

Human rights scoping

Expectations: criteria for assessing the treatment of prisoners and conditions in prisons

Introduction

HMIP's Expectations are underpinned by human rights standards, in line with our role as part of the UK's National Preventive Mechanism. This document sets out the standards that were identified as relevant to the 2017 Expectations in a comprehensive scoping exercise.

We followed a rigorous process to make sure these standards were considered when drafting the Expectations. A scoping document was prepared to inform the work of teams drafting sections of the Expectations, and then cross-checked to ensure any discrepancies were identified and addressed.

The present document reworks the initial scoping document to follow the structure of the finalised Expectations, and aims to provide more detail on the human rights underpinning to those interested. Where possible or necessary we include explanation and evaluation of the standards; in some areas we simply cite the main standards. Many of the standards cut across several areas of the Expectations, and have been placed in the sections to which they are primarily relevant. At the end, we include a section on 'general principles' which were considered.

The standards we refer to derive from both binding treaty law and authoritative standards including the newly revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the European Prison Rules. We were unable to carry out a full review of jurisprudence from the European Court of Human Rights or domestic courts, but cite case law where possible. In some areas of our Expectations there are detailed human rights standards (particularly in the 'safety' and 'respect' Expectations); in other areas there is little international guidance. We have referred to some other authoritative international documents (including from the World Health Organisation) where these provide useful additional guidance.

Existing human rights standards are drafted with a wide range of prison systems and conditions in mind. In some areas HMIP's Expectations exceed existing human rights standards. In a few limited areas we have not captured some standards explicitly, or have taken a decision not to adopt a particular standard. This has been done only where HMIP's Management Board has concluded that outcomes for prisoners in England and Wales are better protected in another way or that compliance with a standard can be better advanced through other means

(such as thematic research, submissions to Parliament and policy submissions and consultation responses).

This document was prepared by Louise Finer, Senior Policy Officer at HM Inspectorate of Prisons. The first draft of the scoping was jointly prepared by Louise Finer and Dr Sharon Shalev, Centre for Criminology at Oxford University. We hope that the document will be useful to our stakeholders, and would be grateful for any observations on the document or suggestions of any standards that have inadvertently been missed.

Section 1: Safety

- **Early days in custody**

Human rights standards, primarily the SMR and EPR, set out a number of requirements relevant to early days in custody. These include standards relating to transport and the requirement to notify others of the prisoner's detention.

Upon admission, every prisoner shall be promptly provided with written information about:

- (a) The prison law and applicable prison regulations;*
- (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;*
- (c) His or her obligations, including applicable disciplinary sanctions; and*
- (d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison. (SMR 54)*

This information shall be available in the most commonly used languages in accordance with the needs of the prison population. If a prisoner does not understand any of those languages, interpretation assistance should be provided. (SMR 55)

If a prisoner is illiterate, the information shall be conveyed to him or her orally. Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs. (SMR55)

The prison administration shall prominently display summaries of the information in common areas of the prison. (SMR 55)

On admission, the following information about each prisoner shall be recorded immediately:

- identity of the prisoner*
- reasons for commitment and authority for it*
- day and hour of admission*

- *inventory of personal property*
 - *any visible injuries and complaints about ill treatment*
 - *info about the prisoner's health that is relevant to the prisoner's physical or mental wellbeing or that of others (subject to the requirements of medical confidentiality)*
- (EPR15)

As soon as possible after admission:

- *information about the health of the prisoner on admission shall be supplemented by a medical examination;*
- *the appropriate level of security shall be determined*
- *the threat to safety that the prisoner poses shall be determined*
- *any information about the social situation of the prisoner shall be evaluated in order to deal with the immediate personal and welfare needs of the prisoner*

(EPR16)

When prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(SMR 73.1; EPR 32.1)

The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited. (SMR 73.2; EPR 32.2)

The transport of prisoners shall be carried out at the expense of the prison administration and equal conditions shall apply to all of them. (SMR 73.3; EPR 32.3)

After each transfer from one place of detention/imprisonment to another, the prisoner is entitled to notify or require the competent authority to notify members of his family or other appropriate persons of his choice of his transfer and of the place where he is kept in custody.

(BOP 16.1)

It is widely recognised that detainees are at particular risk when first received into prison, and that the most important safeguards against ill treatment and torture are those that are applied after a person is taken into custody (see Carver and Handley, *Does Torture Prevention Work*, Liverpool 2016), for which reason there should be particular attention to the provisions and safeguards against torture and ill treatment (CAT, ECHR 3).

Regarding prisoners' property, UDHR 17 and ECHR Protocol 1, article 1, establish property rights, which should only be restricted in limited circumstances

(if lawful; in the public interest; in accordance with the general principles of international law; reasonably proportionate).

- **Managing behaviour**
 - **Encouraging positive behaviour**

Specifically:

Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well-ordered community life. (SMR 36)

Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts. (SMR 38.1)

Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners. (EPR 56.2)

Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every prison, in order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of prisoners in their treatment. (SMR 95)

Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety. (EPR 52.2)

- **Adjudications**

Human rights standards set out in the SMR, EPR and BOP set out detailed requirements for systems of discipline and punishment in prisons. These act as an important check to ensure processes are fair, transparent, proportionate and only used as a last resort. The following key principles should apply:

- Prisoners must be informed of the rules and regulations of the prison on admission
- Disciplinary procedures will only be used as last resort, after other options have been explored
- Disciplinary hearings must adhere to due process requirements and be held by the designated, competent authority

- Punishments should be proportionate to the offence committed.
- Collective punishment, corporal punishment, prolonged solitary confinement, placement in a dark or constantly lit cell and all other forms of inhuman or degrading punishment are prohibited
- Restraints and the prohibition of family contact must never be used as punishment, and any other punishments amounting to ill treatment or torture are prohibited

Specific standards are as follows:

Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well-ordered community life. (SMR 36)

The following shall always be subject to authorization by law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;*
- (b) The types and duration of sanctions that may be imposed;*
- (c) The authority competent to impose such sanctions;*
- (d) 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, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation. (SMR 37)*

For prisoners who are, or have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison. (SMR 38.2)

No prisoner shall be sanctioned except in accordance with the terms of the law or regulation referred to in rule 37 and the principles of fairness and due process. A prisoner shall never be punished twice for the same offence. (SMR 39.1)

Prison administrations shall ensure proportionality between a disciplinary sanction and the offence for which it is established, and shall keep a proper record of all disciplinary sanctions imposed. (SMR 39.2)

Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commitment of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is

considered to be the direct result of his or her mental illness or intellectual disability. (SMR 39.3)

No prisoner shall be employed, in the service of the prison, in any disciplinary capacity. (SMR 40.1)

This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment. (SMR 40.2)

Any allegation of a disciplinary offence by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay. (SMR 41.1)

Prisoners shall be informed, without delay and in a language that they understand, of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defence. (SMR 41.2)

Prisoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges. If the prisoners do not understand or speak the language used at a disciplinary hearing, they shall be assisted by a competent interpreter free of charge. (SMR 41.3)

Prisoners shall have an opportunity to seek judicial review of disciplinary sanctions imposed against them. (SMR 41.4)

In the event that a breach of discipline is prosecuted as a crime, prisoners shall be entitled to all due process guarantees applicable to criminal proceedings, including unimpeded access to a legal adviser. (SMR 41.5)

In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following

practices, in particular, shall be prohibited:

- (a) Indefinite solitary confinement;*
- (b) Prolonged solitary confinement;*
- (c) Placement of a prisoner in a dark or constantly lit cell;*
- (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;*
- (e) Collective punishment.*

(SMR 43.1)

Instruments of restraint shall never be applied as a sanction for disciplinary offences. (SMR 43.2)

Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order. (SMR 43.3)

Disciplinary procedures shall be mechanisms of last resort. (EPR 56.1)

Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence. (EPR 57.1)

National law shall determine:

- a the acts or omissions by prisoners that constitute disciplinary offences;*
 - b the procedures to be followed at disciplinary hearings;*
 - c the types and duration of punishment that may be imposed;*
 - d the authority competent to impose such punishment; and*
 - e access to and the authority of the appellate process.*
- (EPR 57.2)*

Any allegation of infringement of the disciplinary rules by a prisoner shall be reported promptly to the competent authority, which shall investigate it without undue delay. (EPR 58)

Prisoners charged with disciplinary offences shall:

