ix. Preparing for release
- x. Prison staff

V. Recommendations and next steps in terms of follow-up



[BOX 20.2] Example of a structure for a thematic report

- I. Summary of findings, conclusion, and recommendations related to the specific theme
- II. Introduction
 - a. Introduction to the theme and reasons for selecting it
 - b. Overview of visits conducted (when, how many, where, and by whom)
 - c. Cooperation of the authorities with the visiting delegations
- III. Institutional and legal framework related to the specific theme²⁴⁶
- IV. Findings related to the specific theme across institutions visited (sub-headlines should be elaborated in accordance with the theme), analysis of the findings and the risk of torture and other ill-treatment, and analysis of root causes and underlying factors related to the findings
- V. Recommendations related to the specific theme and next steps for follow-up

Apart from the structure of a report, its length also needs to be considered. The length of reports will vary depending, for instance, on their nature, the length of the visit, the findings, and the complexity. The monitoring team needs to decide which report length would be most effective in a certain situation, i.e., relatively short and 'high level' drawing on the information found during a visit, or relatively long, presenting that information in detail as 'evidence' on which the findings are based. Too much detail in a report can be a distraction from the principal points which may not be that controversial in some cases. In other cases, however, that amount of detail may very well be needed to convince the authorities.

20.5 Quality of reports

The way in which reports are drafted is crucial for forming a solid basis for dialogue with the authorities and facilitating the follow-up process. Good-quality reports will also reinforce the monitoring body's credibility and authority which in turn will place the monitoring body in a stronger position in its dialogue with the authorities.

First of all, the facts included in the reports should be as accurate and reliable as possible. For this reason, every finding should be triangulated to the highest extent possible, and the conclusions and recommendations should logically derive from the findings. The monitoring body should always avoid making assessments based

on assumptions. Another good way to ensure the credibility of the report is to share and discuss it among peers within the monitoring body. In case an issue or allegation is indicated (for instance, one person stating that the food is poor), but not sufficiently substantiated (for instance, other persons stating that the food is of good quality and sufficient quantity, which the monitors were able to confirm by seeing the weekly menu and checking its implementation in practice), it might be included in the report as a comment instead of a finding.

Furthermore, to ensure that the report is achieving maximum impact, it is important to consider who the target audience is when adopting the appropriate structure, language, and length. In most cases, the recipients of a report will be high-level officials with diverse professional backgrounds. A lengthy and poorly structured report may discourage the reader from going through the whole report. The findings, conclusions, and recommendations of the monitoring body should instead be provided in a clear, concise, and coherent manner and in a language that is easily understandable by recipients. A good practice is to draft a summary of findings, conclusions, and recommendations, which will provide an outline of the relevant priority areas and indicate the main concerns of the monitoring body. Furthermore, the tone and language, the information disclosed, and the number of recommendations in the report will depend on the aims of the report and the strategic considerations around the target audience.

20.6 Drafting and communicating recommendations

Based on the analysis of findings from visits, the monitoring team will make recommendations to the authorities. According to the SPT, '...recommendations regarding conditions of detention play a critical role in effective prevention and will touch on a wide variety of issues, including matters relating to physical conditions, the reasons for, and levels of, occupancy and the provision of, and access to, a wide range of facilities and services,' and 'reports and recommendations will be most effective if they are based on rigorous analysis and are factually well grounded...'²⁴⁷

Recommendations should provide practical advice and suggestions as to how to reduce the risk of the occurrence of torture and other ill-treatment and be firmly based on, and informed by, the findings and the circumstances during the visits. Issuing recommendations means providing guidance to the responsible authorities on how the findings of the monitoring body can be translated into concrete action. Recommendations will also serve as a point of reference for the follow-up process and for measuring the impact of the monitoring body's work. For this reason, recommendations should meet several quality criteria which are analysed below. First, criteria for the preliminary observations/recommendations that may be presented to the prison management at the end of a monitoring visit will be addressed, after which criteria for the written recommendations in a report will be discussed.

Preliminary findings communicated at the end of a monitoring visit

When a monitoring body visits a prison, it usually meets with the prison management at the beginning as well as at the end of the visit. During the final meeting, it is often expected by the prison management that the monitoring team will provide its preliminary findings, in order either to trigger immediate implementation (if this is possible and feasible), or to start the dialogue about their importance and implementation.

The monitoring team should take its time and consider the preliminary findings very carefully before expressing them to the prison management, as this part of the visit will play a crucial role in the future dialogue and cooperation. It is important that if such findings are likely to be given, that this is planned into the timetable for the visit, so that there is sufficient time to present and discuss them. Some findings will need to be presented in any case, i.e., serious violations that require immediate intervention in order to end them (e.g., observed conditions which amount to ill-treatment).

There are some important issues which need to be kept in mind for the monitoring body during the final meeting with the prison management. They are essential for the upholding the monitoring body's authority and credibility and can be summarised as follows:

The preliminary findings need to be well-substantiated

The monitoring team should be careful not to raise issues it does not have enough information about (yet). Even one unsubstantiated finding against a few very well substantiated ones will diminish the credibility of the whole set of findings. In case the monitoring team feels that there is an issue they need to raise but about which they could not collect sufficient information, they should request this information from the prison administration instead of expressing a preliminary finding.

