

2. Prison management¹

Issues/rules covered:

- Basic principles (Rules 3, 4, 5(1))
- Allocation, classification, admission (Rules 59, 89, 93, 94, 119(1))
- Information to be provided to prisoners (Rule 54, 55)
- Prisoner file management (Rules 6-10)
- Institutional personnel: prison staff training (Rules 74-80 in general, Rule 49 for use of control techniques, Rule 82(2) for use of force)
- Inspections (Rules 83, 84, 85)

Basic principles

Rule 4 unequivocally asserts that rehabilitation and reintegration are the key to protecting society against crime and reducing recidivism.

It was noted that the development of rehabilitation and reintegration programmes should take into account the many reasons for prisoners' failure to lead a law-abiding and self-supporting life after release. This should include consideration of less obvious or longer-term challenges such as family break-ups, unemployment, social marginalisation and stigmatisation.

The Essex group also reflected on the myriad ways in which imprisonment can hinder successful reintegration and advised that prison administrations should make every effort to minimise these obstacles.

The experts pointed out that the rehabilitation and reintegration programmes available to prisoners should be as broad as possible, taking into account their many different social, economic and cultural backgrounds.

The relevance of Rule 94 was highlighted, which captures the requirement to develop an individualised programme (sentence plan) at the beginning of a prison sentence to ensure the provision of activities and services which are appropriate to the individual and reflective of their criminogenic background. The experts also stressed that prisoners should have the opportunity to input to the development of their rehabilitation and reintegration programmes.

The experts noted that the requirement to 'offer' opportunities to prisoners (Rule 4(2)) precludes forced participation in any programmes. They pointed out, however, that prisoners may need to participate in programmes to meet certain milestones (for example, prisoners may need to complete particular programmes before applying for parole). The experts also noted Rule 95, which calls for the establishment of a system not based on sanctions but on privileges to 'encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of prisoners in their treatment'.

¹ This chapter was authored by Andrea Huber, Penal Reform International.

It is important to note that while prisoners may assume responsibility over certain aspects of such programmes, activities or services, their role must never extend to placing one prisoner in a position of power over another. The Essex group referred to Rule 40, which establishes clear boundaries for self-government. (See also Chapter 6, Incident Management).

Whilst Rule 4 can be interpreted as not being applicable to pre-trial detainees, the experts recommended that pre-trial detainees should not be excluded from programmes, activities and services, nor should they be required to participate in them. The denial of opportunities during pre-trial detention would greatly reduce the chances of successful reintegration upon release whether or not the individual is eventually convicted. The experts noted that Rule 4 on non-discrimination implies that pre-trial detainees are not at a disadvantage to sentenced prisoners.

It was discussed that the term 'other competent authorities' in Rule 4(2) means that 'competent' State authorities other than the prison administration should be involved in the provision of programmes, activities and services. Quality programmes provided by government departments in the community could also be offered in prison, thus reducing the burden on prison authorities. Rule 88 also highlights the role community agencies should play in the task of social rehabilitation of prisoners, which was understood to include civil society agencies which often provide services in prison.

The experts noted the relevance of Rules 93-100 (Work), 104-105 (Education and Recreation) and 106-108 (Social Relations and Aftercare) in the context of rehabilitation and reintegration.

→ For Rules 3 and 5, see Chapter 1, Dignity

Allocation, classification, admission

Proximity to home and family

The Essex group noted that the allocation of prisoners should take into account Rule 58 which states that prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals, including by receiving visits. Rule 59 states that prisoners should be allocated, to the extent possible, close to their homes or places of social rehabilitation.

It was stressed that access to the outside world needs to be a key consideration when planning for the building of new prisons, considering the proximity to communities, transport options, access to the wider criminal justice system (e.g. courts), and the availability of guest houses for overnight accommodation. Practical guidance in the design, planning and operation of correctional facilities can be found in the UNOPS *Technical Guidance for Prison Planning* (UNOPS *Technical Guidance*).²

Prisoners should never be sent to facilities far from their homes as a form of punishment. The experts noted that deliberately allocating prisoners far from their families or purposeful and continuous transfer of prisoners may constitute a violation of the prohibition of torture and other ill-treatment.³

² United Nations Office for Project Services (UNOPS), *Technical Guidance for Prison Planning: Technical and operational considerations based on the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, 2016 (*Technical Guidance for Prison Planning, based on the Nelson Mandela Rules*).

³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *2nd General Report on the CPT's activities covering the period 1 January to 31 December 1991, 1992*, CPT/Inf (92) 3, para. 57 (*CPT 2nd General Report*).

The Bangkok Rules state that the allocation of women prisoners should take into account their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.⁴

It was also noted as good practice to consult prisoners about their initial allocation and any subsequent transfer from one prison to another, as enshrined in the European Prison Rules.⁵

The experts discussed the potential tension between the obligation to separate categories of prisoners with keeping them close to their homes or places of social rehabilitation. This may be a particular challenge in allocating female prisoners, minors or high security prisoners due to the smaller number of specialist facilities, particularly in geographically large countries.

The Bangkok Rules address this by requiring flexibility in allowing contact and visits with family to compensate for this disadvantage faced by women.⁶

→ See Chapter 3, Contact with the outside world

Prison facilities

Prison architecture can play an important role in the success of prisoner rehabilitation and reintegration.⁷

The Essex group noted there are risks with both large prisons and prisons so small that proper facilities cannot be provided, for example where there are no specialist staff.

The experts referred to relevant sections of the UNOPS *Technical Guidance*, including on planning and designing prisons to deliver sports-based activities and the provision of educational, vocational, spiritual and recreational activities for prisoners.⁸

The experts clarified that Rule 89(3), which states the maximum number of 500 prisoners per facility, refers to closed prisons and that the maximum population of open prisons should be smaller.

Separation

The Essex group recalled that Rule 11 requires the separation of different groups of prisoners, including pre-trial detainees and convicted prisoners. Participants highlighted that the separation of women from men and of juveniles from adults makes it easier to meet the distinctive groups' needs, and is also a key measure to prevent violence and exploitation, including sexual violence.

Separation, in different facilities or different sections of the same facility, has been recommended by the Inter-American Commission on Human Rights, suggesting separation

⁴ UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), Rule 4.

⁵ European Prison Rules 2006, Rule 17.3

⁶ Rule 26 of the Bangkok Rules states that contact should be encouraged and facilitated 'by all reasonable means' and that measures shall be taken to 'counterbalance disadvantages faced by women detained in institutions far from their homes'.

⁷ See, for example, Dr. Marayca López, 'How to build for success: prison design and infrastructure as a tool for rehabilitation', *Penal Reform International expert blog series website*, 24th July 2014, accessed 14 September 2016 at <http://www.penalreform.org/blog/build-success-prison-design-infrastructure-tool-rehabilitation/>.

⁸ *Technical Guidance for Prison Planning, based on the Nelson Mandela Rules*, pp. 141-150 and 170-175.

also for elderly prisoners, and of civil prisoners from those convicted of criminal offences.⁹

In managing the separation of different prisoner categories, authorities must respect the principle of non-discrimination which requires that each category of prisoner receives equal access to all available resources and services (Rule 2).