- a be informed promptly, in a language which they understand and in detail, of the nature of the accusations against them;*
 - b have adequate time and facilities for the preparation of their defence;*
 - c be allowed to defend themselves in person or through legal assistance when the interests of justice so require;*
 - d be allowed to request the attendance of witnesses and to examine them or to have them examined on their behalf; and*
 - e have the free assistance of an interpreter if they cannot understand or speak the language used at the hearing.*
- (EPR 59)*

Any punishment imposed after conviction of a disciplinary offence shall be in accordance with national law. (EPR 60.1)

The severity of any punishment shall be proportionate to the offence. (EPR 60.2)

Collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited. (EPR 60.3)

Punishment shall not include a total prohibition on family contact. (EPR 60.4)

Solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible. (EPR 60.5)

Instruments of restraint shall never be applied as a punishment. (EPR 60.6)

A prisoner who is found guilty of a disciplinary offence shall be able to appeal to a competent and independent higher authority. (EPR 61)

No prisoner shall be employed or given authority in the prison in any disciplinary capacity. (EPR 62)

A prisoner shall never be punished twice for the same act or conduct. (EPR 63)

The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published. (BOP 30.1)

A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review. (BOP 30.2)

- Use of force

Human rights standards and jurisprudence set out that, as a general rule, force and restraints must only be used if and when absolutely necessary and where all other means to contain a specific situation have failed. It is, however, recognised that there may be times, for example during transit or to prevent serious harm to others, when the use of force and the application of restraint may be unavoidable.

Where this is the case, several conditions must be met and the use of force or application of restraints must be very closely scrutinised to ensure that their use was lawful, necessary and proportionate.

- Force and restraints must only be used as a last resort when strictly necessary and when other methods have failed.

- Only the minimum amount necessary to achieve the aim must be used, for the shortest time possible.
- Force and restraint will only be used by specially trained staff.
- All uses of force/restraint must be recorded and analysed.
- The more incapacitating the measure, the closer the scrutiny of its use.
- Certain instruments of restraint are prohibited altogether.
- Restraints must never be used as punishment (see also 'adjudications' above) or to inflict pain

The use of force/application of restraints intentionally to cause pain or punish, contrary to these principles, may amount to torture or cruel, inhuman or degrading treatment, which is strictly prohibited (CAT 1, 2, 16, ECHR 3, ICCPR 7). Right to life provisions (ECHR 2, ICCPR 6) are also relevant to the use of lethal or potentially lethal force.

Specific standards on restraint are set out as follows:

Instruments of restraint shall never be applied as a sanction for disciplinary offences. (SMR 43.2)

The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited. (SMR 47.1)

Other instruments of restraint shall only be used when authorized by law and in the following circumstances:

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

(b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.

(SMR 47.2)

When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply:

(a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;

(b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed;

(c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.

(SMR 48.1)

Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth. (SMR 48.2)

The prison administration should seek access to, and provide training in the use of, control techniques that would obviate the need for the imposition of instruments of restraint or reduce their intrusiveness. (SMR 49)

The use of chains and irons shall be prohibited. (EPR 68.1)

Handcuffs, restraint jackets and other body restraints shall not be used except:

a if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or b by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority. (EPR 68.2)

Instruments of restraint shall not be applied for any longer time than is strictly necessary. (EPR 68.3)

The manner of use of instruments of restraint shall be specified in national law. (EPR 68.4)

Specific standards on use of force are set in a number of documents, including the Code of Conduct for Law Enforcement Officials (CCLEO) and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUF). We also cite specific guidance on the use of electrical discharge weapons (i.e. Taser) from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director. (SMR 82.1, see also EPR 64.1, CCLEO 3, BPUF 15)

The amount of force used shall be the minimum necessary and shall be imposed for the shortest necessary time. (EPR 64.2)

Prison staff shall be given special physical training to enable them to restrain aggressive prisoners. (SMR 82.2)

Staff who deal directly with prisoners shall be trained in techniques that enable the minimal use of force in the restraint of prisoners who are aggressive. (EPR 66)

Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use. (SMR 82.3)

There shall be detailed procedures about the use of force including stipulations about:

- a the various types of force that may be used;*
 - b the circumstances in which each type of force may be used;*
 - c the members of staff who are entitled to use different types of force;*
 - d the level of authority required before any force is used; and*
 - e the reports that must be completed once force has been used.*
- (EPR 65)*

Staff of other law enforcement agencies shall only be involved in dealing with prisoners inside prisons in exceptional circumstances. (EPR 67.1)

There shall be a formal agreement between the prison authorities and any such other law enforcement agencies unless the relationship is already regulated by domestic law. (EPR 67.2)

Such agreement shall stipulate:

- a the circumstances in which members of other law enforcement agencies may enter a prison to deal with any conflict;*
 - b the extent of the authority which such other law enforcement agencies shall have while they are in the prison and their relationship with the director of the prison;*
 - c the various types of force that members of such agencies may use;*
 - d the circumstances in which each type of force may be used;*
 - e the level of authority required before any force is used; and*
 - f the reports that must be completed once force has been used.*
- (EPR 67.3)*

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime

involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. (BPUF 9)

Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9. (BPUF 16)

The Committee has expressed strong reservations about the use of electric discharge weapons in prison [...]. Only very exceptional circumstances (e.g. a hostage-taking situation) might justify the resort to EDW in such a secure setting, and this subject to the strict condition that the weapons concerned are used only by specially trained staff. There should be no question of any form of EDW being standard issue for staff working in direct contact with persons held in prisons or any other place of deprivation of liberty. (CPT20, para 71)

- **Segregation**

As with any restrictions imposed on persons already deprived of their liberty, segregation or other practices that isolate detainees must only be used when absolutely necessary, for the shortest time possible, and be proportionate to the legitimate objective for which they are imposed. Because of the harm that can be caused by isolation, specific and additional safeguards also need to be in place. While segregation in some instances may be legitimate, the justification for such measures and their severity must be examined carefully by monitoring bodies. The risk is that where detainees are out of sight, their rights can be overlooked or undermined.

The SMR recognises the confinement of prisoners for 22 hours or more a day without meaningful human contact as solitary confinement. It defines “prolonged solitary confinement” (a prohibited practice) as solitary confinement for a time period in excess of 15 consecutive days (SMR 44). Solitary confinement is an extreme practice with potentially devastating health implications, which should thus be used only as a tool of last resort and then for as short a time as possible. Under certain circumstances, and with certain prisoners, it may even amount to torture, inhuman or degrading treatment, which is strictly prohibited under international (as well as regional and national) human rights law (see CAT 1, 2, 16; ECHR 3; ICCPR 7).

In line with international standards, the key aspects of the practice which need to be closely scrutinised include:

- selection for placement in segregation
- conditions in segregation
- regime in segregation including basic provisions (exercise, telephone, shower) and frequency and quality of empathetic human contact and contact with the outside world
- duration
- review of placement and avenues out
- appeal

We used the recently published UK National Preventive Mechanism guidance document, *Isolation in detention*, to inform drafting of the Expectations on segregation and time out of cell, as well as the standards set out in the SMR:

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days. (SMR 44)

Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence. (SMR 45.1)

The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply. (SMR 45.2)

A definition of 'meaningful human contact' has been set out in the *Essex paper 3: initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules* (pp88-89) as follows:

The term [meaningful human contact] has been used to describe the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and well-being. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.

Furthermore:

[...] the provision needs to be interpreted in good faith and conscious of its intent and purpose. They emphasised that, therefore, it does not constitute 'meaningful human contact' if prison staff deliver a food tray, mail or medication to the cell door or if prisoners are able to shout at each other through cell walls or vents. In order for the rationale of the Rule to be met, the contact needs to provide the stimuli necessary for human well-being, which implies an empathetic exchange and sustained, social interaction. Meaningful human contact is direct rather than mediated, continuous rather than abrupt, and must involve genuine dialogue. It could be provided by prison or external staff, individual prisoners, family, friends or others – or by a combination of these.

Further sources of authoritative international standards on segregation and solitary confinement include: United Nations General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: Interim report of the Special Rapporteur on torture (A/63/175)*, 28 July 2008; World Medical Association, *Statement on Solitary Confinement* (2014); UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment (A/66/268)*, 5 August 2011; Council of Europe Committee for the Prevention of Torture, *21st Annual Report (2010-2011)*, and Shalev S, *Sourcebook on solitary confinement* (2008).

- **Security**

In relation to security, human rights standards set out the following:

Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others (EPR 18.10).