The preliminary findings need to be prioritised

If the monitoring team presents very important messages together with less important ones, the prison management may pick up the 'lighter' issues and disregard the more important ones as those are often more complicated to implement. The monitoring team should therefore be very clear about which main issues it wants to point out during the final meeting. Communicating 'immediate observations', often serious breaches of human rights standards that require immediate intervention by the prison management, should always be prioritised. An example could be a severely mentally ill person kept in solitary confinement for over a month already.

Surely, the quality of the recommendations should be prioritised over the quantity, and less urgent and/or important issues should be left for the visit report. It also needs to be stressed that the immediate recommendations presented during the meeting are preliminary and that other important recommendations are likely to be included in the visit report.

The issues that are discussed need to be within the mandate of the monitoring team and/or the prison management

The monitoring team needs to be well aware of its mandate and stick closely to it. During the dialogue with the prison management, there is always the risk of slipping from the path of prevention of torture and other ill-treatment and to addressing issues outside the mandate of the monitoring team and/or the prison management. For example, the monitoring team may be tempted to raise issues related to specific decisions within the criminal court proceedings or related prison legislation, which cannot be acted upon by the prison authorities. Instead, those issues would have to be raised with the national authorities if doing so falls within the mandate of the monitoring body. Discussing these types of issues takes away valuable time and lowers the credibility of the team. On the other hand, the team should be firm in case the prison management tries to convince the team that particular issues do not fall within its mandate, if, in fact, they do or at least could be addressed by them (e.g., medical care in prisons, overcrowding, nutrition).

The right balance in the communication towards the prison management needs to be upheld at all times

The monitoring team should be intentional about the tone in its communication towards the prison management. In some cases, the team takes the stand of strict criticism, and this often does not contribute to establishing a constructive dialogue. There is also the other extreme, i.e., the team is too friendly and is afraid to be firm in order not to spoil the good relationship with the administration. This will lower its credibility and authority in the eyes of the prison management and decrease the chances of generating positive change. It is advisable that one member of the team, usually the team leader or a person with specific knowledge about the particular issue at stake, presents the findings and recommendations on behalf of the whole team in a firm and clear tone, while ensuring that the feedback provided is constructive and creates avenues for further dialogue with the prison management.

Recommendations in the reports

Purpose and prioritisation of recommendations

In order to be able to work towards bringing about change, one needs to know exactly what needs to be changed. Therefore, it is important for monitoring bodies to be clear about what change they would like to see. How would the situation look if the change happens? Having a clear vision and specific goals to be achieved, is the first step in designing the way towards achieving them. This vision should be shared clearly through the recommendations submitted to the authorities. The authorities need to be able to understand what needs to be changed and what is expected from them.

The recommendations included in a report should cover all issues which the monitoring team would like to raise with the authorities. Since one of the purposes of drafting and transmitting recommendations is to continue a constructive dialogue with the authorities, the recommendations should be very carefully formulated in order to deliver the message in the best possible way.

The process of drafting reports may in fact provide opportunities for starting a dialogue before recommendations are officially submitted. Factual input to the report may even be asked for from the prison management before finalising the report and possibly making it public. In this case, the prison management gets a chance to comment on the findings, inform the monitoring body of any measures already taken to address the issue, and give their views on which measures could be taken in the future. In some cases, the monitoring body will be able to address issues that prison managers (middle level) are aware of and would like to resolve but cannot persuade their superiors (high/central level) to take action on. This is often the case when it comes to allocating financial or human resources for specific aspects of prison life, such as food and education, or addressing systemic problems, such as overcrowding or limited health services. Of course, the monitoring body is ultimately responsible for deciding whether the input received will be taken into consideration and what the report will include in the end. But being inclusive and showing consideration for the views of the relevant actors will certainly add credibility and value to the monitoring body's work and increase prospects of impact. If those involved feel that they have been heard and treated fairly, they are more likely to accept the monitoring body's findings and recommendations.²⁴⁸

Monitoring bodies usually issue several recommendations to improve the human rights situation in prisons. However, not all recommendations are of the same urgency or importance in the prevention of torture and other ill-treatment. The monitoring team should thoroughly prioritise which recommendations are of the highest importance and follow their implementation closely. It should not allow important recommendations to be overshadowed by less important issues. For example, lack of drinking water should be given higher priority than the frequency with which the bedlinen is being washed. The monitoring team should also not include all its findings as requiring change. For minor issues it will be sufficient to just inform the authorities at the end of the visit about the finding.

Prioritisation of recommendations is always a difficult task. There are different considerations as well as perceptions as to which recommendations need to be prioritised and the monitoring team should carefully consider and discuss, while taking some criteria into consideration. These include the urgency and seriousness of the issue, as well as the number of persons affected by the matter. Large-scale problems such as overcrowding are important, but so are small-scale issues, such as lack of a certain medication, and they may in fact be more urgent to address although only affecting a small minority. Also, it is worth thinking about prioritising issues which can be acted upon relatively easily. They may not always be the 'most important', but small things can make a big difference and also help foster a climate of change and improve relations, which can help with more major changes.

All recommendations should be included in the report, including recommendations that were already discussed with the prison management during the meeting at the end of the monitoring visit. If some recommendations were communicated at the end of the visit and have already been implemented, these should also be mentioned in order to give credit to the prison management for already having addressed them.

The monitoring team should recall that their task is not to issue as many recommendations as possible, but to prepare substantiated, well-formulated recommendations of high quality on the basis of analysis of the root causes

of the problem. As highlighted by the SPT, recommendations should, in general, 'have a preventive focus, addressing systematic gaps and practices (root causes)'.²⁴⁹ Wherever possible, the report should also indicate suggestions for possible solutions (practical advice) for how to implement the recommendations and achieve the desirable changes with the ultimate aim of reducing the risk of torture and other ill-treatment. Moreover, the addressee of every recommendation should be clearly indicated.