The Inter-American Commission on Human Rights underscored that:

Under no circumstances shall the separation of persons deprived of liberty based on categories be used to justify discrimination, the use of torture, cruel, inhuman, or degrading treatment or punishment, or the imposition of harsher or less adequate conditions on a particular group.¹⁰

Classification and risk assessments

Classification and risk assessments of prisoners are key tools of prison management, required to differentiate and apply various levels of security for different prisoners. The concept is captured in Rules 94 and 89, both unchanged by the review, and is based on an individual assessment and treatment of each prisoner.¹¹ The Essex group underlined that the references to the ‘varying degrees of security’ and ‘individualized treatment’ should be understood in the context of: the principle of rehabilitation and reintegration (Rules 4, 87, 88, 91, 92-94); the provision for the specific needs of individual prisoners (Rules 2(2)); and the protection of prisoners and prison staff from violence (Rule 1).

Risk assessments help identify which prisoners present a threat to themselves or others or a flight risk. While the nature of the offence for which the prisoner was convicted and the length of sentence are an indicator, the Essex group noted that risk assessments should not be based solely on the type of offence or sentence. In particular, prisoners under a death sentence or life sentenced prisoners must not be subjected to higher security measures merely on the basis of their sentence.

Concern was raised, in general, about the frequent practice of keeping prisoners locked in their cells for most of the day as a matter of routine rather than based on individual security concerns.

Risk assessments should include the nature, severity and motivation of the current and previous offences, any history of involvement in inter-prisoner violence or escape attempts, personal history including victimisation (e.g. whether the prisoner has experienced domestic abuse or child abuse), attitude towards the victim and towards fellow prisoners, ‘emotional maturity’ etc.¹² Risk assessments should cover the identification of any risks of abuse or violence from/to prison staff or prisoners,¹³ discrimination, self-harm or suicide, and also the identification of any specific needs of prisoners.

The experts stressed that mental health issues should not be misinterpreted as a risk factor when determining classification levels. This is supported by Rule 41(d) of the Bangkok Rules

⁹ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, principle XIX.

¹⁰ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, principle XIX.

¹¹ Rule 94 calls for ‘a study of the personality of each prisoner’ and a programme of treatment ‘in light of the knowledge obtained about his or her individual needs, capacities and dispositions’. Rule 89 emphasises the need for ‘individualization of treatment’ and a ‘flexible system of classifying prisoners in groups’ for this purpose. Rule 93 also refers to the classification of prisoners under sentence based on individual risk and needs assessments (see also Rule 89).

¹² For guidance on risk assessments see United Nations Office on Drugs and Crime (UNODC), *Handbook on Dynamic Security and Prison Intelligence*, New York, 2015, pp. 14-15 (*Handbook on Dynamic Security*).

¹³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *11th General Report on the CPT’s activities covering the period 1 January to 31 December 2000*, 3 September 2001, CPT/Inf (2001) 16, para. 26 (*CPT 11th General Report*).

which states that the gender-sensitive risk assessment and classification of prisoners must: 'Ensure that those with mental health care needs are housed in accommodation which is not restrictive, and at the lowest possible security level...'

Most countries allocate prisoners in low, medium and high security levels. The security level to which prisoners are subject to should be the 'minimum necessary to achieve their secure custody'.¹⁴

However, in the absence of effective classification system, prisoners are frequently over-classified (i.e. housed in higher security facilities than necessary). The number of prisoners who present a genuine risk of escape or a risk to themselves, other prisoners or staff is usually quite small.¹⁵ Allocating prisoners to the minimum security level necessary has three primary benefits: the treatment of prisoners will be more humane (and in line with the principle of minimising differences to life at liberty); staff will have greater capacity to mitigate and minimise the risk of those prisoners who do pose an actual risk; and as higher security facilities are more expensive, there will be financial gains by minimising the number of prisoners allocated to high security levels.

The Essex group highlighted the potential damaging consequences of placing low security prisoners in high security facilities/regimes and noted that certain groups are more likely than others to suffer the adverse effects of high security classification. This included women prisoners, for whom the UN Bangkok Rules require classification methods and sentence planning that address the gender-specific needs and circumstances. They specify that a gender-sensitive risk assessment shall:

*'Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women prisoners.'*¹⁶

A proper risk assessment on admission and regular review to reallocate a prisoner to a lower or higher security level forms part of this measure. In particular prisoners nearing the end of their sentence should be placed in low security accommodation to prepare them for their return to society.¹⁷

While in some countries judges handing down the sentence also specify the security level for imprisonment, the experts noted that prison authorities are better placed to determine the security requirements. This approach also facilitates the review of security levels at regular intervals, which can act as an incentive for prisoners.¹⁸ However, the experts stressed the need for transparent criteria and avenues to challenge classifications, even more so in systems where the category 'entails legal consequences based on assessments of the person's future behaviour', such as qualification for conditional release.¹⁹

The experts noted that classification requirements need to be taken into account already at the prison planning stage, and in the allocation of prisoners (e.g. location, physical state of the prison, number and experience of prison staff).

¹⁴ Rule 51 of the European Prison Rules also states explicitly that security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

¹⁵ *Handbook on Dynamic Security*, p. 5.

¹⁶ UN Bangkok Rules 40 and 41.

¹⁷ See Rule 87 on the need for steps to be taken to ensure 'a gradual return to life in society'.

¹⁸ Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff: Second edition*, International Centre for Prison Studies, London, 2009, p. 62 (*A Human Rights Approach to Prison Management*).

¹⁹ Such practice was documented, for example, in Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Argentina*, 27 November 2013, CAT/OP/ARG/1, para. 42.

Furthermore, the experts noted the relevance of Rule 12(2), which requires careful selection regarding the occupation of shared cells, in particular dormitories, in terms of who is 'suitable to associate with one another in those conditions'.

Provision of information

Information about charges

Rule 119(1) requires that 'every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her'. In doing so, the Rules incorporate an obligation deriving from Articles 9(2) and 14(3) of the International Covenant on Civil and Political Rights (ICCPR).

Information must be provided in a language that the arrested person understands, or through interpretation (free of charge).²⁰ It has to be noted that the ability to communicate on everyday issues does not mean individuals can cope with criminal procedure law and charges.²¹ For some categories of vulnerable persons, directly informing the person arrested of the reasons for detention is not sufficient.²² It was also recalled that a family member or other person needs to be notified of the fact and place of detention.²³

The participants highlighted that interpreters need to be independent from the authorities, as required by the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.²⁴

Obligations on the provision of information may be met orally initially and subsequently be confirmed in writing, provided that the information indicates both the law and the alleged general facts on which the charge is based.²⁵ The UN Human Rights Committee has provided guidance on the type of information required and how it needs to be delivered. The reasons given must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint.²⁶

The term 'promptly' in Rule 119(1) requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law or is publicly named as such. Any delay of notification must be exceptional and kept to the absolute minimum necessary.²⁷

Given that information needs to be provided 'immediately upon arrest',²⁸ this obligation will usually have to be met before a person is admitted to a detention facility. For example, if a person is arrested by police and transferred to a pre-trial detention facility, he/she must have been notified about the charges before arriving. Exceptions might arise where an interpreter has to be found or where additional charges are brought against a person who is already

²⁰ Principle 14 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (*Body of Principles*).