There is a general presumption against the use of restraints, but these can be used as a precaution against escape during a transfer, “provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise” (SMR 47.2.a, EPR 68.2.a).

In relation to searches, the procedures and justifications for conducting searches must be defined in accordance with international standards and norms, keeping in mind the need to ensure security in the prison (SMR 50, EPR 54.1 and 54.2). Searches must be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity. (SMR 50, EPR 54.4). In addition:

Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches. (SMR 51)

Prisoners shall be present when their personal property is being searched unless investigating techniques or the potential threat to staff prohibit this. (EPR 54.8)

There are specific human rights standards relating to body searches, as these may constitute degrading treatment, which violates the most basic, core human rights. Whilst it is recognised that searches may sometimes be necessary to ensure prison security or to prevent disorder, searches must always satisfy the tests of being legal, necessary and proportionate.

The following conditions must always be satisfied:

- Body searches must not be arbitrary and must only be conducted in response to a specific and pressing security need. (EPR 54.2, SMR 52.1)
- They must be conducted in privacy and according to protocol by specially trained staff of the same sex, in a manner which is respectful of human dignity. (SMR 52.1, 52.2, EPR 54.5, 54.6)

Prison administrations must keep records of all searches, including body searches and searches of cells, "as well as the reasons for the searches, the identities of those who conducted them and any results of the searches." (SMR 51)

In addition, prison administrations are encouraged to develop and use appropriate alternatives to intrusive searches (SMR 52.1).

Detailed standards on body searches have been developed by the World Medical Association in their *Statement on Body Searches of Prisoners*. This emphasises that though searches are performed for security rather than medical reasons, they should not be done by anyone other than a person with appropriate medical training in order to protect from harm. Body searches carry some risk of physical and psychological injury. Physicians involved in searching must explain to the prisoner that the usual conditions of medical confidentiality do not apply. If the search is conducted by a physician, it should not be done by the physician who will also subsequently provide medical care to the prisoner. The physician's obligation to provide medical care to the prisoner should not be compromised by an obligation to participate in the prison's security system.

Case law from the European Court of Human Rights shows instances in which body searches have been found to violate the prohibition of torture and ill treatment (ECHR 3).

The reason for strip-searching a prisoner and the manner in which the search was conducted have been found by the ECtHR to be in violation of Article 3. In *Valašinas v. Lithuania* (24 July 2001) the manner in which the applicant was strip-searched, without gloves and in front of a female officer, was found to violate Article 3. Routine strip-searches, together with other conditions of confinement, were found to be in violation of Article 3 *Khider v. France*, 9 July 2009). In *El Shennawy v. France* (20 January 2011) the Court found that the frequent searches which the applicant was subjected to were not in response to a pressing need and were "liable to arouse in the applicant feelings of arbitrariness, inferiority and anxiety characteristic of a degree of humiliation going beyond the level which the strip-searching of prisoners inevitably entailed", and therefore violated article 3. In *Frérot v. France* (12 June 2007) while the Court accepted that strip-searches were conducted in order to maintain security, it held that the fact that policies for strip-searching prisoners varied between prisons had meant that the applicant was subjected to arbitrary treatment in violation of Article 3.

In relation to complaints, human rights standards clearly set out the need for prisoners to be able to make complaints safely and confidentially, and without fear of reprisal. Though neither the SMR or EPR specify separate procedures or guarantees for making complaints about staff, the SMR do indicate the importance of independent investigation of allegations of torture or ill treatment, which is supported by the provisions of CAT 13, 16 and ECHR 3.

Safeguards shall be in place to ensure that prisoners can make requests or complaints safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint. (SMR 57.2)

Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority [...]. (SMR 57.3)

See also APT and PRI, *Balancing security and dignity in prisons: a framework for preventive monitoring*.

- **Safeguarding**
 - **Suicide and self-harm prevention**

Beyond emphasising the importance of doctors assessing suicide risk (SMR 30.c) and the requirement that the prison medical service provide for the psychiatric treatment of prisoners, paying special attention to suicide prevention (EPR 47.2), neither the SMR nor the EPR set out standards specifically relating to suicide or self-harm prevention. General standards relating to keeping prisoners safe (SMR 1) and treating them with respect for their human rights (EPR 1) are relevant, and the right to life provisions in ECHR 2 and ICCPR 6 are of great importance:

There are specific prison standards relating to responses to deaths in custody, as follows:

Notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases. The prison administration shall fully cooperate with that authority and ensure that all evidence is preserved. (SMR 71.1)

When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation. (BOP 34)

The obligation in [SMR 71.1] shall equally apply whenever there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed in prison, irrespective of whether a formal complaint has been received. (SMR 71.2)

Whenever there are reasonable grounds to believe that an act referred to in paragraph 2 of this rule has been committed, steps shall be taken immediately to ensure that all potentially implicated persons have no involvement in the investigation and no contact with the witnesses, the victim or the victim's family. (SMR 71.3)

The prison administration shall treat the body of a deceased prisoner with respect and dignity. The body of a deceased prisoner should be returned to his or her next of kin as soon as reasonably possible, at the latest upon

completion of the investigation. The prison administration shall facilitate a culturally appropriate funeral if there is no other responsible party willing or able to do so and shall keep a full record of the matter. (SMR 72)

The provisions in SMR 71.2 reflect obligations established under the Convention against Torture to conduct a prompt and impartial investigation where there is reasonable ground to believe an act of torture or ill treatment has been committed (CAT 12, 16) and to ensure any allegations of torture or ill treatment from individuals are promptly and impartially examined by competent authorities (CAT 13, 16). See also ECHR 3.

- Protection of adults at risk

The concept of safeguarding does not exist in the SMR or EPR, but several principles relating to vulnerable prisoners do apply:

In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory. (SMR 2.2)

The physician shall report to the prison director whenever he or she considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment. (SMR 33)

Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible. (SMR 109.1)

The provisions of the Convention on the Rights of Persons with Disabilities (CRPD 12, 14-17) should be considered.

• Leadership and management of safety

The following standards in the EPR relate directly to the leadership and management of safety:

Prisons shall be managed within an ethical context which recognises the obligation to treat all prisoners with humanity and with respect for the inherent dignity of the human person. (EPR 72.1)

Staff shall operate to high professional and personal standards. (EPR 72.4)

Section 2: Respect

- **Staff-prisoner relationships**

ICCPR establishes the obligation to treat all persons deprived of their liberty with humanity and respect for their inherent dignity (ICCPR 10.1). See also UDHR 1.

The EPR and the SMR emphasise the important public service that prison staff carry out and that they should operate to high standards and lead by example.

Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners. (EPR 8)

Staff shall operate to high professional and personal standards. (EPR 72.4)

Particular attention shall be paid to the management of the relationship between first line prison staff and the prisoners under their care. (EPR 74)

Staff shall at all times conduct themselves and perform their duties in such a manner as to influence the prisoners by good example and to command their respect (EPR 75)

All prison staff shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect (SMR 77)

More generally,

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. (SMR 5.1)

Life in prison shall approximate as closely as possible the positive aspects of life in the community (EPR 5)

The EPR also emphasise the role of staff in supporting the rehabilitation of prisoners:

The duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance. (EPR 72.3)

- **Daily life**
 - **Living conditions**

Basic principles for prisoners' living conditions are affirmed in a number of key instruments, and reflect the minimum standards which must always be met. Prison conditions that infringe prisoners' human rights are not justified by lack of resources (EPR 4) and could violate the prohibition on torture and ill treatment (CAT 1,16, ICCPR 7, ECHR 3). All prisoners must be treated with humanity (ICCPR 10.1).

Based on and elaborating human rights standards set out in the SMR and EPR, the technical standards developed by the ICRC and UNOPS (Technical Guidance for Prison Planning: Technical and operational considerations based on the Standard Minimum Rules for the Treatment of Prisoners, 2015) should be considered.

Poor living conditions, in and by themselves, can and have been found to violate Article 10 of the ICCPR and Article 3 of the ECHR. Case law makes clear that this does not necessitate intention by the authorities to degrade or humiliate the prisoner. It is often the cumulative effects of prison conditions which can lead to a violation of Article 3 being found (see ECtHR *Ananyev and Others v. Russia*, *Modârcă v. Moldova*, *Torreggiani and Others v. Italy*).

Accommodation

Prisoner accommodation must meet basic standards of decency, hygiene and health, and be respectful of prisoners' inherent human dignity (ICCPR 10.1).