Quality of recommendations

In order to draft effective recommendations, the SMART criteria may be used. SMART is an acronym that stands for Specific, Measurable, Assignable, Realistic and Time-bound, originally proposed by George T. Doran in 1981.²⁵⁰ These criteria will guide in the setting of goals and objectives that are assumed to give better results.



[BOX 20.3] The SMART criteria

SPECIFIC	Target a specific area for improvement and suggest specific steps
MEASURABLE	Quantify or at least suggest an indicator of progress
ASSIGNABLE	Specify who will do it
REALISTIC	State what results can realistically be achieved, given available resources
TIME-BOUND	Specify when the result(s) should be achieved

Specific

Recommendations should not be too general but should instead be specific and address the issue from a specific point of view. They should not merely address the problem but also indicate the best solutions and actionable steps for how to achieve the desirable changes (in the opinion of the monitoring body). Even in case these solutions will not be accepted by the authorities exactly as they stand, they will serve as a basis for dialogue and will indicate that the monitoring body is taking a constructive approach in reducing the shortcomings, instead of just describing and condemning the existing situation.

Measurable

A recommendation should be measurable from at least two points of view:

- it should be possible to assess after some time whether or not the recommendation has been implemented.
- if the recommendation has been implemented, it should be possible to assess if its implementation has led to improvements in the human rights situation within the prison.

This means that the monitoring body should clearly identify how it will measure whether the desired change has been achieved. In recent years, there have been many discussions around the use of indicators to measure progress in human rights implementation.²⁵¹ These discussions are also relevant for monitoring bodies, although it may prove challenging to measure the impact of the monitoring work due to other possible confounding factors contributing to the change and due to the long time that may pass between the monitoring activities and the change.

There are situations in which assessing the above two criteria is not difficult. For example, if the recommendation was to fix the heating system in the prison, it is easy to see if it has been done or not, as well as to assess if it has brought a change for the persons in prison. However, there are situations in which it is more complicated to make measurable recommendations, for example, if the monitoring body suggested introducing an effective complaints system. In order to make the recommendation as measurable as possible, instead of giving a general recommendation such as 'establish an effective complaints system', some more specific and measurable recommendations should be suggested. These could for instance include distributing paper and envelopes to the persons in prison, placing complaints boxes in the institution, registering every complaint, informing the complainants about the outcome of their complaint, etc. In this way, it will be possible to measure progress and to assess whether the recommendations have been fully implemented.

Assignable

If the monitoring body is drafting a recommendation, it should be carefully assessed who should be the addressee of the recommendation, i.e., who has the responsibility and authority to make a change. For this reason, the monitoring body should be well aware of the institutional and legal framework governing the particular issue.

If the recommendation is addressing issues related to the management of the prison visited, it must be presented to the prison management. If the recommendation is addressing issues regarding rules and regulations, it must be presented to the central executive authorities, e.g., the Ministry of Justice or the General Directorate of prison administration. If the recommendation is addressing legislation or budget allocations, the right recipient of the recommendations would be the relevant Ministry or the Parliament (e.g., the Committee for Legal Affairs or the Budget Committee).

There might, however, be situations in which it is not easy to determine the most relevant addressee. In this case, the recommendation may be addressed to all authorities that are potentially responsible for the situation. For instance:

- *If the possibility for outdoor exercise is 30 minutes once every two days in a particular prison, while the national legislation follows the international standard stating the right to at least one hour of outdoor exercise every day, then this issue shall be addressed to the prison management and possibly also to the central prison administration*
- *If the national legislation is unclear about that standard, then both the prison administration (who implements the practice) and the legislator (who sets the national standards) should be addressed.*

- If the national legislation provides for only 30 minutes of outdoor exercise once every two days, then the issue needs to be raised with the legislator as the standard is not in line with the international standard. The prison administration will be limited in its efforts to remedy this legislative shortcoming but should nevertheless be informed so as to take steps towards improving its practice in line with the international standards.

Box 20.4 presents two examples of addressing recommendations to the right level.



[BOX 20.4] Examples of addressing recommendations to the right level

Example 1: Food

A monitoring team encounters complaints from several persons in prison that the food is of poor quality and insufficient in quantity. Interviews with prison staff, including kitchen staff, confirm that the resources allocated to food are too scarce. Observation of the kitchen and food deposits also confirms that this area is underfunded considering the number of persons in this institution. The team analyses the problem and discovers that the resources allocated for food are calculated on the basis of the normed occupancy, and that the institution does not get extra funds when the institution is overcrowded, which is currently the case (with an occupancy rate of 180%). The monitoring team decides to raise the problem with the Ministry and to recommend that the allocation of food resources is proportionate to the actual number of persons in prison.

Example 2: Body searches

A monitoring team identifies an issue with body searches. Male guards are body searching female persons in prison. The team analyses the problem and discovers that there are rules providing for same-sex body searches. Therefore, the monitoring body chooses to address this issue to the prison management and requests that relevant procedures are put in place, instructions are provided, and staff duty schedules allow for the rules to be adhered to.