²¹ See, for example, NSW Police Force, *Code of Practice for CRIME (Custody, Rights, Investigation, Management and Evidence)*, April 2015, p. 67 (*NSW Police Force Code of Practice*).

²² *NSW Police Force Code of Practice*, para. 28. When children are arrested, notice of the arrest and the reasons for it should also be provided directly to their parents, guardians, or legal representatives. For certain persons with mental health-care needs notice of the arrest and the reasons also need to be provided directly to persons they have designated or appropriate family members.

²³ *Body of Principles*, Principle 16(1).

²⁴ UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 3, para 43(f).

²⁵ UN Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, 23 August 2007, CCPR/C/GC/32, para. 31.

²⁶ UN Human Rights Committee, *General Comment No. 35, Article 9: Liberty and security of person*, 10 April 2014, CCPR/C/GC/R.35/Rev.3, paras. 24-5 (*General Comment No. 35*).

²⁷ *General Comment No. 35, CCPR/C/GC/R.35/Rev.3*, para 25.

²⁸ *General Comment No. 35, CCPR/C/GC/35*, para 27.

detained.

The role of the prison authority should therefore be to verify whether information about charges was provided, and to assist detainees in obtaining relevant information. To do this, they will need to liaise with other relevant authorities. The Essex group held that the prison administration would be informed about the charges at least in a general way by the commitment order, without which prisoners should not be received in a prison (see Rule 7).

Requirement of valid commitment order

The Essex group noted the prison administration's obligation to verify the existence of a valid 'commitment order' upon admission of a prisoner enshrined in Rule 7.

The experts advised that such an order, at the very minimum, must include the date, time and place of arrest, the name of the person and authority ordering the commitment and any other relevant information (see Rule 7(b)). Commitment orders must be issued and signed by a judicial authority or another competent agency.

The UN Subcommittee on Prevention of Torture (SPT) has noted, for example, that 'the absence of copies of warrants of committal makes it impossible to monitor any extensions of pre-trial detention'.²⁹ Any commitment order lacking the required information should be automatically considered invalid.

The group noted that, when a commitment order expires, prison authorities bear a responsibility to either release the prisoner without delay, or – where the legal framework does not allow them to do so – to contact the responsible court or authority immediately, ideally ahead of the foreseeable expiration of the commitment order.

Information provided in detention

Rules 54 and 55 address both the content of information provided to prisoners and the manner in which it should be imparted. The Essex group emphasised that it is in the vital interest of prison administrations and staff for prisoners to understand the prison rules and procedures and their rights and obligations.

The participants considered the terminology 'authorized methods of seeking information' in Article 54(b), and cautioned that this should not be interpreted in a way that results in the denial of information about prisoners' rights. They also noted that 'applicable prison regulations' in Rule 54(a) should be interpreted in the broadest sense and should include information on regulations around the use of force and restraints.

While information should be provided at the earliest possible moment, the experts pointed out that admission to prison is a highly stressful time when detainees may not be able to grasp all the information received. Women prisoners, particularly those who have been separated from their children, may be especially distressed at the time of their admission and should be treated with sensitivity.³⁰

Moreover, in larger prisons there may be a significant number of prisoners passing through the admissions area each day, making it difficult to ensure information is provided to each prisoner in a language and format he/she understands.

²⁹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mali*, 20 March 2014, CAT/OP/MLI/1, para. 78 (*SPT Report on visit to Mali*).

³⁰ See UN Bangkok Rules, Rule 2.

The experts therefore recommended that information be explained to prisoners again at a later stage and that they should have the opportunity to ask questions and seek clarifications.

→ For further details on information provided on requests and complaints, see Chapter 6, Incident management.

Methods of imparting information

The provision of information should involve a conversation rather than simply handing out pamphlets or giving a lecture. Peers should be engaged in the induction process and peer support may also be helpful for follow up questions. As an example of good practice, it was noted that in some countries there are information desks staffed by prisoners with training in prison regulations and policies.

Rule 55(1) clarifies that information should be available at least in the most commonly used languages in accordance with the needs of the prison population and professional interpretation should be made available wherever possible.

The Essex group acknowledged that professional interpretation may be difficult to provide in some countries or for some languages. They suggested that the support of other prisoners with relevant language skills may be helpful, yet stressed that while this may be a solution for day-to-day routines, it does not provide a sufficient safeguard for more complex or private matters (e.g. medical examinations and complaints). An inventory of the languages spoken by prison staff, social workers and NGOs that might be able to help, was suggested as good practice.

Embassies may also be in a position to assist with language needs; however, where a fear of persecution exists, contact to the diplomatic representation is impermissible. The Essex group noted the relevance of Rule 62 in this context (foreign nationals, refugees and stateless persons), as well as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 16, paragraph 2) and the Vienna Convention on Consular Relations (article 36, paragraph 1(b)).

→ For consular assistance, see Chapter 3, Contact with the outside world

Good practice could include an easy-to-understand guide with information on practicalities (e.g. times of meals, how to sign up for vocational and educational programmes; information about peer support and relevant contact details; visitation rights; relevant timetables etc.).

Prison file management

The Essex group stressed the importance of prisoner file management for both good prison management and for the protection of the rights of prisoners. The UNODC *Handbook for Prison Leaders* stresses:

'Ensuring effective data management systems, including the basic prerequisite of maintaining adequate files for individual prisoners, is essential for the effective management of any prison system. (...) Where prison records are poor, there is a great risk of individual prisoners becoming "lost" in the system and no one knows why they are being detained, for how long and when they should be released. In many countries it has happened that "lost" prisoners thought to have been released were "discovered" still in prison many years later. Good prisoner data management is critical to ensuring that their human rights are respected and it is also important in terms of the management of

*the prison itself.*³¹

The SPT has emphasised the role of complete and reliable records as ‘one of the fundamental safeguards against torture or ill-treatment’ and as ‘an essential condition for the effective exercise of due process guarantees’.³²

Bearing these objectives in mind, the Essex group discussed the considerable changes to the SMR related to prisoner file management, noting that they now exceed the detail provided in regional standards and include:

- Standardised prisoner file management (Rule 6)³³
- Security of information (numbered and signed pages, secure audit trail, prevention of unauthorised access or modification) (Rule 6 and 9)
- Requirement of a valid commitment order for admission (Rule 7, see above)
- Comprehensive personal data (Rule 7)
- Prisoner to have access to his/her records (Rule 9)
- Data recorded throughout the term of imprisonment (Rule 8)
- General data to be extracted on trends (Rule 10)

Security of information

The Essex group noted that a ‘secure audit trail’ implies meticulously kept records which should include the identity of the staff member who enters, modifies or deletes information in the system as well as the date and time of any additions/revisions/deletions. The experts referred to guidance provided on the secure storage of prisoner files by the UNODC *Handbook on prisoner file management*³⁴ and the UNOPS *Technical Guidance*.