The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation. (EPR 18.1)

The EPR set out specific standards for all buildings where prisoners live, work or congregate:

- a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;*
 - b. artificial light shall satisfy recognised technical standards; and*
 - c. there shall be an alarm system that enables prisoners to contact the staff without delay.*
- (EPR 18.2)*

The specifics of these general standards shall be set in national law, which shall also put in place mechanisms to ensure that minimum requirements are not breached by overcrowding (EPR 18.3; 18.4).

The SMR also emphasise that artificial light shall be sufficient for prisoners to read or work without injury to eyesight (SMR 14b).

The ICRC suggests that the size of windows must be no less than one-tenth of the floor space (ICRC 2012). CPT standards further specify that windows must not be covered or made with opaque glass (11th Annual Report at section 30).

Fresh air and good air circulation are important components in the making of a comfortable and healthy environment. The longer the person spends inside their cell, the more important it is to provide them with sufficient access to fresh air. The ICRC provides the following guidance on how to assess the quality of ventilation in places of detention:

"The function of ventilation is to evacuate the carbon dioxide produced by breathing and the humidity resulting from perspiration. Good air circulation in living quarters allows the detainees to breathe normally and gets rid of body odour [...]. For proper ventilation, a supply of fresh air is necessary. [...] A practical way of calculating ventilation in places of detention is to determine the ratio of the size of windows or other openings to the area of the floor. To renew the air in a satisfactory manner, the following requirement must be fulfilled: the size of the openings must be no less than one-tenth of the floor area. Compliance with this requirement is especially important if the detainees are not able to spend long periods in the open air every day, as it also ensures that the cells or dormitories enjoy a minimum amount of daylight. For example, a cell measuring 20 m² should have openings totalling 2 m²." (ICRC p23)

Cells and all other parts of the prison used by prisoners must be properly maintained and kept clean and tidy (SMR 17, EPR 19). The prison authorities should provide prisoners with toiletries and with the cleaning implements and

materials necessary for keeping themselves, their accommodation and their clothing clean (EPR 19.6).

Cell sharing and size

Single cells are the preferred option, though standards allow for a deviation from this principle when circumstances so require.

Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room. (SMR 12.1)

Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation. (EPR 18.5)

Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other. (EPR 18.6)

As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation. (EPR 18.7)

The exact regulation of minimum standards regulating cell size has traditionally been left for states to determine, based on their population needs, housing stocks and budgets. In recent years, however, more detailed guidance has been developed, specifying minimum living-space requirements in different types of cells.

The CPT *Standards for Personal Living space in Prisons* (2015) stipulate the following:

- 6m² of living space for a single-occupancy cell + sanitary facility
- 4m² of living space per prisoner in a multiple-occupancy cell + a fully-partitioned sanitary facility
- at least 2m between the walls of the cell and 2.5m between the floor and the ceiling of the cell

In *Muršić v. Croatia*, the European Court of Human Rights found a violation of Article 3 with regard to the consecutive period of 27 days in which the applicant had less than 3m² personal space. The fact that the applicant had two hours' outdoor exercise and three hours' free movement outside his cell did not diminish from this finding.

Specifically relating to bedding:

Every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness (SMR 21)

Washing and sanitary facilities

Prisoners should have regular access to a shower or a bath, ideally daily but no less than twice a week (EPR 19.4) and as an absolute minimum once a week in temperate weather (SMR 16). They should be able to wash at a temperature suitable to the climate (SMR 16). Sanitary facilities should respect privacy (EPR 19.3).

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner. (SMR 15)

Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness. (SMR 18.1)

In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be able to shave regularly. (SMR 18.2)

Clothing

Ideally, prisoners should be allowed to wear their own clothing. Where this is not possible, the prison should provide them with appropriate clothing which is suitable for climatic conditions, and which is not degrading or humiliating.

Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her in good health. Such clothing shall in no manner be degrading or humiliating. (SMR 19.1)

All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene. (SMR 19.2)

In exceptional circumstances, whenever a prisoner is removed outside the prison for an authorized purpose, he or she shall be allowed to wear his or

her own clothing or other inconspicuous clothing. (SMR 19.3)

If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the prison to ensure that it shall be clean and fit for use. (SMR 20)

- Residential services

Every prisoner shall be provided with:

- food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served hygienically (SMR 22.1 and EPR 22)
- meals three times a day with reasonable intervals between them (EPR 22.4)
- clean drinking water at all times (SMR 22.2 and EPR 22.5)
- food that takes into account their age, health, physical condition, religion, culture and the nature of their work (EPR 22.1)

The prison's physician or a competent public health body shall regularly inspect and advise the prison director on the quantity, quality, preparation and service of food and water (SMR 31.1; EPR 44).

Prisoners shall, subject to the requirements of hygiene, good order and security, be entitled to purchase or otherwise obtain goods, including food and drink, for their personal use at prices that are not abnormally higher than those in free society (EPR 31.5).

There are further recommendations for food in prisons in the World Health Organisation's *Food systems in correctional settings: a literature review and case study* (2015).

Human rights standards also specify that prisoners should be able to access newspapers and other publications, as well as television and radio, in order to keep informed of public affairs:

Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case. (EPR 24.10)

Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any

*similar means as authorized or controlled by the prison administration.
(SMR 63)*

- Prisoner consultation, applications and redress

Prisoners, individually or as a group, should have ample opportunity to make requests or complaints to the director of the prison or staff member authorized to represent him (SMR 56.1; EPR 56.1). The SMR specify that prisoners should have opportunity each day.

If mediation seems appropriate this should be tried first. (EPR 70.2)

Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power. (SMR 56.3)

Requests/complaints must be dealt with promptly and replied to without delay. If the request or complaint is rejected, reasons shall be provided to the prisoner. If the request or complaint is rejected or if there is undue delay in responding, the complainant shall be entitled to bring it before a judicial or other authority. (SMR 57.1; EPR 70.3; BOP 33.4).

The prisoner's legal adviser should be able to make requests/complaints on behalf of the prisoner. If neither the prisoner nor the legal adviser is able to do this, a member of the prisoner's family or any other person who has knowledge of the case may do so (SMR 56.4; EPR 70.5; BOP 33.2). The prisoner concerned must consent to a complaint being brought on his/her behalf by a legal representative/organisation concerned with welfare of prisoners (EPR 70.6).

There should be safeguards in place to make sure requests/complaints can be made safely and, if requested by the complainant, confidentially (SMR 57.4; BOP 33.3).

Prisoners shall not be punished, exposed to any risk of retaliation, intimidation or other negative consequences because of having made a request or lodged a complaint (EPR 70.4; SMR 57.2; BOP 33.4).

Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority (SMR 57.3).

Human rights standards also set out clear standards relating to prisoners' access to lawyers and legal assistance. These standards come from both prison-specific

standards (SMR 61) as well as those relating to the role of lawyers (UN Basic Principles on the Role of Lawyers, 1990).

A detained person is entitled to the assistance of a legal counsel and to be informed of this right promptly after arrest and shall be provided with reasonable facilities for exercising it (BOP 17.1; BRPL 5). They are entitled to call upon the assistance of this lawyer to defend them in all stages of criminal proceedings (BRPL 1).

The lawyer should have experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance (BRPL 6).

If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay (BOP 17.2; BRPL 6).

There should be sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons (BRPL 3); prisoners should have access to effective legal aid (SMR 61.3).

Prisoners are entitled to communicate and consult with their legal counsel and shall be allowed adequate time and facilities for these consultations (BOP 18.1-2, SMR 61.1).

Prisoners should be able to exercise this right without delay or censorship and in full confidentiality (BOP 18.3, SMR 61.1).

The right to be visited by, to consult and communicate with legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified in law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order (BOP 18.3).

Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official (BOP 18.4; BRPL 8).

The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published (BOP 30.1).

A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review (BOP 30.2).

- **Equality, diversity and faith**

Non-discrimination is a fundamental principle enshrined in human rights treaties and standards (ICCPR 26, CERD 1, ICESCR 2.2, CAT 1.1, CRPD 5).

Human rights standards relating specifically to prison set out that all of their provisions should be applied impartially and without discrimination.