Realistic

There is often an imbalance between the expectations of the monitoring body and the possibilities of the authorities to implement the recommendations. In order to be able to formulate realistic recommendations, the monitoring body should be well aware of the institutional and legal framework. They should present the issue in a realistic way, which will not be rejected by the recipient as being out of touch with the realities on the ground. If the monitoring body feels that the recommendation might not be welcomed, it may elaborate alternative ways to communicate the issue, such as setting up a specific meeting to discuss the issue and to agree on short, medium, and long-term goals towards change.

Time-bound

The time necessary for implementation of a recommendation will vary. For example, if the recommendation is to fix a broken bed in a cell, it should be done immediately, while more complicated issues, such as improving the 'prison climate', will take more time. When drafting the recommendations, the monitoring body should take this aspect into account, and indicate in the report which of the recommendations need immediate action by the authorities, and which ones should be implemented over a longer period.

To make recommendations as effective and useful as possible, the Association for the Prevention of Torture (APT) has proposed a 'double-SMART model' which goes one step further than the SMART criteria as described above. It suggests the application of ten criteria: specific; measurable; achievable; results-oriented; time-bound as well as solution-suggestive; mindful of prioritisation, sequencing and risks; argued; root-cause responsive; targeted. More about the double-SMART model can be read in APT's Detention Monitoring Briefing No. 1.²⁵²

20.7 Further reading

- APT (2008). *Detention Monitoring Briefings, Briefing No 1: Making Effective Recommendations*. Association for the Prevention of Torture, Geneva, 2008.
www.apr.ch/sites/default/files/publications/Briefing1_en.pdf
- Ludwig Boltzmann Institute & University of Bristol (2015). *Enhancing Impact of NPMs. Strengthening the follow-up on NPM recommendations in the EU: strategic development, current practices and the way forward*.
gmrlbg.ac.at/wp-content/uploads/sites/12/2021/09/enhancing_impact_of_national_preventive_mechanisms.pdf
- SPT (2010). *The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. CAT/OP/12/6, para 5(d) and 5(f).
tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FOP%2F12%2F6&Lang=en

CHAPTER 21

Strategic follow-up

This chapter addresses strategic follow-up as the final step of the preventive monitoring cycle and a key part in achieving change. It explains that monitoring bodies are not only visiting and reporting mechanisms, but also change agents seeking to promote implementation of their recommendations.

The chapter examines how follow-up helps assess progress, identify remaining challenges, strengthen accountability, and adjust monitoring strategies. It also links follow-up to the preventive approach by emphasising systemic change, causal analysis, and the need to address the factors that enable torture and other ill-treatment.

Finally, the chapter outlines key elements of a follow-up strategy, including dialogue with authorities, follow-up visits, stakeholder mapping, advocacy, communication, and strategic use of partnerships and public reporting.

CHAPTER 21

Strategic follow-up

21.1 Introduction

Preventive monitoring puts emphasis on regular visits to places of detention in order to identify shortcomings in the system, report on them, and submit relevant recommendations. It is important to remember that, ultimately, visits, reports, and recommendations are aimed at changing policies and practices in order to prevent torture and other ill-treatment. Therefore, monitoring bodies are not just visiting and reporting mechanisms; they are also ‘change agents’. As such, monitoring should be a forward-looking and change-oriented process that includes, beyond reporting and drafting recommendations, the need to strategically follow up on and promote the implementation of the needed improvements.

Follow-up can be defined as the process by which a monitoring body seeks information on measures taken by the responsible authorities to implement their recommendations and actively encourages such implementation.²⁵³

Strategic follow-up is the final step in the preventive monitoring cycle and serves to strategically promote positive change within the prison system as well as to assess the change already occurring by keeping track of the implementation of previous recommendations.

Most monitoring bodies do not have the power to compel authorities to implement their recommendations and therefore need to rely on other strategic ways of promoting change. Moreover, monitoring bodies need to continuously seek information and monitor the level of implementation of their recommendations to assess whether further visits to specific prisons are necessary and to assess which measures need to be prioritised and discussed further with the authorities. This process of strategic follow-up will allow the monitoring body to self-assess the effectiveness of their methodology and to adjust accordingly. That is why the monitoring process is not linear but cyclical, as clearly illustrated by the monitoring cycle (see Chapter 1).

A key component of preventive monitoring is an ongoing constructive dialogue with authorities. In some cases, the authorities may not be ready to engage constructively with the monitoring body in relation to its recommendations. Therefore, monitoring bodies will need to explore and identify alternative ways to overcome this resistance – or even denial – by the authorities. Of course, this does not happen overnight, and most measures will take time and effort before they are fully implemented. In any case, if monitoring bodies narrow their mandate to only making observations and submitting recommendations without strategically following up, the progress (if any) may be very slow.

This chapter addresses the issue of strategic follow-up as an essential part of preventive monitoring. In doing so, the following questions will be addressed:

1. Why is strategic follow-up an important element of preventive monitoring?
2. How is strategic follow-up related to the preventive approach?
3. What are the key considerations when designing a follow-up strategy?
4. What are the challenges and good practices in maintaining constructive dialogue with authorities and other stakeholders?

21.2 Strategic follow-up as an important element of preventive monitoring

A monitoring body is not only a visiting mechanism; it is also a 'change agent'. Thus, monitoring bodies should be impact-oriented in all aspects of their work. Reports and recommendations provide the basis for the change process, and strategic follow-up lies at the heart of this process.