The sensitivity of information (right to privacy and confidentiality of personal information) is recognised by Rule 9, which implies that access to information in the prisoner file should be on a strictly need-to-know basis.

The participants noted cases in which prisoners’ safety was in jeopardy or prisoners were even killed after information about their offence became known to other prisoners. They therefore stressed that the files need to be kept in a location where they cannot be accessed by prisoners or any unauthorised persons.

The Essex group recognised there may be a tension between implementing a dynamic security approach and upholding confidentiality of prisoners’ files. It was suggested that access to the entire file could be limited to certain prison staff (e.g. more senior staff or wing leaders), who could share the necessary information with their peers, including during staff meetings.

The UN Beijing Rules were mentioned as possibly providing additional guidance. Rule 21 states that access to the records of juvenile offenders must be limited to persons ‘directly concerned with the disposition of the case at hand or other duly authorized persons’.

Medical confidentiality

³¹ United Nations Office on Crime and Drugs (UNODC), *Handbook for Prison Leaders*, New York, 2010, p. 94 (*Handbook for Prison Leaders*).

³² Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Ukraine*, 16 March 2016, CAT/OP/UKR/1.

³³ See also, for example *SPT Report on visit to Mali*, CAT/OP/MLI/1, para. 75.

³⁴ UNODC, *Handbook on Prisoner File Management*, New York, 2008, Chapter 6.

The Essex group considered how the principle of medical confidentiality is to be reconciled with the need to disclose information to prison staff pertaining to a prisoner's mental health status, bearing in mind the requirements of Rule 5(2).³⁵ Especially following a disciplinary offence, it would be counter-productive to withhold such information from prison staff and it might also be inconsistent with Rules 39(3) and 1.³⁶

The experts noted that information on a prisoner's mental health is crucial for prison staff to fulfil their duties (including providing safety and security), but not all medical information needs to be shared. Rather, information can be shared by health-care personnel with prison staff on a need-to-know basis, e.g. potential issues should be flagged to staff so they can recognise a connection between a prisoner's behaviour and mental health problems.

Similarly, the experts held that a common-sense approach will greatly help staff to assess behavioural patterns and will indicate behaviour that may be a result of mental health problems. Such cases must be referred to a health-care professional. The Essex group recalled Rule 8(c) which requires that information related to behaviour and discipline be recorded in the prisoner file.

→ See also Chapter 5 for restrictions, discipline and sanctions and Chapter 4 for health-care

Comprehensive personal data

Rule 7 lists the following information to be entered in the prisoner file management system upon admission of every prisoner:

- a) Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender;
- b) The reasons for his or her commitment and the responsible authority, in addition to the date, time and place of arrest;
- c) The day and hour of his or her admission and release as well as of any transfer;
- d) Any visible injuries and complaints about prior ill-treatment;
- e) An inventory of his or her personal property;
- f) The names of his or her family members, including, where applicable, his or her children, the children's ages, location and custody or guardianship status;
- g) Emergency contact details and information on the prisoner's next of kin.

The Essex group pointed out that much of this information can be captured during the reception process³⁷ on entry to a prison, but noted the need to update some of the information listed in the course of the prison term.

Within its country visits, the SPT has repeatedly documented deficiencies in the maintenance of registers, noting for example if and when registers were not completed or signed regularly, and 'useful records, such as records of deaths, transfers to hospital or other prisons, disciplinary punishments, visits by court officials' were not available.³⁸

³⁵ SMR Rule 5 (2) 'Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis'.

³⁶ SMR Rule 39 (3) '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 commission 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'; Rule 1 'The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times', which inherently includes protection from suicide and self-harm.

³⁷ UNOPS' *Technical Guidance for Prison Planning*, based on the Nelson Mandela Rules, offers guidance on how to design a reception area that supports effective registration.

³⁸ See, for example, *SPT Report on visit to Mali*, CAT/OP/MLI/1, para. 76.

The Essex group discussed Rule 7(a), describing personal data to be recorded by prison administration as ‘precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender’.

The experts noted that the provision was included to protect lesbian, gay, bisexual, transsexual and/or intersex (LGBTI) prisoners, in light of Rule 2 which prohibits discrimination, including based on ‘other status’ (i.e. gender identity and sexual orientation) and which requires that prison administrations take individual needs into account.

The allocation of LGBTI prisoners and subsequently their placement within a facility need to be determined with great caution in light of the documented particular vulnerability and risk of human rights violations and abuses. LGBTI prisoners should be consulted on their allocation.³⁹

The SPT, in its eighth Annual Report, has noted concern that ‘the absence of appropriate means of identification, registration and detention leads in some cases to transgender women being placed in male-only prisons, where they are exposed to a high risk of rape, often with the complicity of prison personnel’.⁴⁰

The SPT has also noted that ‘obtaining precise individual information as to gender identity is vital to determining proper treatment, including hormone and other treatment associated with gender transition. In the absence of mechanisms to obtain such information, grave health consequences ensue’.⁴¹

The recording of information on the self-perceived gender in Rule 7(a) should therefore be considered as a way to facilitate the placement of transgender detainees in appropriate facilities⁴² and to ensure the necessary protection and treatment.

The Essex group stressed that under no condition must Rule 7(a) be misinterpreted to stigmatise LGBTI prisoners, discriminate against them or impose disadvantageous conditions on them.

It has been recommended that prison registers do ‘not mention the sexual orientation and/or gender identity of a person in custody unless the person expressly wants this information to appear and that this information is not used against them. Recording information per Rule 7(a) should not mean that prisoners are automatically separated or their rights restricted. For transgender people, information contained in the records concerning gender identity should not be based solely on the biological sex of the persons concerned’.⁴³

In relation to Rule 7(c) the SPT has stressed that failure to record times of arrival and departure makes it ‘difficult to monitor whether the legal limit on periods of pretrial detention is respected’.⁴⁴

³⁹ See PRI and APT, *LGBTI persons deprived of their liberty: a framework for preventive monitoring*, 2013, 2015, London (*LGBTI persons deprived of their liberty*); UN General Assembly, 56th Session, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, 3 July 2001, A/56/156, para. 23.

⁴⁰ UN Committee Against Torture, 54th Session, *Eighth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 26 March 2015, CAT/ C/54/2, para. 68.

⁴¹ UN Committee Against Torture, 57th Session, *Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 22 March 2016, CAT/OP/C/57/4, para. 65.

⁴² See *LGBTI persons deprived of their liberty*, p. 9.

⁴³ APT, ‘Files and records – LGBTI persons’, *Detention Focus database*, accessed 14 September 2016 at http://www.apr.ch/detention-focus/en/detention_issues/27/?setvg=6.

⁴⁴ *SPT Report on visit to Mali*, CAT/OP/MLI/1, para. 78.