All standards/expectations should be applied impartially, with no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In order for the principle of non-discrimination to be put into practice, prison administrations must take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory. (SMR2)

Specific standards relating to the rights of persons from minority backgrounds are set out in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (DRM):

Specifically, persons belonging national or ethnic, cultural, religious and linguistic minorities must be able to exercise their rights individually as well as in community with other members of their group, without any discrimination. They should not be disadvantaged as a consequence of exercising (or not exercising) their rights as a minority. (DRM 2)

We set out in more detail below standards relating to some of the protected characteristics that apply in HMIP's Expectations.

- **Protected characteristics**

Prisoners with disabilities

The UN Convention on the Rights of Persons with Disabilities sets out the following rights of persons with disabilities (CRPD 3) that are relevant to the prison context:

- respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
- non discrimination

- respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- equality of opportunity
- accessibility
- equality between men and women

With specific reference to persons with disabilities deprived of their liberty:

States are required to take measures in legislation and policy to implement these principles. Where persons with disabilities are deprived of their liberty lawfully, they are entitled to guarantees for their human rights as any other prisoners (CRPD14.3).

Reasonable accommodation/adjustments must be made to ensure persons with disabilities are able to enjoy and exercise their human rights on an equal basis with others. This principle is set out in CRPD 2, SMR 5.2 and the Equality Act 2010.

According to the CRPD, reasonable accommodation means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

The SMR make clear that prison administrations are responsible for making reasonable accommodation/adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.

Jurisprudence from the Committee on the Rights of Persons with Disabilities found a violation of the CRPD on the basis that a prisoner was unable to enter a bathroom as it was too small to accommodate his wheelchair, that he had been unable to access a recreation yard and that despite having a call bell in his cell, he was unable to have timely access to a nurse as this was sometimes answered after a delay or never answered, and the failure to provide physical rehabilitation services that had been prescribed by doctors (*X v. Argentina*, 2012).

The CRPD sets out that persons with disabilities must be able to live independently and participate fully in all aspects of daily life in a place of detention, and that they should have equal access to areas and services such as bathrooms, yards, libraries, study areas, workshops and medical, psychological, social and legal services (CRPD, Guidelines on Article 14, para 18).

According to the Special Rapporteur on Torture, the denial or lack of reasonable accommodations for persons with disabilities may create detention and living conditions that amount to ill treatment and torture. See United Nations General

Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment: Interim report of the Special Rapporteur on torture (A/63/175)*, 28 July 2008

In *Price v. UK* (2001), the European Court of Human Rights found that a severely physically disabled prisoner held in Wakefield prison had been subject to degrading treatment (a violation of ECHR 3). Despite the fact that a doctor and staff nurse had expressed concern over the problems likely to be encountered during her detention, and the attempt of the prison governor to find the applicant a place in an outside hospital, they had been unable to transfer her as she was not suffering from any particular medical complaint. During her first night's detention, the duty nurse had been unable to lift her to help her use the toilet, and as a result she was subjected to humiliating treatment at the hands of male prison officers. On release she had to be catheterised as the lack of fluid intake and problems in getting to the toilet had caused her to retain urine. In addition, she was dangerously cold and risked developing sores as her bed was difficult to reach and too hard.

The SMR set out specific rules relating to the application of disciplinary sanctions and solitary confinement to prisoners with disabilities, as follows:

Prison administrations must consider whether/how a prisoner's mental illness or developmental disability may have contributed to his/her conduct and the offence or act underlying the disciplinary charge (SMR 39.3)

Prisoners should not be sanctioned for any conduct that is considered to be the direct result of their mental illness or intellectual disability (SMR 39.3)

Prisoners with mental or physical disabilities should not be held in solitary confinement if it would exacerbate their conditions (SMR 45.2).

Healthcare personnel should be able to review and recommend changes to the involuntary separation of a prisoner to ensure it does not exacerbate their mental or physical disability (SMR 46.3)

In addition,

Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs. (SMR 55.2)

If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals. (SMR 109.2)

Sexual orientation and gender identity

The main standard-setting documents relating to prisons (SMR, EPR) do not provide much guidance on issues relating to sexual orientation in prison, and even less on gender identity. However, several basic human rights apply:

- The prohibition of discrimination (ECHR 14, ICCPR 2, UDHR 7)
- The right to respect for private life/privacy (ECHR 8, ICCPR 9, UDHR 12)
- All persons deprived of their liberty shall be treated with humanity and respect for human dignity (ICCPR 10)

In addition, the following principles from the SMR should be applied to ensure equal treatment of prisoners of different sexual orientation or gender identity.

- All prisoners shall be treated with respect to their inherent dignity and value as human beings (SMR 1)
- The safety and security of prisoners [...] shall be ensured at all times (SMR 1)
- All rules shall be applied impartially and there shall be no discrimination on the grounds of 'any other status' (sexual orientation/gender identity could be read into this). In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings (SMR 2)

The EPR recognise that prisons can be intimidating places for those who are different from the majority, including because of their sexual orientation. The EPR identify as problematic the tendency of prison authorities to deal with vulnerable minorities by restricting their activities and separating them from other prisoners. Locking them up separately 'for their own safety' should be a matter of last resort.

Further standards are set out in the Council of Europe Committee of Ministers *Recommendations on measures to combat discrimination on grounds of sexual orientation or gender identity*:

- to adopt measures to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
- to conduct effective, prompt and impartial investigations into alleged crimes/incidents where sexual orientation or gender identity is reasonably suspected to have been a motive for the perpetrator. Particular attention

- should be paid to incidents committed by law enforcement or other officials;
- to take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons;
 - to take measures to ensure the right to health can be effectively enjoyed without discrimination, taking into account the specific needs of lesbian, gay, bisexual and transgender persons;
 - to ensure transgender persons have effective access to appropriate gender reassignment services.

The Parliamentary Assembly of the Council of Europe's *Resolution 2048: Discrimination against transgender people in Europe* includes recommendations to States that are of specific relevance to prisons, including:

- collect and analyse information and data on the human rights situation of transgender people, including discrimination on grounds of gender identity and multiple discrimination, as well as transphobic intolerance and hate crimes;
- provide effective protection against discrimination on grounds of gender identity [inter alia] in the justice and health care sectors;
- involve and consult transgender people and their organisations when drafting and implementing policy and legal measures which concern them.

In 2006, the *Yogyakarta Principles* were drafted and agreed by international experts. These include the following:

- Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;
- Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;
- Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;
- Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;

- Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

See also United Nations General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (A/HRC/31/57) 5 January 2016.

Foreign national prisoners

Non-discrimination provisions apply similarly to foreign national prisoners (see ICCPR 26). Specific standards relate to the need for foreign national prisoners to be able to communicate with diplomatic and consular representatives.

Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. (SMR 62.1, see also EPR 37.1)

Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons. (SMR 62.2, see also EPR 37.2)

Specific information about legal assistance shall be provided to prisoners who are foreign nationals. (EPR 37.4)

Prisoners who are foreign nationals shall be informed of the possibility of requesting that the execution of their sentence be transferred to another country. (EPR 37.5)

- Faith and religion

Prisoners' freedom of thought, conscience and religion shall be respected (ICCPR 18, ECHR 9, UDHR 18). There should be no discrimination on the grounds of religion or religious belief. Religious beliefs and moral precepts must be respected. Prisoners belonging to religious minorities must be able to profess and practice their religion without any interference or any form of discrimination (EPR 29, SMR 2, BOP 5, DRM 2).