Follow-up serves a two-fold purpose:

1. It provides an overview of the level of implementation of recommendations and of any remaining issues and challenges that need to be addressed. If a monitoring body is able to systematically assess the level of implementation of its recommendations, it will be better placed to decide which issues still need to be addressed and how, as well as provide authorities with targeted advice in the process. Moreover, positive feedback when recommendations have been implemented is crucial. Monitoring bodies should not focus solely on what still needs to be done but also give credit where it is due. This is important to maintain the impartiality and objectivity of the monitoring body, to motivate authorities to continue the implementation process and to let them know that they are on the right track.
2. It provides various opportunities for promoting and fostering the necessary changes for recommendations to be realised. Various avenues for constructively engaging with authorities and other stakeholders to drive positive change, as well as ways of increasing leverage should be explored, designed, and implemented as part of an overall strategy. The monitoring body will need to strategically decide which means it will apply to pursue maximum impact.

Strategic follow-up contributes to enhancing accountability, it leads to better performance, it contributes to making the monitoring work more transparent, and it strengthens strategic and conscientious use of resources.²⁵⁴ Monitoring bodies often generate many reports and recommendations based on their visits and spend a fair amount of effort and resources in generating these. If this extensive work does not lead to improvements in the conditions and treatment in prisons, or if such improvements are not systematically identified and measured, the value of preventive monitoring may be called into question. It may also lead to 'monitoring fatigue' among the institutions visited, the persons in prison, and the monitoring body itself.

Ultimately, the ability of monitoring bodies to ensure implementation of their recommendations is key to their success and impact.²⁵⁵ Nevertheless, it should be remembered that the responsibility of implementation lies with the State and its relevant authorities, and monitoring bodies should not be tempted to submit only those recommendations that are easily achievable in order to achieve a higher level of implementation.²⁵⁶

Change cannot be achieved if authorities, despite every effort of the monitoring body, systematically refuse to engage constructively, unjustifiably deny the validity of findings, or do not implement the recommendations. In such cases, monitoring bodies will need to rethink their follow-up strategy and consider whether there are other ways of intensifying their advocacy and increasing their leverage to influence the State authorities' stance. It is therefore important that National Preventive Mechanisms (NPMs)/visiting bodies have sufficiently broad mandates and operational independence to allow them to do this.

21.3 Strategic follow-up as part of a preventive approach

Chapter 1 introduced the *preventive approach*, which includes adopting a capacious understanding of which underlying factors may facilitate and sustain torture and other ill-treatment in a given context, how these factors interrelate, and which measures could be effective in addressing them. This approach facilitates a broader causal and situational analysis that will point to the factors increasing the risk of torture and other ill-treatment and the measures that need to be put in place to address these. Based on this analysis, the monitoring body will be able to formulate its findings, including the underlying factors, and recommend relevant measures to address them.

The ultimate aim of preventive monitoring is to bring about systemic institutional and cultural change to prevent torture and other ill-treatment in detention. Looking at the current state of global affairs, there is a clear gap between the international human rights norms and standards, and the reality on the ground in many countries. This implementation gap should raise the vital question of 'what really works' when it comes to changing practices within prisons. One should also wonder why torture persists, considering the substantial developments in the prohibition and understanding of torture and other ill-treatment, as well as the increased efforts and resources invested in preventing torture.

Bringing these questions back to the practice of monitoring bodies, it is worth acknowledging that through their visits and reports, monitoring bodies offer a unique causal and situational analysis and are in a unique position to indicate *what* needs to be changed, in order to minimise the risk of torture and other ill-treatment in prison. What often remains a challenge, however, is knowing *how* to bring about change²⁵⁷ and being successful in such efforts. This is especially true for the broader, systemic changes that monitoring bodies often recommend.

At the same time, monitoring bodies are already contributing to the process of positive change in many ways. Especially the 'small victories' that they achieve should be acknowledged, appreciated, and celebrated within the monitoring body. Creating this positive environment is part of taking care of monitors' mental well-being.

It is critical that monitoring bodies continue to work on addressing the everyday realities in prisons in the short and medium-term, while also addressing the broader issues in the longer term. Any improvement in conditions and treatment of persons in prison, even minor ones, is a step in the right direction and may have a significant impact on the lives of those in prison.

A preventive approach is, by definition, change-oriented. Although this seems obvious, it can sometimes be difficult to keep the overall goal of preventing torture and other ill-treatment in mind when dealing with a packed schedule of visits, complex realities, and a breadth of issues that need improvement. It is therefore important to keep a clear vision about the change to be achieved and how to reach it.

Applying such a change-oriented approach during the follow-up process will push the monitoring body to design, implement and adjust its follow-up strategies to achieve the maximum possible impact. Such a perspective may include making use of the so-called 'Theory of Change' to develop its strategic thinking by identifying underlying assumptions and ideas about how change could happen. Apart from the Theory of Change, a variety of models and tools have been tested and developed, focusing on how change processes work.²⁵⁸ It is beyond the scope of this manual to present these models, but based on one of these models, four key questions are presented below that may guide strategic thinking about a change process:²⁵⁹

1. **Driver:** Why is the change needed? Is there an urgent problem or an opportunity?
2. **Vision:** What change do we want to see? How would the situation look if our recommendations were implemented?
3. **Resources:** What are the available resources, strengths, etc. that can be used?
4. **First Steps:** What are good first steps to take in order to create momentum and a sense that this is achievable?