With regard to Rule 7(f) – inclusion of the names of family members, in particular children – the participants stressed that this requirement must be consistent with the Convention on the Rights of the Child, which provides that the best interests of the child be the primary consideration.⁴⁵

The Essex group also referred to Rule 3 of the Bangkok Rules. This rule recommends recording the names, ages and location of children in order to facilitate contact, but is worded to ensure that women are never forced to disclose information about their children.⁴⁶ Parents should never be punished for refusing to provide this information. Furthermore, Bangkok Rule 3(2) specifies that all information related to the children's identity should be kept confidential. The experts highlighted that the respective Bangkok Rules are applicable to fathers as noted in preliminary observation no. 12 of the Bangkok Rules.

The UN Rules for the Protection of Juveniles Deprived of their Liberty specify that the records of juveniles in detention must include details of the 'notifications to parents and guardians on every admission, transfer or release of the juvenile'.⁴⁷

Data recorded throughout the term of imprisonment

The Essex group highlighted the significance of Rule 8, which goes beyond existing regional standards in providing for a record in every prisoner's file not only in terms of personal and case information upon admission, but throughout the term of imprisonment.

The experts agreed that the list provided in Rule 8 should be read as an indicative rather than an exhaustive list:

- a) Information related to the judicial process, including dates of court hearings and legal representation;
- b) Initial assessment and classification reports;
- c) Information related to behaviour and discipline;
- d) Requests and complaints, including allegations of torture or other cruel, inhuman or degrading treatment or punishment, unless they are of a confidential nature;
- e) Information on the imposition of disciplinary sanctions;
- f) Information on the circumstances and causes of any injuries or death and, in the case of the latter, the destination of the remains.

The requirement to keep records on 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', is enshrined in Rule 51.

The experts clarified that records should also include participation in work or educational activities and the use of force, arms and/or restraints. Information related to behaviour and discipline could include comments on prisoners' rapport with others, sudden behavioural changes etc. which could be useful in later assessments of whether behavioural difficulties may be related to mental health issues.⁴⁸

⁴⁵ Article 3(1) of the Convention on the Rights of the Child: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.

⁴⁶ Bangkok Rule 3 states: 'The number and personal details of the children of a woman being admitted to prison shall be recorded at the time of admission. The records shall include, without prejudicing the rights of the mother, at least the names of the children, their ages and, if not accompanying the mother, their location and custody or guardianship status'.

⁴⁷ UN Rules for the Protection of Juveniles Deprived of their Liberty, adopted by UN General Assembly Resolution 45/113, 14 December 1990, Rule 21 (d).

⁴⁸ The UK's Assessment, Care in Custody, and Teamwork (ACCT) care planning system was given as a good practice example. Under the ACCT any member of staff who receives information, including that from family

The prisoner file should include information about good behaviour and positive achievements in line with the rehabilitative purpose of imprisonment and need for ongoing individual assessments with regard classification, rehabilitation programmes and information relevant for conditional release (Rule 93).

While keeping comprehensive records was perceived as an important tool of good prison management, the experts noted the risk of creating an over-bureaucratic system in which staff spend more time doing paperwork than interacting with prisoners, providing security or facilitating rehabilitation programmes.

The Essex group also stressed that in order to maintain a comprehensive prisoner file, personnel needs to be equipped with the skills to operate such a system.⁴⁹

Extraction of general data on trends

The Essex group discussed Rule 10, which states that prisoners' files should be used to generate data about trends in the prison population and occupancy rates.

The importance of extracting general data has been captured, for example, in the 2010 *Survey of the United Nations and other Best Practices in the Treatment of Prisoners in the Criminal Justice System*. It states that 'Collecting data about prisoners and prisons and developing information management systems can (...) better inform criminal policies and help to monitor compliance with international standards. Maintenance of accurate prisoner records is also crucial to prevent overcrowding and rights violations'.⁵⁰

The experts agreed that Rule 10 should be interpreted to include reliable data on a broad range of trends such as the numbers of deaths and serious injuries,⁵¹ and data on the profile of prison populations,⁵² including, for example, on the changing age profile of a prison population so appropriate facilities and programmes can be provided.

The experts stressed the importance of generating information on occupancy rates to address and/or prevent overcrowding. The Inter-American Commission on Human Rights, for example, has emphasised the need for a reliable system of registration to control prison

members or external agencies, or observes behaviour which may indicate a risk of suicide/self-harm, must open an ACCT plan.

⁴⁹ See, for example, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to New Zealand*, 28 July 2014, CAT/OP/NZL/1, para. 46, documenting that the 'lack of skills by personnel to effectively operate the system [Integrated Offender Management System] might affect data entry and record keeping of prisoners' information'.

⁵⁰ Twelfth United Nations Congress on Crime Prevention and Criminal Justice, *Workshop 2: Survey of United Nations and other best practices in the treatment of prisoners in the criminal justice system: Background Paper*, 28 January 2010, 6A/CONF.213/13, para. 18. See also UNODC, *Handbook on Prisoner File Management*, New York, 2008, which contains practical guidance on setting up effective registration systems.

⁵¹ The UN Committee against Torture, for example, has stated that 'States should monitor and document incidents of violence in prisons with a view to revealing the root causes and designing appropriate prevention strategies'. (UN Committee against Torture, *Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR)*, 16 December 2013, CAT/C/51/4, para. 15 (CAT SMR revision observations)). See also European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *3rd General Report on the CPT's activities covering the period 1 January to 31 December 1992*, 1993, CPT/Inf (93) 12, para. 62: 'The health care service could compile periodic statistics concerning injuries observed, for the attention of prison management, the Ministry of Justice, etc.'

⁵² In this context the experts recalled the value of research, and in particular Rules 67 and 68 of the UN Bangkok Rules which call for research into the reasons why women are in prison and the impact of prison on them as well as research on the number of children affected by imprisonment and the impact on them.

overcrowding.⁵³

The data generated should be publicly available and easily accessible, to better inform public policy and provide the public and media with regular factual information about matters affecting prisoners.

Institutional personnel

Working conditions of prison staff

The Essex group recognised that working in a prison requires specific skills, but that prison staff are often poorly paid, under-trained and experience high levels of work-related stress and violence.⁵⁴ It was also noted that those working in isolated, rural prisons may experience particular difficulties.

The group discussed the need for decent working conditions and terms of service for prison staff. This is also a prerequisite to attract and retain suitable people and to enable them to deliver their duties effectively. Favourable conditions of service should include consideration of prisoner to staff ratios. (See also Chapter 6, Incident management - Safety and security.)

The experts also discussed the need to inform the public about prisons, prison staff and the significance of their role in safeguarding society (Rule 74(2)), noting that prison staff are often held in lower regard than other actors who work in the criminal justice field.

It was noted that in some countries, prison officers are transferred regularly from one prison to another, which constitutes a hardship for them and their families. At the same time, it has to be acknowledged that transfers of prison officers have proven to be an effective measure to prevent corruption.