Specifically,

If the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis. (SMR65.1)

A qualified representative appointed or approved under paragraph 1 of this rule shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times (SMR 65.2)

Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his or her attitude shall be fully respected (SMR 65.3; EPR 29.3)

So far as practicable, every prisoner shall be allowed to satisfy the needs of his or her religious life by attending the services provided in the prison and having in his or her possession the books of religious observance and instruction of his or her denomination. (SMR66)

The prison regime shall be organized so far as is practicable to allow prisoners to practice their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives and to have in their possession books or literature relating to their religion or beliefs. (EPR 29.2)

- **Health, well-being and social care**

The right to the highest attainable standard of physical and mental health is a core human right set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR 12) and the European Social Charter (ESC 11) and States must refrain from denying or limiting equal access to health to prisoners (CESCR General Comment 14 paragraph 34). CRPD 25 and CERD 5 reiterate this right with respect to persons with disabilities and those of all race, colour, or national or ethnic origin, to which end States must take appropriate measures to ensure access to them. All prisoners have a right to physical and mental health care of a good standard equivalent to that offered in the community. This is set out in a number of standard-setting documents as well as professional principles:

The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-

care services free of charge without discrimination on the grounds of their legal status. (SMR 24.1)

Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation (BPTP 9)

There is a strong emphasis on professional ethics in providing health care to prisoners:

The relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community, in particular:

- (a) The duty of protecting prisoners' physical and mental health and the prevention and treatment of disease on the basis of clinical grounds only;*
- (b) Adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship;*
- (c) The confidentiality of medical information, unless maintaining such confidentiality would result in a real and imminent threat to the patient or to others;*
- (d) An absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation that may be detrimental to a prisoner's health, such as the removal of a prisoner's cells, body tissues or organs.*

(SMR 32.1)

Without prejudice to paragraph 1 (d) of this rule, prisoners may be allowed, upon their free and informed consent and in accordance with applicable law, to participate in clinical trials and other health research accessible in the community if these are expected to produce a direct and significant benefit to their health, and to donate cells, body tissues or organs to a relative. (SMR 32.2)

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained. (Principle 1 of the United Nations 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)

The basis for a harm reduction approach to health care in prisons that is underpinned by international human rights standards is set out in Sander G., *HIV, HCV, TB and Harm Reduction in Prisons: Human Rights, Minimum Standards and Monitoring at the European and International Levels.*

- **Strategy, clinical governance and partnerships**

A physician must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The physician's fundamental role is to alleviate the distress of his or her fellow human beings, and no motive, whether personal, collective or political, shall prevail against this higher purpose. (World Medical Association, Declaration of Tokyo: Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment, Principle 5)

Every prison shall have in place a health-care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health-care needs or with health issues that hamper their rehabilitation. (SMR 25.1)

The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner. (SMR 25.2)

The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access his or her medical file. (SMR 26.1)

Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality. (SMR 26.2)

All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care. (SMR 27.1)

Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff. (SMR 27.2)

The physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners

who complain of physical or mental health issues or injury and any prisoner to whom their attention is specially directed. All medical examinations shall be undertaken in full confidentiality. (SMR 31)

- Promoting health and well-being

Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence. (SMR 24.2)

The importance of health promotion is also set out as an element of the right to health in CESCR General Comment 14.

- Primary care and inpatient services

A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. Particular attention shall be paid to:

(a) Identifying health-care needs and taking all necessary measures for treatment;

(b) Identifying any ill-treatment that arriving prisoners may have been subjected to prior to admission;

(c) Identifying any signs of psychological or other stress brought on by the fact of imprisonment, including, but not limited to, the risk of suicide or self-harm and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and undertaking all appropriate individualized measures or treatment;

(d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;

(e) Determining the fitness of prisoners to work, to exercise and to participate in other activities, as appropriate.

(SMR 30)

- Social care

Training for prison staff should include “the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.” (SMR 75.2)

Services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society shall ensure, so far as is possible and necessary, that released prisoners are provided with

appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season and have sufficient means to reach their destination and maintain themselves in the period immediately following their release. (SMR 108.1)

It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare. (SMR 110)

- Mental health

Training for prison staff should include “the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.” (SMR 75.2)

There shall be no discrimination on the grounds of mental illness. "Discrimination" means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights. Special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory. Discrimination does not include any distinction, exclusion or preference undertaken in accordance with the provisions of these Principles and necessary to protect the human rights of a person with a mental illness or of other individuals. (United Nations Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care, 1991, Principle 1 (4))

Regarding the treatment and transfer out of prisons to mental health facilities of prisoners with severe mental disabilities, the SMR state the following:

Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible. (SMR 109.1)

The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment. (SMR 109.3)

It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare. (SMR 110)

- **Substance use treatment**

Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence. (SMR 24.2)

See also Harm Reduction International, *HIV, HCV, TB and Harm Reduction in Prisons: Human Rights, Minimum Standards and Monitoring at the European and International Levels*.

- **Dental services and oral health**

[...] The services of a qualified dentist shall be available to every prisoner. (SMR 25.2)

- **Leadership and management of respect**

The following standards in the EPR relate directly to the leadership and management of respect:

Prisons shall be managed within an ethical context which recognises the obligation to treat all prisoners with humanity and with respect for the inherent dignity of the human person. (EPR 72.1)

Staff shall operate to high professional and personal standards. (EPR 72.4)

Section 3: Purposeful activity

The key aim of the prison is the “reformation and social rehabilitation of prisoners” (ICCPR 10.3) and to “protect society against crime and to reduce recidivism” by using the period of imprisonment to ensure reintegration into society upon release (SMR 4.1). Human rights standards make clear that these purposes can only be achieved through offering a balanced programme of education, vocational training and work, as well as other forms of assistance (EPR 25.1). All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners (SMR 4.2, EPR 27.5). In addition:

The prison regime should seek to minimise 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 (SMR 5.1)

The expectation that prisoners should have access to regime activities places a positive duty on prison authorities to provide equal access to programmes and activities, as well as specialised support to all prisoners regardless of their legal status, gender or length of sentence (SMR 5.2, 42; EPR 25.3, 25.4). Where possible, these should be provided in association with others.

- **Time out of cell**

There is clear consensus in human rights standards that all prisoners, including those in segregation or cellular confinement, should have at least one hour of outside exercise in the open air every day:

Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits (SMR 23.1)

Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits (EPR 27.1)

When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise. (EPR 27.2)

[...] all prisoners without exception (including those undergoing cellular confinement as a punishment) should be offered the possibility to take outdoor exercise daily (CPT 2nd General Report)

This should come in addition to a regime that allows prisoners to spend time out of their cells in association with others:

This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction. (EPR 25.2)

Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities. (EPR 27.7)

[remand prisoners] are able to spend 8 hours a day or more outside their cells, engaged in purposeful activity of varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable (CPT 2nd General Report CPT/Inf (92)3)

The standards relating to solitary confinement above (see ‘segregation’) should also be applied with respect to prisoners’ time out of cell.

There is a particular emphasis on exercise and promoting physical fitness:

Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes. (EPR 27.3)

Prison authorities shall facilitate such activities by providing appropriate installations and equipment. (EPR 27.4, see also SMR 23.2)

There is a positive obligation on prison authorities to organise special activities for those prisoners who need them (EPR 27.5) and for physical and recreational training to be available to young prisoners (SMR 23.2).

Finally, there are specific standards relating to prison libraries:

Every prison shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it (SMR 64, see also EPR 28.5)

The Special Rapporteur on the Right to Education emphasises that libraries should be stocked with an “appropriate range of resources and technology available for all categories of detainees” (SR Education 2009, para 95).

- **Education, skills and work activities**

There are comprehensive human rights standards on access to work, which should be part of a good prison regime. The right to work is established in UDHR 23 and ICESCR 8. International standards stipulate that work must never be used as punishment (EPR 26.1), nor be of an afflictive nature (SMR 97.1). Work must be equitably remunerated (SMR 103.1; EPR 26.10; CESCR General Comment 23). Where possible, work should equip the prisoner with a vocation they can utilise upon their release (BPTP 8, EPR 26.7, SMR 98.1). Remand prisoners should be given the opportunity to work, but this should not be a requirement (SMR 116).

In addition, there is emphasis on providing work *of a useful nature* (EPR 26.2, SMR 96.2) and that prisoners should be actively employed for a normal working day (SMR 96.2) and should have at least one rest day a week and sufficient time for education and other activities (EPR 26.16, SMR 102.1).

Prisoners should be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family (SMR 103.2, EPR 26.11). There should also be a system for setting aside part of the earnings to constitute a savings fund to be handed over to the prisoner on release (SMR 102.3).

In addition, standards stipulate:

The precautions laid down to protect the safety and health of free workers shall be equally observed in prisons. (SMR 101.1)

Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workers. (SMR 101.2)

As far as possible, prisoners who work shall be included in national social security systems. (EPR 26.17)

The universal right to education is established in the Universal Declaration of Human Rights (UDHR 26) and International Covenant on Economic, Social and Cultural Rights (ICESCR 13) and applies equally in prisons. The right to education should be enjoyed without discrimination. In 1990, the UN Economic and Social Council (ECOSOC) agreed a resolution, *Prison Education (1990/20)*, emphasising the importance of prison education. It calls on States to provide prison education with the aim of “developing the whole person” and make every effort to encourage all prisoners to participate actively in education, which should include literacy programmes, basic education, vocational training, creative, religious and cultural activities, physical education and sports, social education, higher education and library facilities.