21.4 The key considerations when designing a follow-up strategy

There are various ways in which monitoring bodies may decide to follow up on their recommendations in order to assess the level of implementation and to enhance their impact. Here are a few such ways:

1. Conducting follow-up visits
2. Having written correspondence with the responsible authorities
3. Requesting regular updates on progress from the responsible authorities
4. Holding meetings with the responsible authorities

5. Organising workshops and trainings to strengthen the capacity of the authorities to implement recommendations
6. Organising public events such as round-table discussions, conferences, etc. to discuss the issues at hand
7. Setting up working groups with participation of multiple national and international stakeholders to discuss and agree on next steps
8. Organising advocacy campaigns to put pressure on the responsible authorities
9. Providing advice on needed new/amended legislation

Research related to Europe-wide NPMs and other oversight bodies reveals that different activities are used in such follow-up action, the most common being follow-up visits (89.3%) and engaging in written dialogue with the competent authorities (78.6%).²⁶⁰ These activities were followed by having meetings and personal exchanges with authorities (67.9%) and, to a lesser extent, sending warnings (28.6%). A few countries reported using other tools to monitor the implementation of recommendations (21.4%), which mostly involved cooperation with CSOs and the media.

It is not the aim of this manual to prescribe which means are the most effective in following up, as each context is unique and the same activity may yield different results – in fact, even within the same context at different points in time. Monitoring bodies will need to decide which means they will apply depending on the scope and urgency of recommendations, the relevant stakeholders, the overall political climate on the issue at hand, the public opinion, and other factors. Such a decision will need to be part of an overall strategy geared towards achieving positive change. As the UN Subcommittee on Prevention of Torture (SPT) suggests, monitoring bodies should ‘develop concrete long- and short-term strategies in order to achieve the maximum impact on problems and challenges’.²⁶¹ The key considerations when designing such a strategic follow-up process are presented below.

Designing change pathways and measurement methods

Once the monitoring body has submitted its recommendations, it is crucial that it identifies the steps towards achieving their implementation. In simple terms, the monitoring body will need to identify what needs to be done in order for the recommended changes to happen: who needs to do what, what will it take (resources, capacity, etc.), and how could the monitoring body contribute to the process.²⁶² These questions will guide the monitoring body in identifying a basic ‘pathway of change’ which could take the form of a simple ‘flow chart’ with a set of steps and actions towards a specific change. Having such an action plan will provide a solid foundation for taking action and for keeping track of the steps taken, the results achieved, and the way forward.

Monitoring bodies are able to conduct their own assessments of whether their recommendations have been fully or partially implemented or whether implementation is still pending, based on the information gathered during various follow-up activities. Although developing specific indicators may prove useful, they may not be able to capture the whole range and complexity of contextual factors that play a role in a change process. At the end of the day, a monitoring body will need to apply its experience and knowledge of the context in order to make an

assessment of the level of implementation of its recommendations based on rigorous and strategic follow-up.²⁶³ This requires that the monitoring body has previously set a specific timeline for a recommendation to be implemented (as required by the SMART criteria), has identified the type of information that will be collected to inform the measurement of implementation, and has designed a strategy for follow-up and the 'pathway' for the change to be achieved. It is important to note that measuring implementation is a continuous process, which informs the next steps that need to be taken and any adjustments that may be needed to the follow-up strategy.

Creating synergies and networks

Change cannot be achieved by the monitoring body itself. The implementation of recommendations is the responsibility of the competent authorities, whilst other stakeholders may also promote or hamper change. A stakeholder analysis is necessary to inform the follow-up process. A stakeholder analysis could take different forms but the one that may be most useful for the work of the monitoring bodies is the power map.²⁶⁴ A power map addresses the following key questions and offers an overview of relevant stakeholders that have or lack power to influence or be influenced (positively/negatively) by the desired change:

1. Who holds the power to bring about change?
2. Which groups are most affected by the issue and thus will benefit from the change?
3. Who are the most powerful opponents likely to be?
4. Who are the most powerful supporters or allies likely to be?

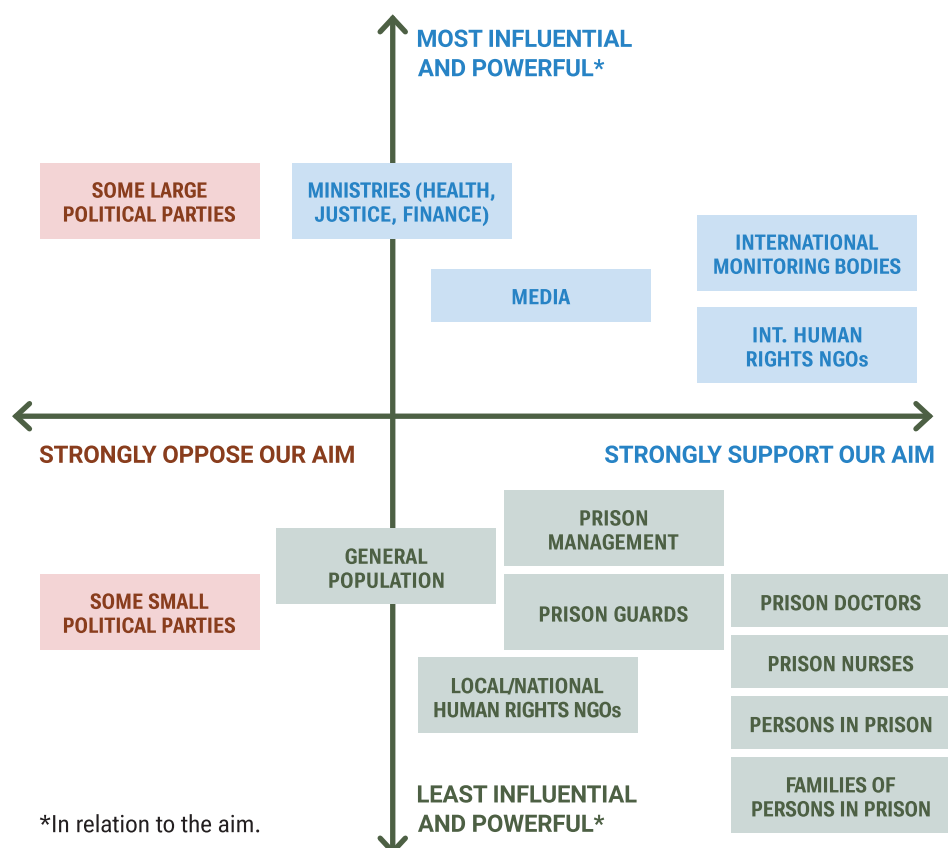
Based on the answers to these questions, relevant stakeholders can be placed within a 'power map' which includes two axes:

1. A vertical axis representing the power scale: stakeholders who hold a lot of power to influence the change are placed at the top of this vertical axis, while those with little/no power are placed at the bottom.
2. A horizontal axis representing the interest scale: stakeholders who are likely to promote the desired change are placed on the right end of the axis, while those that are likely to oppose the desired change are placed on the left end. The result is an overview of the potential allies and blockers in achieving the change, which will inform the strategic decisions on how certain stakeholders need to be approached to use their power for promoting change and how others need to be approached to alter their interest in the change. Obviously, different means need to be used for different purposes and thus, it is important to start by analysing the various stakeholders that will affect change processes.

An example of a power map for the specific aim 'increasing the number of health professionals working in the prison health clinic' is given in Figure 21.1 below.



[FIGURE 21.1] Example of a power map for the aim ‘increasing the number of health professionals working in the prison health clinic’



From this power-interest analysis, the monitoring body will also decide with whom it would be beneficial to pursue strategic partnerships and to build networks for collaboration and collective action. Of course, the reputation and compatibility of its potential partners should be carefully considered when working collaboratively in networks, in order not to undermine the monitoring body's effectiveness and credibility. In some contexts, involving a particular kind of partner (for example a specific civil society organisation) automatically excludes involvement of other stakeholders (for example, another CSO or a State authority). The monitoring body will need to assess what the best course of action is based on its independence and impartiality. It will also need to assess how far its recommendations should go (for instance, should they go as far as political bodies?). This will always depend on the mandate of the monitoring body.

Identifying and creating 'windows for change'

When designing a follow-up process to promote implementation of recommendations, the monitoring body should consider which circumstances could be identified or created that may increase the probability of a recommendation being implemented. For example, does the recommendation address an issue that is politically or socially recognised as important? Is there a favourable political climate for tackling this issue and, if not, could it be created

and how? Often, opportunities for making progress on specific issues may occur due to specific incidents (for example, a prison riot) or important events (for example, elections or the review of the State by a treaty body).

In order to identify and create such opportunities for change, it is important to apply a multidisciplinary lens to understand the dynamics within society through multiple viewpoints. Multi-disciplinarity will also offer various insights and entry points as to which action will bring the best result in promoting change.

Advocacy, communications, and media strategy

Monitoring bodies will need to reflect on how they can engage strategically and effectively in advocacy activities, as well as how they deal with communications and the media. In some cases, conducting public advocacy in order to influence public opinion about a particular issue and thereby put pressure on the responsible authorities may prove to be a powerful way of creating opportunities for change. In other cases, public opinion may generally be unfavourable to the rights of persons in prison and therefore, publicising certain issues may create a backlash.

Monitoring bodies often focus primarily on working with professional or institutional counterparts, paying too little attention to the media and public relations. When working with the general public and the media, adequate attention should be paid to how the messages are presented and framed so as to achieve the best possibilities for broad acceptance. Cautious use of social media could play an essential role in advocating for the desired change.

This may require the support from advocacy and media experts, which are rarely part of the monitoring body's composition. Overall, a strategic approach to advocacy, communication, and the media is a crucial element of the work of a monitoring body and may contribute to promoting the implementation of recommendations.

21.5 Challenges and good practices in the dialogue with authorities and other stakeholders

Change requires collaboration and coordination between various actors in many sectors and on multiple levels. Change needs to be driven internally in order to be meaningful and sustainable. The Optional Protocol to the Convention against Torture (OPCAT) recognises this and places a unique emphasis on constructive dialogue between different stakeholders: international mechanisms (the SPT), national mechanisms (the NPMs) and national stakeholders (State authorities, civil society).²⁶⁵ Therefore, according to the OPCAT, various actors need to come together in a coherent way to generate dialogue towards change.