Guidance about the planning, design and provision of facilities for prison staff can be found in the UNOPS *Technical Guidance*.⁵⁵

Adequate prisoner-staff ratio

The Essex group highlighted that the importance of an adequate prisoner-staff ratio for good prison management, which has been widely recognised. The Inter-American Principles and Best Practices provide that '[s]efficient and qualified personnel shall be available to ensure security, surveillance, and custody'.⁵⁶ They require that staff 'shall be provided with the necessary resources and equipment so as to allow them to perform their duties in suitable conditions, including fair and equitable remuneration, decent living conditions, and appropriate basic services'. The Kampala Declaration on Prison Conditions in Africa also states that 'the State should provide sufficient material and financial resources for staff to carry out their work properly'.⁵⁷

As has been noted by human rights bodies, 'where staff complements are inadequate (it)

⁵³ Inter-American Commission on Human Rights, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, 31 December 2011, OEA/Ser.L/V/II Doc 64, para. 157.

⁵⁴ See, for example, Penal Reform International, 'Prison Staff: Overworked and Underpaid?', *Global Prison Trends 2015, 2016*; and PRI and APT, 'Staff working conditions: Addressing risk factors to prevent torture and ill-treatment', *Detention Monitoring Tool, second edition, 2015*.

⁵⁵ *Technical Guidance for Prison Planning, based on the Nelson Mandela Rules*, pp. 202-208.

⁵⁶ Principle XX of the Inter-American Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

⁵⁷ See African Commission on Human and Peoples' Rights, *Kampala Declaration on Prison Conditions in Africa*, September 1996, 'Prison Staff', para. 3.

can easily result in high levels of stress in staff and their premature burnout, a situation which is likely to exacerbate the tension inherent in any prison environment'.⁵⁸

The experts noted that adequate numbers of staff need to be present at all times to ensure safety and security, including overnight.

Dynamic security and conflict prevention

Lessons learned over the last 60 years include the acknowledgment that techniques of conflict resolution and mediation not only ensure human rights compliance, but also are more effective and efficient in providing for the safety and security of prisoners and prison staff.

In particular, it is now 'generally acknowledged that safety and security in prisons depend on creating a positive climate which encourages the cooperation of prisoners' and that 'engaging with prisoners and getting to know them can enable staff to anticipate and better prepare themselves to respond effectively to any incident that may threaten the security of the prison and the safety of staff and inmates'. This notion is usually referred to as 'dynamic security', describing an 'emphasis on the need for prison staff to establishing good relationships with prisoners'.⁵⁹ It implies proactive and frequent interaction of prison staff with prisoners, which allows them to observe the prisoners and gather information. Such regular interaction provides warning signs of incidents and allows prison staff to anticipate and prevent problems before they even arise. It also means that should an incident occur the prison staff know prisoners well enough to know how to respond.⁶⁰

Furthermore, a dynamic security approach has shown to in itself improve security. Constructive as opposed to confrontational, relations between prisoners and staff 'will serve to lower the tension inherent in any prison environment and by the same token significantly reduce the likelihood of violent incidents and associated ill-treatment'.⁶¹ 'Approachability of staff, instilling confidence, creating a sense of order and safety/security' has been found to prevent conflict.⁶²

Dynamic security entails the prison staff being directly involved with prisoners ('basic grade staff') and requires adequate training. Interpersonal skills of staff are an important element in the effective application of dynamic security.⁶³ Staff should understand the relevance of verbal and non-verbal behaviour, and be familiar with the different groups represented in prison (including religious, ethnic and cultural groups).⁶⁴

The SMR acknowledge the concept of dynamic security in Rule 76(c), and emphasise the role of conflict prevention and alternative dispute resolution in prisons in Rule 38(1).

It has been noted, in the context of post-conflict situations, that to a certain extent the 'introduction of effective dynamic security elements, such as increased staff/prisoner contact and interaction, can offset a prison's limited static security components'.⁶⁵

⁵⁸ *CPT 11th General Report*, [CPT/Inf (2001) 16], para. 26.

⁵⁹ *Handbook for Prison Leaders*, p. 106.

⁶⁰ *A Human Rights Approach to Prison Management*, pp. 59, 70-71. See also United Nations Department of Peacekeeping Operations, *Prison Incident Management Handbook*, 2013, pp. 15 and 21 onwards (*DPKO Prison Incident Management Handbook*); *Handbook on Dynamic Security*; and Office of the United Nations High Commissioner for Human Rights, *Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials*, vol. 1, Geneva, 2005, p. 98 (*Human Rights and Prisons*).

⁶¹ *CPT 2nd General Report*, CPT/Inf (92) 3, para 45.

⁶² *Handbook on Dynamic Security*, p. 32.

⁶³ *Handbook on Dynamic Security*, p. 32.

⁶⁴ *Handbook on Dynamic Security*, p. 32.

⁶⁵ *DPKO Prison Incident Management Handbook*, p. 21.

Recruitment and selection of prison staff

The Essex group recommended that penitentiary systems have a recruitment policy in place which is clear about the skills and qualities required. The policy should have proper criteria and procedures to ensure only suitable applicants are employed. It has been stressed that, '[t]o obtain personnel of the right calibre, the authorities must be prepared to invest adequate resources into the process of recruitment and training and to offer adequate salaries'.⁶⁶

The skills described in Rule 76 should already be taken into account in the course of recruitment, i.e. prison authorities should seek to recruit staff who have already acquired relevant skills.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials also call on governments and law enforcement agencies to 'ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training'. They also call for a periodic review of the 'continued fitness to perform these functions'.⁶⁷

It was emphasised that there should be no discrimination in the recruitment of staff and that prisons should make efforts to recruit from diverse communities, to include members of different ethnic groups and minorities. This seems particularly relevant in light of Rule 5 and, bearing in mind possible language differences, would be necessary in prisons where a significant number of prisoners are members of such communities. (See also Chapter 3, Contact with the outside world.)

The experts highlighted the importance of recruiting female staff, with particular reference to women's prisons in light of Rule 81(3). This provision states that women prisoners shall be attended and supervised only by women staff members.

The Essex group referred to the UNODC *Handbook for Prison Leaders* which recommends that hiring staff should be a gradual system of application, interview and testing to ensure the best individual receives the position. It also recommends the implementation of testing for situational judgement and personal ethics.

For countries in a post-conflict situation the *Handbook* notes that a 'vetting process' may be required to ensure a proper screening of new recruits and calls for special attention to the frequent practice of recruiting amongst demobilised soldiers and officers.⁶⁸

It was noted with concern that in some countries police or military officers are assigned to serve as prison officers and that prison staff are sometimes transferred to more difficult or remote prisons as a form of disciplinary sanction, rather than in the course of a positive selection.

Training of prison staff

The Essex group noted that the list of training content in Rule 76 should be regarded as illustrative rather than exhaustive.

The experts stressed the importance of strengthening social skills of prison staff, in particular

⁶⁶ CAT SMR revision observations, CAT/C/51/4, para. 63.

⁶⁷ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 18.

⁶⁸ *Handbook for Prison Leaders*, pp.55, 59.

the aptitude for interpersonal communication skills,⁶⁹ and of ethical standards, which should be enshrined in a Code of Ethics for prison staff.⁷⁰ They pointed out that training needs to be designed to ensure prison staff have a broad understanding of their actions/roles, going beyond the duty of guarding prisoners, but contributing to rehabilitation and reintegration – in line with the principles of Rules 1 and 4.