The UN Special Rapporteur on the Right to Education emphasises that education programmes should aim at developing the full potential of each detainee, minimising the negative impact of incarceration, improving prospects of reintegration, rehabilitation, self-esteem and morale (SR Education 2009, para 91 b).

The European Prison Rules set out precise expectations for education in prisons:

Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations. (EPR 28.1)

Priority shall be given to prisoners with literacy and numeracy needs and those who lack basic or vocational education. (EPR 28.2)

Particular attention shall be paid to the education of young prisoners and those with special needs. (EPR 28.3)

Education shall have no less a status than work within the prison regime and prisoners shall not be disadvantaged financially or otherwise by taking part in education. (EPR 28.4)

The SMR call for compulsory attention for illiterate and young prisoners (SMR 104.1).

Both the EPR and SMR emphasise the desirability of integrating the education of prisoners with the educational (and vocational) training without difficulty (EPR 28.7, SMR 104.2).

The Special Rapporteur on the Right to Education makes further recommendations relating to the screening of all prisoners to develop individual education plans, providing assistance and resources to address barriers to education, providing approved training and ongoing professional development to teachers, as well as safe working environment and appropriate recognition, evaluation and monitoring of all education programmes, and that education programmes should be based on current, multidisciplinary and detailed research (SR Education 2006).

Section 4: Rehabilitation and release planning

Human rights standards are clear that any period of imprisonment must be used to ensure prisoners' rehabilitation and reintegration into society on release (ICCPR 10.3; SMR 4.1). They emphasise that consideration must be given from the beginning of a prisoner's sentence to his/her future after release, the importance of maintaining family and other relationships, and the prisoner's need for assistance in re-establishing him/herself in society after release (SMR 106-108).

- **Children and families and contact with the outside world**

The right to a private and family life is protected under core human rights treaties including the UDHR (Article 12), the ICCPR (Article 23) and the ECHR (Article 8). This right takes on a special importance in prison. Maintaining contact with family and friends through visits, telephone calls and letters is important for maintaining prisoners' well-being. The SMR emphasise the need to pay attention to maintaining and improving relations between prisoners and their families:

Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his or her family as are desirable in the best interests of both. (SMR 106)

Interference with this right can engage ECHR Article 8 and, in extreme cases, Article 3 (prohibition of inhuman or degrading treatment). Prisoners' right to maintain contact with the outside world places an obligation on prison authorities to respect, encourage and facilitate this contact.

The rights of the child established in the UN Convention on the Rights of the Child set out the responsibility of States to ensure that no child is discriminated against or punished on the basis of a parent's status (which could include imprisonment) and to respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests (CRC 2.2 and 9.3; see also CRC General Comment No.14).

Standards relating to prisons require prisoners to have various means of communicating with family and friends:

Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:

(a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and

(b) By receiving visits.

(SMR 58.1)

Prisoners should be allocated, to the extent possible, to prisons close to their homes (SMR 59, see also BOP 20).

In relation to visits:

The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible. (EPR 24.4)

The Bangkok Rules, which apply specifically to women prisoners, set a useful standard on visits involving children:

Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible. (BR 28)

The European Prison Rules emphasise that the ability to communicate and receive visits should extend to “other persons and representatives of outside organisations” (EPR 24.1) and that prison authorities should assist prisoners in maintaining “adequate contact” with the outside world “and provide them with the appropriate welfare support to do so” (EPR 24.5).

Specific standards relate to the searching of visitors and monitoring of communications:

Admission of visitors to the prison facility is contingent upon the visitor’s consent to being searched. The visitor may withdraw his or her consent at any time in which case the prison administration may refuse access. (SMR 60.1)

Search and entry procedures for visitors shall not be degrading and shall be governed by principles at least as protective as those outlined in rules 50 to 52. Body cavity searches should be avoided and should not be applied to children. (SMR 60.2)

Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact. (EPR 24.2)

National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted. (EPR 24.3)

Specific standards relate to the actions prisons should take in the case of a death or serious illness of a prisoner’s family member:

Any information received of the death or serious illness of any near relative shall be promptly communicated to the prisoner. (EPR 24.6)

Whenever circumstances allow, the prisoner should be authorised to leave prison either under escort or alone in order to visit a sick relative, attend a funeral or for other humanitarian reasons. (EPR 24.7)

- **Reducing risk, rehabilitation and progression**

Human rights standards emphasise the importance of preparing for the prisoner’s release on admission, which requires individualised treatment (SMR 89.1), regular reviews and the involvement of outside services and agencies.

A programme of treatment should be prepared as soon as possible after admission, in the light of the knowledge obtained about his or her individual needs, capacities and dispositions. (SMR 94)

As soon as possible after admission [...] the appropriate level of security for the prisoner shall be determined [...] (EPR 16(b))

There should be procedures for establishing and regularly reviewing prisoners' sentence plans after the consideration of appropriate reports, full consultations among relevant staff and with the prisoners concerned who shall be involved as far as practicable (EPR 104.2)

All representatives of social services or agencies involved with released prisoners must have all necessary access to the prison and prisoners so they can assist with preparations for release and planning after-care programmes (EPR 107.5)

The approved representatives of such agencies shall have all necessary access to the prison and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his or her sentence. (SMR 108.2)

There should be particular care to providing appropriate sentence plans to life sentenced and other long term prisoners (EPR 103.8)

Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation. (SMR 59, see also BOP 20)

- Interventions

From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family. Sentence plans should include work, education, other activities and preparation for release and may include social work, medical and psychological care (SMR 107; EPR 103.2). The EPR emphasise that in all aspects of regime, "particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse" (EPR 25.4).

Human rights standards also emphasise that the steps taken to ensure a prisoner's gradual return to life in society could be through a pre-release regime organized 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. (SMR87, EPR107.3). In addition, prisoners who consent to do so may be involved in a programme of restorative justice and in making reparation for their offences (EPR103.7)

Jurisprudence from the European Court of Human Rights and the UK Supreme Court confirms the relevance of ECHR Article 5(1) (the right to liberty and security of person) to matters of sentence progression.

Specifically, in *James, Wells and Lee v. UK* (ECtHR 2012) the ECtHR found a violation of Article 5(1) on the grounds that the men spent considerable time in local prisons where there were few, if any, offending behaviour programmes, which meant they had no realistic chance of making objective progress towards a real reduction or elimination of the risk they posed by the time their tariff periods expired. This amounted to arbitrary and therefore unlawful detention.

In *Haney, Kaiyam and Massey v. SSJ*, the Supreme Court examined the case of three IPP prisoners in light of the James, Wells and Lee judgment. They conclude that there is a duty to facilitate the progress towards release by providing appropriate courses and facilities, but consider this an ancillary duty of ECHR Art 5(4) which does not affect the lawfulness of the detention but “sounding in damages if breached” (para 38).

- Release planning

Human rights standards focus on assistance prior to release, providing aftercare and ensuring prisoners are equipped with appropriate documents, adequate clothing, have suitable homes and work to go to, and the means to reach their destination and maintain themselves in the period immediately following release.

Prisoners should be assisted in good time prior to release (EPR 107.1)

Governmental or private agencies should provide efficient aftercare to prisoners post-release, with the aim of lessening of prejudice against him or her and towards his or her social rehabilitation. (SMR 90)

Services and agencies, governmental or otherwise, which assist released prisoners in re-establishing themselves in society shall ensure, so far as is possible and necessary, that released prisoners are provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season and have sufficient means to reach their destination and maintain themselves in the period immediately following their release. (SMR108.1).

- Leadership and management of rehabilitation

The European Prison Rules state the responsibility of staff and management in rehabilitation:

Staff shall manifest a clear sense of purpose of the prison system. Management shall provide leadership on how the purpose shall best be achieved. (EPR 72.2)

The duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance. (EPR 72.3)

- Specialist units
 - Offender personality disorder units including psychologically informed planned environments
 - Therapeutic communities

Although human rights standards do not specify the above type of specialist units, there is clear indication that the development of specialist facilities can be useful in some circumstances:

If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals. (SMR 109.2)

The development of such facilities should be matched by appropriate training:

Prison staff who are in charge of working with certain categories of prisoners, or who are assigned other specialized functions, shall receive training that has a corresponding focus. (SMR 76.2)

Specifically relating to the treatment of “dangerous offenders”, the Council of Europe Committee of Ministers states that these prisoners should be treated with respect for their human rights and fundamental freedoms, and with due regard for their particular situation and individual needs as with other prisoners. Similarly, as for all prisoners, security measures should be set to the minimum necessary, and the level of security should be revised regularly. See *Recommendation of the Committee of Ministers to member States concerning dangerous offenders (CM/Rec(2014)3)*.