Challenges

Dialogue and cooperation with relevant stakeholders take place at many levels (with Ministers, prison policy makers, prison managers, prison officers, persons in prison) and at different times throughout the monitoring cycle.²⁶⁶

Often, the actors that are requested to change practices are the ones who are perpetrating, facilitating, or otherwise complicit in torture and other ill-treatment. Authorities that perpetrate, facilitate, condone, or turn a blind eye to torture and other ill-treatment through their practices will often view monitors as intruders who are there to defend the rights of those in prison and to 'name and shame' the authorities. Thus, authorities may be more inclined to conceal the realities on the ground, by obstructing the monitoring work, contesting, or rejecting the findings and recommendations of the monitoring body and not engaging constructively.²⁶⁷ Systematic denial, obstruction, and resistance to change by State actors are generally important obstacles to advancing torture prevention and accountability.²⁶⁸

Overcoming these obstacles and preparing the ground for working collaboratively with stakeholders requires building relationships based on credibility and trust by demonstrating impartiality and fairness throughout the work. A monitoring body is neither an advocate for those in prison nor a defender or prosecutor. This should be evident in everything that the monitoring body does and throughout the steps of the monitoring cycle. Relationships are built through the day-to-day interactions between monitors and those working within the prison system (at all levels). It is important to tackle assumptions and preconceptions in order to establish a culture within prisons that views monitors as independent, impartial and credible interlocutors. Within such a culture, problems identified by a monitoring body will not be viewed as an attempt to lay blame on the authorities but as the first step in the process of finding solutions and encouraging change.²⁶⁹

A central dilemma in the relations with authorities is the issue of publicising the reports of a monitoring body. Although, in principle, the reports of a monitoring body should be made public to enhance transparency and accountability, this is not always an easy decision. In some instances, publication of reports is a powerful tool to enhance torture prevention measures. In other instances, publicising a report may lead to a 'naming and shaming' approach and destroy any potential for constructive dialogue with the State authorities. Therefore, monitoring bodies should carefully and strategically consider the timing of publishing a report. If constructive dialogue with State authorities is foreseen or still ongoing, publicising a report may jeopardise the collaboration and limit the leverage of the monitoring body. Nevertheless, there are instances when, despite concerted efforts by the monitoring body, State authorities will still avoid constructive engagement or remain unwilling to implement certain recommendations. In this case, the monitoring body will need to assess whether there is a need to increase the intensity of the advocacy and shift from collaboration to a stricter form of oversight. For example, the monitoring body may assess whether publicising its report and the stance of the State authorities will increase the probability of implementation. Sometimes the mere fact that the monitoring body is considering doing so may prompt stakeholders to engage more constructively. The monitoring body may also examine how reaching out to other actors working on the same issue (for example, CSOs, regional or international bodies) may promote compliance.

In any case, visit and annual reports of NPMs should be published for transparency and information to the public, yet again the timing needs to be decided based on strategic considerations.

Good practices

For many monitoring bodies, ongoing dialogue with authorities takes place in writing and is based on reports. Such written dialogue may be conducted at various stages and in different forms. For example, monitoring bodies may initiate written dialogue through:

- Submitting a visit report and asking for a reply on the actions taken in relation to the recommendations
- Regularly seeking information in writing about the progress in the implementation of recommendations
- Requesting feedback and entering a dialogue based on a preliminary report²⁷⁰
- Conducting surveys to gather additional information after a visit or on a specific theme²⁷¹

Beyond written correspondence, monitoring bodies often engage in oral exchanges through convening meetings, roundtables, conferences, and working groups. Such oral exchanges may take place regularly in an institutionalised manner (for example, at set intervals and at a certain hierarchical level) or may be scheduled ad hoc. An interesting tool for follow-up and ongoing dialogue is also the establishment of working groups with the authorities. Such working groups could be *general*, addressing the full scope of the monitoring body's work with inter-agency participation or *thematic*, focusing on a specific issue. For example, in Bulgaria the Government set up an inter-agency working group consisting of representatives from different ministries, judges, prosecutors, and civil society, to discuss issues raised in the NPM reports. In Austria, there is a thematic working group on police custody to discuss pending issues.²⁷²

Furthermore, monitoring bodies often conduct training activities for State authorities, which may serve as an additional platform for dialogue, particularly with officers at the operational level. Conducting training also offers an opportunity for monitoring bodies to raise awareness about their mandate, scope of work, and findings and recommendations, thus fostering cooperation and trust. On the other hand, conducting training may conflict with other priorities (such as visits) especially when resources are scarce. Therefore, monitoring bodies need to assess the feasibility and effectiveness of such trainings and decide on the level of their contribution.

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«Monitoring places of deprivation of liberty to prevent torture and ill-treatment requires a distinct set of skills and methods, different from other types of oversight such as handling complaints or conducting inspections. The strength of preventive visiting lies precisely in its proactive and forward-looking approach, which helps identify risks and foster positive change. This manual provides essential guidance both for monitors just getting started and for experienced practitioners seeking to deepen their knowledge and expertise. It is a much-appreciated contribution to global efforts to prevent torture and to protect the human rights of persons in prison.»

Dr Maria Luisa Romero, Chair of the SPT

«DIGNITY's manual on prison monitoring to prevent torture and other ill-treatment is a 'must read' for prison monitors at local, national and international levels. This long-awaited and much-needed resource will help ensure effective monitoring to prevent torture and other ill-treatment (worldwide). It is also an important point of reference for prison management and staff, not least when balancing considerations for security and care.»

Dr Alan Mitchell, President of the CPT

«DIGNITY has published a landmark manual on prison monitoring. It provides practical tools to identify risks and prevent ill-treatment in prisons by bridging the gap between theory and action. The manual will undoubtedly stand as a reference in strengthening the way we work and reshaping the ethics of prevention.»

Ms Amina Bouayach, Chairperson of GANHRI & the Moroccan CNDH

«Torture and ill-treatment often occur during the first moments of deprivation of liberty and in the darkest places. Monitoring places of detention brings these abuses to light and helps drive away the spectre of mistreatment.»

Hon. Commissioner Hatem Essaiem, Chairperson of the CPTA and Vice-Chairperson of the ACHPR