The need for specialist training mentioned in Rule 76(2) should include training on working with the groups identified in the UNODC *Handbook on Prisoners with Special Needs*.⁷¹ The experts noted good practice in some jurisdictions where specific officers are assigned with sentence planning and identifying suitable rehabilitation and reintegration programmes for special groups. This ‘specialist function’ should be facilitated by specialist training in line with Rule 76(2).

Training must incorporate standards that give guidance on how to provide both a gender-sensitive and age-sensitive approach,⁷² as well as relating to the specific needs of other groups, including LGBTI prisoners.⁷³

The experts stressed that training should not be limited to theoretical presentation of laws and regulations, but should be practical and include scenario-based training.

Rule 75(3) underlines that training must be provided not only before entering duty, but on a continual basis.

The experts acknowledged the benefit of technology, including the availability of e-training, but stressed the need and benefit of face-to-face education, in particular for practical training content such as the use of force and restraints. They further noted the need for dedicated training facilities, where inductions can be provided in-house (staff may be more receptive to in-house training) or by external agencies. The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas recommend the participation and cooperation of social institutions and private enterprises in training programmes and specialised education.⁷⁴

→ See also Chapter 6, Incident management – use of force and arms.

Inspections and external monitoring

Two-fold system of inspections

⁶⁹ ‘The possession of such skills will often enable a police or prison officer to defuse a situation which could otherwise turn into violence, and more generally, will lead to a lowering of tension, and raising of the quality of life, in police and prison establishments, to the benefit of all concerned’ (*CPT 2nd General Report*, CPT/Inf (92) 3], para. 60). See also *CAT SMR revision* observations, CAT/C/51/4, para. 63 (‘considerable emphasis should be placed on the acquisition of interpersonal communication skills by prison staff’); and *Handbook on Dynamic Security*, p. 32.

⁷⁰ See Council of Europe, *Recommendation CM/Rec (2012)5 of the Committee of Ministers to member States on the European Code of Ethics for Prison Staff*, 2012.

⁷¹ UNODC, *Handbook on Prisoners with special needs*, 2009.

⁷² UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985; UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) 1990; UN Rules for the Protection of Juveniles Deprived of their Liberty 1990; OHCHR Guidelines for Action on Children in the Criminal Justice System, Guideline 21. See also *CAT SMR revision* observations, CAT/C/51/4, para. 62.

⁷³ *CAT SMR revision* observations, CAT/C/51/4, para. 62; UN General Assembly, 68th Session, *Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General*, 9 August 2013, A/68/295, para. 83 (*Special Rapporteur on Torture report 2013*); UN Human Rights Council, 29th Session, *Discrimination and violence against individuals based on their sexual orientation and gender identity: Report of the Office of the United Nations High Commissioner for Human Rights*, 4 May 2015, A/HRC/29/23, para. 75.

⁷⁴ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, principle XX.

The Essex group recalled that the updating of the rules on inspections (Rules 83-85) reflects the considerable lessons learned in recent decades from the regular monitoring of places of detention and its preventive function with regard to torture and ill-treatment.

Experience with monitoring and inspection systems revealed that, while internal inspections fulfil an important function, monitoring is ensured much more effectively through an external, independent body that has full access and can undertake unannounced visits.

Accordingly, the revised SMR reflect the concept of a two-fold system consisting of internal inspections on the one hand, and external inspections by a body independent of the prison administration on the other.

The participants discussed that there is no clear differentiation between the terms 'inspection' and 'monitoring'. 'Inspection' may be used more often amongst criminal justice actors describing internal prison inspections, whereas the term 'monitoring' may be in use more in the human rights community and referring to enquiries by an external, independent body.

The experts did not discuss at length aspects and good practice on external monitoring bodies, given the wealth of information and guidance already available.

They recommended drawing on the wide array of standards and sources relating to monitoring, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT),⁷⁵ the European Committee for the Prevention of Torture (CPT) Standards,⁷⁶ as well as manuals such as the OHCHR *Manual on Human Rights Training for Prison Officials*.⁷⁷

The UNOPS *Technical Guidance* suggests that an office should be provided within a prison that can be used by inspectors when conducting their work.⁷⁸

Objectives for internal and external inspection

The Essex group highlighted that Rule 83(2) clarifies the objectives for both internal and external inspections/monitoring, as follows:

- Ensuring management in line with existing laws, regulations, policies and procedures;
- Protecting the rights of prisoners; and
- Bringing about the objectives of penal and corrections services.

The participants emphasised that compliance with laws and regulations includes regional and international standards, and in particular the revised SMR; and that the 'objectives of penal services' need to be interpreted in line with Rule 4, i.e. delivering a rehabilitative function.

The experts highlighted the requirement of 'regularity' of both internal inspections and external monitoring visits in Rule 83(1). They noted that inspections must be frequent enough to enable effective monitoring of conditions, changes and developments whilst

⁷⁵ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁷⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *CPT Standards: "Substantive" sections of the CPT's General Reports*, 2015, CPT/Inf/E (2002) 1 – Rev. 2015, para. 54.

⁷⁷ *Human Rights and Prisons*, p. 137: 'Internal inspection is not in itself sufficient. It is therefore essential that there should also be a form of inspection which is independent of the prison system'.

⁷⁸ *Technical Guidance for Prison Planning, based on the Nelson Mandela Rules*, p. 225.

allowing for flexibility in terms of prioritising inspections in more problematic prisons.

The Essex group underlined that the existence of inspections or the establishment of a monitoring body should not result in the reduction of access to prison facilities for other actors, such as non-governmental organisations who frequently deliver an important distinct function when visiting prisons. The Inter-American Court on Human Rights has underscored that the work undertaken by NGOs and other groups constitutes a positive and complementary input to the duty of the State as a guarantor of the rights of persons under its custody.⁷⁹

Authority of inspectors/monitors

The Essex group discussed the new provision on the authority of inspectors in Rule 84(1), which is applicable to both internal inspectors as well as external monitors:

- Access all information, including on the number of prisoners, places and locations of detention;
- Access all information on the treatment of prisoners, their records and conditions of detention;⁸⁰
- Freely choose which prisons to visit, including unannounced visits at their own initiative;⁸¹
- Freely choose which prisoners to interview;
- Conduct private and fully confidential interviews with prisoners;
- Conduct private and fully confidential interviews with prison staff; and
- Make recommendations to the prison administration and other competent authorities.

The Essex group stressed the requirement for inspectors to access ‘all places and locations of detention’, which includes all areas of prison facilities, including maximum security wings.⁸²

Note was made of the prison administration’s obligation to enable and facilitate the work of inspectors and monitors.