General principles

The following general principles are set out in human rights law and standards and underpin HMIP's Expectations.

All prisoners shall be treated with humanity and with respect for the inherent dignity of the human person. All persons deprived of their liberty shall be treated with respect to their human rights (ICCPR 10.1, EPR preamble and 1, BOP).

Presumption against detention

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law (ICCPR 9.1).

No-one shall be deprived of liberty save as a measure of last resort and in accordance with a procedure prescribed by law (EPR preamble).

Punishment and the restriction of rights

Imprisonment is afflictive in nature as it takes away the right of self-determination from individuals by depriving them of their liberty. The prison system shall not (except as incidental to justifiable separation or the maintenance of discipline) aggravate the suffering inherent in such a situation (SMR 3).

Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody (SMR2).

Any further restrictions placed on persons deprived of their liberty can only be justified if they satisfy the following tests (NB these are tests applied by the European Court of Human Rights to specific cases and have been adopted by the CPT – see 21st General Report):

Proportionate: Any further restriction of a prisoners' rights must be linked to the actual or potential harm the prisoner has caused or will cause by his or her actions (or the potential harm to which he/she is exposed) in the prison setting.

Lawful: Provision must be made in domestic law for restrictive practices that are applied, and this provision must:

- be reasonable
- be communicated in a comprehensible form to everyone who may be subject to it
- set out the precise circumstances in which these practices can be imposed

- specify the persons who may impose it
- specify the procedures to be followed
- specify the right of the prisoner affected to make representations as part of the procedure
- set out the requirement to give the prisoner the fullest possible reasons for the decision (it being understood that there might, in certain cases, be reasonable justification for withholding specific details on security-related grounds or in order to protect the interests of third parties), the frequency and procedure of reviews of the decision and the procedures for appealing

Accountable: Full records should be maintained of all decisions to impose further restrictions on prisoners' rights and all reviews of decisions. These records should evidence all the factors which have been taken into account and the information on which they were based. There should also be a record of the prisoner's input or refusal to contribute to the decision-making process.

Necessary: Any further restrictions must be strictly necessary in a democratic society and in the interests of public safety and the prevention of disorder and crime. There should be no automatic withdrawal of rights, and regimes should be flexible enough to permit the relaxation of any restrictions which are not necessary in individual cases.

Non-discriminatory: Restrictions should not be applied disproportionately against a particular prisoners or group of prisoners without an objective and reasonable justification.

Rehabilitation and recidivism

The essential aim of the treatment of prisoners is their reformation and social rehabilitation (ICCPR 10.3).

The purpose of imprisonment is primarily to protect society against crime and reduce recidivism. This can only be achieved if the period of imprisonment is used to ensure the reintegration of prisoners into society on release, so they can lead a law abiding and self-supporting life (SMR 4).

All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty (EPR 6).

Prohibition and prevention of torture and ill treatment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment (ECHR 3).

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (ICCPR 7).

States must take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction (CAT 2.1). States must establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment (OPCAT 1).

All acts of torture must be offences under criminal law, and this must apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. All offences must be punishable by appropriate penalties (CAT 4.1).

Competent authorities must proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed (CAT 12).

For an act to constitute torture, it must have the three essential elements:

- the infliction of severe mental or physical pain or suffering
- the intentional or deliberate infliction of the pain
- the pursuit of a specific purpose, such as gaining information, punishment or intimidation

According to the UN definition, torture must be inflicted by/at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity. However, the European Court of Human Rights has diverged from this definition and considers non-state actors to be capable of torture.

Where a practice does not meet the strict criteria to be defined as torture, and lacks the intensity or purpose of torture, it may be classified as ill treatment (which in turn may be either cruel treatment, inhuman treatment and/or degrading treatment). Case law of the European Court of Human Rights sets out some of the parameters of these definitions, which are constantly evolving.

The prohibition of torture is absolute and violations cannot be justified on the grounds of availability of resources or any other circumstances (CAT, ECHR, SMR 1, BOP 6).

Where an individual raises an arguable claim of serious ill treatment/torture, there must be an effective official investigation which must be capable of leading to the identification and punishment of those responsible. Without this, the prohibition of torture and ill treatment would be ineffective in practice. Failure to respond adequately to allegations of violations may give rise to a separate and discrete violation of Article 3 ECHR. Victims of proven violations must also be able to remedies and redress.

Prison policy and management of the prison estate

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture (CAT 11).

Prison conditions that infringe prisoners' human rights are not justified by lack of resources (EPR4).

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 (SMR 5).

Life in prison shall approximate as closely as possible the positive aspects of life in the community (EPR 5).

Prison staff carry out an important public service and their recruitment, training and conditions of work shall enable them to maintain high standards in their care of prisoners (EPR 8).

Location and separation of prisoners

The SMR, EPR and BOP all recommend that prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation (SMR 59; BOP 20; EPR 17.1). In addition, the EPR recommend that, where possible, prisoners should be consulted about their initial allocation and any subsequent transfer from one prison to another (EPR 17.3)

The following categories of prisoners must be kept in separate institutions or parts of institutions as follows:

- Male and female prisoners (if in an institution that receives both men and women, the whole of the premises allocated to women must be entirely separate) (SMR 11.a)
- Untried (ie remand) and sentenced prisoners (ICCPR 10.2.a, SMR 11.b and EPR 18.8)
- Young adult prisoners and older prisoners (EPR 18.8, also SMR 11.d but does not specify 'young adults')
- Children and adults (ICCPR 10.2.b, CRC 37 and General Comment 9)
- Persons imprisoned for debt and other civil prisoners, persons imprisoned by reason of a criminal offence (SMR 11.c)

The separation of remand and sentenced prisoners should lead to separate treatment of remand prisoners that is “appropriate to their status as unconvicted persons” (ICCPR 10.2.a).

Exceptions to the separation of remand and convicted prisoners can be made to allow prisoners to take part in joint activities, but they shall always be separated at night unless they consent to be detained together and prison authorities judge that it would be in the best interest of all prisoners concerned (EPR 18.9).

The only permitted exception to the separation of children and adults above is if it is in the child’s best interests not to separate them from adults. However, this exception should be interpreted narrowly, and the child’s best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices (CRC 37 and General Comment 9).

Classification and individualisation

Human rights standards set out that there should be individualised treatment in prisons and to do this, a “flexible system of classifying prisoners in groups” is desirable. Such groups should be distributed in separate prisons suitable for the treatment of each (SMR 89.1).

More specifically:

- varying degrees of security should be provided according to the needs of different groups (e.g. open prisons which provide the conditions most favourable to the rehabilitation of carefully selected prisoners) (SMR 89.1).
- the number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed five hundred. In open prisons the population should be as small as possible. On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided (SMR 89.4, 89.5).

In addition, classification of prisoners into specific groups can be justified for the following purposes:

- To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence
- To divide prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation

(SMR 93.1)

So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners (SMR 93.2).

Right to vote

In *Hirst v. UK*, the European Court of Human Rights ruled that the blanket ban on voting in elections violated Article 3 of Protocol No. 1 to the European Convention on Human Rights on account of the automatic and discriminate restriction on the applicant's right to vote due to his status as a convicted prisoner.

The Court ruled that States do have a margin of appreciation in interpreting the rights under Art.3 Protocol No. 1 but that any restrictions should be proportionate, requiring a "discernable and sufficient link between the sanction and the conduct and circumstances of the individual concerned".

References

Treaties

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECHR Protocol 1	Protocol to the European Convention on Human Rights
ESC	European Social Charter
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

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Standards

- BOP UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, 1988
<http://www.un.org/documents/ga/res/43/a43r173.htm>
- BPTP UN Basic Principles for the Treatment of Prisoners
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx>
- BPUFF UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>
- BPRL UN Basic Principles on the Role of Lawyers, 1990
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>
- BR UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 2010.
<http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>
- CCLEO UN Code of Conduct for Law Enforcement Officials, 1979
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>
- DRM UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
http://www.ohchr.org/Documents/Issues/Minorities/Booklet_Minorities_English.pdf
- EPR Council of Europe, Recommendation Rec[2006]2 of the Committee of Ministers to member states on the European Prison Rules (European Prison Rules), 2006
http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules_978-92-871-5982-3.pdf
- SMR UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 2015
https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

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