At the same time, the experts noted frequent problems of members of monitoring bodies when seeking confidential interviews with prisoners. While the protection of monitors from dangerous prisoners is legitimate and required, it must not become an obstacle to the very function of inspection and external monitoring. In particular, it must not prevent confidential interviews of monitors with prisoners in a trustful atmosphere. Such an environment is

⁷⁹ I/A Court H.R., Matter of Mery Naranjo et al. regarding Colombia. Provisional Measures. Order of the Inter-American Court of Human Rights of July 05, 2006, Considering 6. I/A Court H.R., Matter of Monagas Judicial Confinement Center ("La Pica") regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights. February 09, 2006, Considering 14. I/A Court H.R., Matter of Carlos Nieto et al. regarding Venezuela, Provisional Measures. Order of the Inter-American Court of Human Rights of July 09, 2004, Considering 8. I/A Court H.R., Matter of Lysias Fleury regarding Haiti, Provisional Measures. Order of the Inter-American Court of Human Rights of December 02, 2003, Considering 10.

⁸⁰ The SPT has been critical of detention authorities limiting the access of monitoring bodies for reasons of confidentiality (e.g. Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of the Republic of Malta: Report to the State Party*, 1 February 2016, CAT/OP/MLT/1, para. 33 (*SPT Report on visit to Malta*).

⁸¹ The Special Rapporteur on Torture, for example, has stressed the criterion of unimpeded access (on a regular and an ad hoc basis) without prior notice (*Special Rapporteur on Torture report 2013*, A/68/295, para. 82). See also *CAT SMR revision observations*, CAT/C/51/4, para. 58.

⁸² Unimpeded access to all places of detention, all areas and facilities within them and all prisoners is established good practice and proven precondition for the effectiveness of an inspection/ monitoring mechanism. See in particular Article 14 (1) of OPCAT and Principle XXIV of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

lacking, for example, if the prisoner being interviewed is handcuffed to bars or windows during the conversation.

The participants clarified that interviews referred to in Rule 84(c) require the consent of the interviewee and that both prisoners and prison staff who speak to inspectors and monitors need to be protected from any risk of intimidation, retaliation or other negative consequence as a result of having been interviewed. The Essex group recommended to expand safeguards against such risks developed under Rule 57(2) on inspectors and monitors, where applicable.⁸³

It was stressed that inspectors should 'not limit their activities to seeing prisoners who have expressly requested to meet them, but should take the initiative of visiting the establishments' detention areas and entering into contact with inmates'.⁸⁴

External monitoring body

The Essex group recommended that, when establishing such institutions, states should ensure a clear distinction between internal and external inspections.

The participants emphasised that 'independence' requires that the body is not under the same institutional, hierarchical or organisational structure as the prison management. They noted that guidance can be drawn from Article 18 of the OPCAT, which specifies the term as implying functional independence as well as the independence of the monitoring body's personnel. Principle 29(1) of UN Body of Principles, regarding supervision of places of detention, refers to 'a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment'.

The Essex group noted that adequate resources and the monitoring body's ability to decide upon their use constitutes a vital factor in the independence of external monitoring.

The experts discussed the requirement expressed in Rule 84(2) for external inspection teams to be composed of 'qualified and experienced inspectors' and reiterated that guidance can be drawn from the OPCAT. The Protocol requires members to have 'proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration', and calls on states to 'strive for a gender balance and the adequate representation of ethnic and minority groups in the country'.⁸⁵ They pointed to the explicit mention of health-care professionals (including forensic doctors) as members of inspection teams, which constitutes established good practice.⁸⁶

The Essex group recommended that experience in monitoring methodology and knowledge of international standards is considered a requirement when appointing members of an inspection team.

The participants noted the appointment by 'a competent authority' in Rule 84(d) and emphasised that in order to ensure independence such a body must not be appointed or approved by the government. The wording of Rule 84(d) illustrates that there may be distinct competent authorities appointing different inspectors.

The participants highlighted that the term 'competent authority' is used in different contexts

⁸³ The Essex group noted as good practice Articles 15 and 21 of the Optional Protocol to the Convention against Torture, according to which 'No authority or official shall order, apply, permit or tolerate any sanction against any person' for having communicated information to the monitoring body.

⁸⁴ *CAT SMR revision* observations, CAT/C/51/4, para. 57.

⁸⁵ Articles 5 and 18 (2) of the Optional Protocol to the Convention against Torture.

⁸⁶ The UN Committee against Torture stressed that inspectors should be 'trained to detect signs of torture or other ill-treatment, including sexual violence' (*CAT SMR revision* observations, CAT/C/51/4, para. 58).

throughout the SMR and that any explanatory note needs to ensure consistency with other references (see rules 34, 37, 41(1), 45 (1), 56(3), 71(1) and 85(2)).⁸⁷

Internal inspections

The Essex group considered that internal inspections should also, to the extent possible, have an element of independence. Under no circumstances should internal inspection mechanisms replace or be presented as external.

The experts noted that internal or administrative inspections under Rule 83(1) should take place according to agreed-upon standards and criteria. Prison managers must be made aware of these, to be aware of what criteria they will be assessed against. Unannounced inspections are to be encouraged.

The experts recommended the scope for internal inspections be clarified, which may vary from external monitoring mechanisms. For example, it was noted that monitoring bodies established under the OPCAT are focused on a mandate to 'prevent torture and other ill-treatment', whereas internal inspections may also want to include broader aspects of prison management, criminal justice, or the prevention of corruption etc.

The participants noted that the ability to speak openly (internally) is imperative for an internal inspection body. They discussed that to achieve the necessary authority, weight, and effectiveness it is beneficial to have a high-level public authority figure as the head of any inspection body.

Reporting and follow up

The Essex group referred to the wealth of information and guidance developed in recent years on monitoring methodology and the follow-up of recommendations in particular by the SPT, National Preventive Mechanisms established under OPCAT, by the Inter-American system, as well as the European Committee for the Prevention of Torture (CPT).

Examining Rule 85(1), the Essex group emphasised that transparency of inspection and monitoring bodies is important to ensure their credibility.

The participants highlighted the requirement of a written report for 'every inspection', which is clearly stipulated in Rule 85(1) for internal and external inspections.

The Essex group considered that Rule 85(1) – 'due consideration to making the reports of external inspections publicly available' – must not be understood as implying that internal inspections are not made public. Rather, they noted clear guidance by international human rights mechanisms that the findings of monitoring should always be 'made public, excluding any personal data of a prisoner without his or her express consent'.⁸⁸

The participants discussed the common approach of monitoring bodies where a bilateral dialogue with the inspected detention facility is held to discuss findings and recommendations, and subsequently reports are made public.

⁸⁷ Further guidance on inspections can be found in APT's publications *Optional Protocol to the UN Convention against Torture: Implementation Manual* and *Establishment and Designation of National Preventative Mechanisms*.

⁸⁸ *CAT SMR revision observations*, CAT/C/51/4, para. 57. *Special Rapporteur on Torture report 2013*, A/68/295, para. 82, with reference to Rule 74 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. See the concern raised by the SPT, noting with concern that 'whilst all reports prepared by the NPMs, including annual reports and visit reports, are submitted to the relevant Minister, they have never been made public'. (*SPT Report on visit to Malta*, CAT/OP/MLT/1, para. 35.)

The experts stressed the importance of following up on the implementation of recommendations, including through subsequent inspections to enquire whether recommendations were implemented and whether any questions or challenges have arisen (Rule 85 (2)).